

**The General Counsels Roundtable at the U.S. Securities and Exchange Commission
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Participants:

Christopher Cox, SEC Chairman
Giovanni P. Prezioso, SEC General Counsel

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James R. Doty, Baker Botts LLP; Partner
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Daniel L. Goelzer, Public Company Accounting Oversight Board, Board Member
Simon M. Lorne, Millennium Partners LP, Vice Chairman and Chief Legal Officer,
Harvey L. Pitt, Kalorama Partners, CEO and Founder
Richard H. Walker, Deutsche Bank AG, General Counsel

Christopher Cox: Well, I want to thank everyone who is with us live and those who are going to be watching us later on the Web. Welcome to what is the first of a series of round tables that I'm planning to hold here at the Securities and Exchange Commission in this wonderful auditorium.

It's quite a cast that we've been able to assemble here at this General Counsel round table and I want to thank our current General Counsel, Giovanni Prezioso, for leading the effort to organize this. The next upcoming event of this kind will be the Chairman's round table on December 20th, where we expect to have every living former Chairman and I hope that it will be every bit as lively as today's extravaganza. What diplomats call a frank exchange of ideas or what John Belushi called the "Food Fight."

Today's event is co-hosted by the SEC Historical Society. The Society has graciously volunteered to prepare a transcript of these proceedings and to archive that transcript on their Website. If you haven't already by the way, I recommend to you that you visit the magnificent Web portal of the SEC Historical Society that is at www.sechistorical.org. There's a lot of history, however assembled in this room right here and so I'd like to get into it as quickly as possible. We have already seven general counsels including Giovanni on stage. We expect one more to be here who's in traffic and I'd like immediately to introduce our special guest.

Brad Cook once said that being General Counsel was the second best job at the SEC after Chairman. Harvey Pitt ought to know since he's done both. He was General Counsel for three years beginning in 1975 through 1978. And as you all know he was appointed as the 26th Chairman of the Securities and Exchange Commission by President Bush during one of the most trying times in the capital markets that our country has ever experienced. And because of that he was a pioneer in many of the actions that we're still pursuing at the Commission today. Chairman Pitt also has the distinction of having been the Historical Society's first President and one of its founding trustees, and for 10 years from 1968 to 1978 he held a variety of top level positions. Today, he is the founder and CEO of the global business consulting firm Kalorama Partners.

Dan Goelzer was appointed as the SEC's General Counsel in 1983 and served for seven years, making him the longest serving General Counsel in the Commission's history. All in all, he was a staff member of the SEC for 16 years, from 1974 to 1990. Today he serves as a board member of the Public Company Accounting Oversight Board.

Jim Doty served as SEC General Counsel from 1990 to 1992 and he's one of our most internationally minded former General Counsels. He's a partner with the international law firm of Baker Botts and has worked closely with securities regulators around the world, in Latin America, Mexico, Eastern Europe and China. He's also been involved with the Commission's International Institute for Securities Market Developments, which brings together regulators from emerging markets.

Simon Lorne followed Jim Doty, serving from 1993 to 1995. He's today Vice Chairman and Chief Legal Officer of Millennium Partners, a hedge fund based in New York. After leaving the SEC, he went first to Salomon Brothers, which then became Salomon Smith Barney and then Citigroup. For that reason, Simon reminds me of the man who lived in the same place in Europe but changed countries over 40 times in four years.

Richard Walker followed in his footsteps as General Counsel in 1998. He is exceptional in many ways. After he finished as General Counsel, he stayed on and became Director of the Division of Enforcement here at the Commission, a position that he held until 2001. He's now General Counsel at Deutsche Bank.

David Becker took up the mantle in 2000 and held the position of GC for two years. He was Editor in Chief of the Columbia Law Review and clerked for Justice Stanley Reed on the U.S Supreme Court. Today he's at Cleary Gottlieb, where his practice covers the full range of capital markets activities.

That brings us to our counsel today, Giovanni Prezioso. Before joining the Commission, Giovanni was also partner at Cleary Gottlieb. I detect the pattern. He has served here for the past three years and he's not going anywhere, not for the time being, because we need him here. He got his law degree from Harvard and I think he will tell you why I have not held that against him.

This is quite a reservoir of experience. I'm going to suggest and enforce a 4 minute limit for opening statements during which I encourage you to lay on the table anything that suits you -- safe, controversial or in between. After that we'll get even more animated and interactive and then I'm going to reserve 7 or 8 minutes at the end for each of you to do a one minute McLaughlin Group-style summary of whatever you think is left unsaid. So, with that, why don't we begin with Harvey Pitt.

Harvey Pitt: Thank you Chairman Cox. So is the pleasure to be back. And that opening quote had me thinking - after my stint here at the Commission as Chairman, I thought it was a lot easier being General Counsel. But I guess after this week, I'm not quite so sure. I think the most important aspect of my experience was the deep and abiding affection I developed for the agency. There's an enormous amount of camaraderie. The breadth of issues that the General Counsel has to consider and the importance of the job make it one of the best legal jobs in the country, not just in Washington and since leaving as General Counsel I can say that my successors have all done me proud. Actually they've done me less than proud because they've all done

better. But it's been quite remarkable to see the flow of talent that has come to the General Counsel's office.

I watch with admiration the very difficult issues that the Commission and its General Counsel are handling today. I think that one of the most difficult issues the General Counsel has is that an agency that seeks adherence to the rule of law needs to also make sure that the agency itself adheres to the rule of law. That puts the General Counsel in an exceedingly difficult posture sometimes because his or her client may have great intentions but sometimes needs to be reminded about some of the niceties of the law. I think that there've been two recent encounters with the DC Circuit which raise issues -- one was the mutual fund rule, and the other is the more recent proxy fraud case which reminded me of my days defending some Commission actions before the Supreme Court. We didn't always have a very hospitable audience and sometimes it appears the DC Circuit has concerns about it. So I'm looking forward with interest to seeing how the Commission responds in both of those cases.

Christopher Cox: All right, Dan.

Dan Goelzer: Thank you, Chairman Cox. I thought I would begin with just a couple of comments about what was important here when I was General Counsel. I guess I will leave it to the rest of the panel to see if any of it has any resonance today. I joined the staff in 1974. At that time I think there were 30 people in the General Counsel's office, probably about 20 of whom were old lawyers, including a young staff attorney named Jake Stillman, who I think is in the audience here today.

One of the most intimidating things about working in the office in that time was the calendar review which I know is still an important part of what the office does. It was then done by one unlucky staff attorney who was assigned on a Friday to read everything on the Commission's calendar for the following week and then report on Monday morning to the General Counsel about each item. I can't tell you the weekends I spent struggling with things like the net capital rules, so that I'd be able to explain them.

When I became General Counsel in 1983, I think the most striking thing that to me was going on at that time wasn't a particular legal issue, but it was a change that was going on with respect to the General Counsel's office participation in Commission decision making.

John Shad said to me when he appointed me that he would like the General Counsel's office to oppose every recommendation made to the Commission by any other office or division. John's theory was that decisions were best made in an advocacy context. The General Counsel's office was full of lawyers, where we ought to be able to take any side of a question and so that's how we ought to operate with respect to calendar review. I don't know, Chairman Cox whether you have the experience today, when you ask the staff to do something and they don't actually do it. I don't imagine that that ever happens anymore.

I didn't take Chairman Shad's request fully seriously, although I think we did try to go a long way in that direction. I would describe it as perhaps a bad idea that had the germs of a good idea in it, because I do think that the agency makes the best decisions when it's aware of the pitfalls in the courses of action that it may be taking or may be considering taking. And with all due respect to the talents in the other offices and

divisions, the division office that's recommending something doesn't always have it, I think, in its best interest to point out what might go wrong if we do this. I think I saw that as one of the central things that we strive to do when I was General Counsel.

Some of the issues that were important to us in those days have been resolved. I guess some are still with us. Certainly regulation of hostile takeovers was an important issue. The development of the law of insider trading coming out of the Supreme Court's decision and some other issues were central for us.

Enforcement remedies was an important topic and what remedies should be used in what particular situations is something I know you certainly struggle with today. Many of the accounting related issues that we deal with now at the PCAOB also had their echoes in those times and questions about the meaning of the internal control provisions of the Foreign Corrupt Practices Act were very central to us. The oversight of the accounting profession, the rather new peer review program that the AICPA was conducting, disclosure of non-audit services performed by auditors are other things that continue to be issues today.

I think we had many successes in these areas. We certainly had some failures. Harvey, I don't know if you remember this but when I became General Counsel you said to me (I never checked if it was true) that the no court of appeals had ever invalidated a Commission rule and it shouldn't happen on my watch either. We came up with two ideas, however: Rule 3(b)9 which dealt with when was a bank really a broker, and Rule 19(c)4, which had to do with anti-takeover restricted voting rights, coming into stock exchange listing requirements. I'm afraid we didn't maintain the record that you asked us to maintain. So those problems I guess are always with us.

Harvey Pitt: At least you didn't lose a case, 9-0, to the Supreme Court.

Dan Goelzer: I wasn't going to mention that. The final thing I would say would be something current to the day. I'm the only member of this panel that's in the position of being under the current oversight of the SEC, even to the extent of having our budget and therefore my salary contingent on the SEC's approval and good graces. So I think my first observation would be, I think the current Commission is doing a terrific job on absolutely everything. And I hope you feel the same way about us.

I would say though that we're now coming within sight of the fourth birthday of the Sarbanes-Oxley Act. I spent a good deal of my time during the past year as the board's participant in the work of the SEC's Smaller Public Company Advisory Committee, which I think has been just a tremendous value, and an eye opener for me. And many of the issues that group has struggled with -- the impact of internal control reporting, complexity of accounting standards, implementation of new standards, impact of securities regulation on competitiveness -- certainly are not unique to smaller companies. They are important throughout the size range that the Commission regulates and with the fourth birthday of Sarbanes-Oxley, it might be time to think about a more comprehensive study of the impact that SOX has had, particularly on the disclosure system and whether any adjustments or changes ought to be made in that respect. Perhaps that is something we will get into later on in the panel. Thank you.

Christopher Cox: We should have ample time to solve all the Sarbanes-Oxley problems during this panel, I would think. Jim.

James Doty: Well, thank you. I walked in the door the day the business round table case was handed down. I was glad that I did not have to deal with that for the next two and a half years.

We did deal with the issues of globalization of systemic risk and an inter-agency cooperation and jurisdiction. And I was always impressed that people no longer here, such as Linda Quinn and Richard Ketchum, had a mantra: what is good for the capital markets? You could always take a difficult complex problem that had not been addressed and you could count on the SEC staff to ask questions about what really is good for the capital markets.

I want to use my three and a half or 3.59 minutes to say that I think there is one issue that I would like to see the Commission take on and that is an initiative to expand and amplify the way you administer and enforce the Foreign Corrupt Practices Act and the anti-bribery statutes. And I know of no issue that is more current in terms of what affects the competitiveness and the transparency of American business, doing business abroad at a time when access to markets and access to raw materials is very important.

I think that what we have is not enough. I say not enough because this is not about abandoning a statute, amending a statute or ceasing to enforce the statute. It is about laying on an administrative scheme, which I think this agency is uniquely equipped to do that will enable American business to know that it is somewhat leveling the playing field and that it is engaging our government diplomatically, the right way at the right time, to actually project an elimination of corruption abroad.

There was an article earlier this week in The Post arguing to my mind not quite correctly that Sarbanes-Oxley accounts for greater transparency and anti-corruption efforts. I don't think that is quite right. But I think it shows you where you have an opportunity.

The current problem is that, while we know that a company cannot purchase T-shirts for an election, we don't know what the amount of walking around money on a per diem can be given to Government officials who come here for educational purposes. We don't know what a facilitating payment is, and I think it has always been odd for many of us in the bar that an agency as good as promulgating and proposing and defining concepts as this one has never defined facilitating payment.

Now, I am suggesting more than that. We need a filing system; we need a system whereby an issuer that has designed, promulgated, communicated and enforces an anti-bribery compliance program throughout its corporate enterprise can file that with the agency agreements it uses, with the agents it employs and the projects on which it employs those agents and that needs to confer something like S3 issuer status. The presumption that should go along with that is that at any time, if you discover foreign corrupt practice problems, that does not carry authorization by the parent and it doesn't carry by carrier's liability with it, that shifts presumption towards individual accountability. I would do more. I think that the Commission can promulgate the kinds of standards that it has announced in the Titan case. The Division of Enforcement created in the Titan case a duty to monitor agents. There are no standards that companies know and can communicate. It is an ideal case for the proposal of a rule to determine what should be the monitoring provisions abroad of agents. What should companies reasonably be

expected to require of agents by way of intrusion into the agent's own business structure. All of those are things you can do and you should do.

Having done that, I believe there would be a great business benefit and a great competitive benefit to our country and the capital markets. If going forward, companies could make filings if they are these threshold compliant filers that I have identified. If they could continue to make filings that show what projects are being bid on and who the competitors are and know that in a Hart-Scott-Rodino type of maintaining confidential competitive information, our government would then become engaged in monitoring abroad what is happening to these proposals and these bids.

In other words I think it would be a very good idea if the Department of State tapped the Minister of Finance or the Minister of Energy on the shoulder and said, we have two consortia led by two highly qualified U.S. bidders on this project for power or this project for natural gas. We are going to be watching this. If this is not awarded to one of these two bidders we are going to want to know why it went to a Chinese consortium, or why it went to someone who doesn't have the same standards of anti-bribery that we have in the United States.

It is an appropriate time for the Commission to start making the inter-agency efforts with the Department of Justice, the Department of State and the Treasury to do what you have done in the capital markets area, with the unified capital market and bring something good in addition to what you got now.

Christopher Cox: Thank you very much. Si.

Simon Lorne: Thank you, Mr. Chairman. It is perhaps obvious that we didn't get together and figure out what we are all going to say ahead of time. It is interesting as we sit here in a dramatic and new building to recognize that there is a sense in which people are looking at the continuity of the Commission over the years, with the SEC Historical Society, which Harvey got started three or four years ago. We reflect most of the General Counsels from the last 30 years out of the Commission's 71 years of existence - - Harvey became general counsel in 1975 -- and there is a continuity of some issues, but beneath the surface, there is the transitory nature to some of the external issues the Commission deals with. I think we can all talk about specific activities that were big in our time.

But behind the scenes, it seems to me that the General Counsel's office has been quite useful over the years in a way that Dan alluded to, and that is figuring out its own relationships with the Commission, the extent to which the General Counsel is the Chairman's General Counsel or the five Commissioners' General Counsel or in some abstract sense, the Commission as entity that became quite pointed. I spent a long time with Chairman Levitt and Commissioner Wallman and that was it. Fortunately right before we came to that situation we adopted a rule to the effect that two could be a quorum under some circumstances but it effectively meant that nothing could be done without both Commissioners being on board. Sometimes in the last four to five years it seemed like it might be a useful kind of an approach to life. But it brought those questions to the surface.

Relationships between the general counsel's office and the other divisions. We had long debates, Mr. Chairman, inside the building on securities litigation reforms, trying to

decide what the public face of the Commission would be so that we could come down to your offices and tell you what our public face was, but they were long and bloody at times. But there was recognition I think throughout the agency of something Harvey alluded to and that was the extraordinary recognition in this agency that we may disagree on the right answers to the questions but we don't disagree on what the questions are and what the goals are. There is an extraordinary affection among the alumni of this agency. On essentially a moment's notice on one e-mail from Giovanni, most of the General Counsels from the last 30 years came together to sit at a panel like this. And I think that is one of the wonderful things about the office that I served and the agency as a whole and it is exciting to sort of be here and reflect on that.

Christopher Cox: Thank you. Dick.

Richard Walker: Thank you, Chairman Cox. I remember very vividly the day that I left Washington after being at the Commission for over 10 years -- it was September 8, 2001, three days before 9/11. And I've always and often thought in retrospect what an enormous change 9/11 and within a month the fall of Enron, WorldCom and all of the other events of the fall of 2001 has brought about. And I think history will reflect that this is one of the most tumultuous periods in our history, not only for capital markets, but for the country as a whole. Life as we know has changed very rapidly and very, very dramatically. I have spent much of the last four years looking into our capital markets on the outside. I worked for a foreign private issuer located in Germany so I've had a lot of opportunities to travel around the world, to deal and engage with regulators in different countries, some following different approaches. It has been very instructive to look back into your own country through the eyes of others and to see how others see you.

I think for this agency, much of the last four years has been a very reactive time, it has been a time to clean up some of the problems that surfaced in 2001. It has been a time to implement Sarbanes-Oxley; I think the lion's share of the work fell to the SEC. I think the SEC, from a foreign private issuer's point of view, did a Herculean job in making sense of a very difficult and complicated law and making it applicable to people who have different corporate governance systems.

But I think that the present really is the time for action, now the Commission has caught up with some of these rapid events. It has for the most part, we hope, addressed and cleaned up some of the problems from the early period after 2001. It has done its job in implementing Sarbanes-Oxley; there is still some work to do. But it seems to me that there is no better time for a very substantial re-evaluation of what the future holds. Let's not get caught behind the eight-ball. Let's look forward, let's see and test and challenge some of the ways and some of the principles that the agency has followed and see if they really make sense and see if there are changes that would make the agency a better, stronger place going forward.

Obviously there has been a lot of change in terms of Congressional budgets and recognition of the resources that the agency needs. The staff has increased. But nevertheless 4,000 people is just a tiny, tiny speck in comparison to the size of the industry that you have to oversee and regulate. As any organization has to set priorities, it is very important for this agency to determine how to get the most bang out of the 4,000 people and the money the Congress has ascribed to the SEC's budget.

There are a lot of things, I think, that should be examined. I think no subject should be beyond examination. Self-regulation is something that is at a critical juncture. What does this mean? What should the future be? How can the agency facilitate better, more effective self-regulation to help relieve it of some of the burdens that it faces and other work that it has to do?

I think there are a lot of different styles of regulations. Some regulation is principles based, some regulation is prescriptive and rules-based. And what is the most effective? Historically the SEC has been a rules-based system with principles as well. But other systems of regulation are far less prescriptive. They are much more rule-oriented and based. It is time to rethink the way regulations should occur here.

I, for one, offer it as a challenge that it is time for fresh thinking, for reevaluation to test some of the historical principles and philosophies and see if they really match to the current needs of the marketplace.

Christopher Cox: Thank you very much. David.

David Becker: I do want to underscore what Si said about the respect and affection that we have for one another. I want to underscore my own respect and affection and I do want to underscore doubly a respect for Giovanni in the job that he has done with rejuvenating a sometimes fractious Commission. I think he has done a wonderful job and the office has done a wonderful job.

One of the things that I think a General Counsel can do is to help the Commission in generally analyzing things tightly. There is a tendency from time to time for the Commission to moralize rather than analyze. I say that even as I am speaking epigrammatically. In the enforcement area, there are whole bunch of forces that cause the Commission, particularly in settled cases, not to state its reasons as fully and as precisely as it might otherwise. The press release or the size of the penalty becomes the primary medium of communication.

The outside world doesn't really know what is expected with the level of precision that it should know. I have spent the last three years trying to communicate the expectations of the Commission; the conduct, as the staff in the Commission knows, sometimes falls seriously short of what the Commission would like it to be. I don't think the Commission does an adequate job of communicating expectations with sufficient detail and precision. Sometimes the Commission is viewed as a bunch of moralizing aliens, as opposed to people who understand the situations that people actually face and the choices that they have to make and the purposes for which they are running a business. And simply saying you are bad and you have to be good and we are going to force you to be good, when you feel that your arm is being twisted by twisting your other arm, doesn't quite get the message across with the clarity that changes conduct. And ultimately, it's all about changing conduct in order to protect investors.

I think that's an area in which the Commission could do a better job. To take just one example, rather than using a just all-inclusive term like gatekeepers, you are a gatekeeper and you are not doing your job so we are going to clobber you. The Commission could explain what it means by the term gatekeeper in various contexts, what it expects people to do and what legal duties arise from that. You don't get that in an order settling proceedings.

So that's an example of an area where I think the General Counsel's office, with cooperation of other parts of the Commission staff and under the direction of course of the Commission, could be helpful.

Christopher Cox: And that takes us to the present day. Giovanni.

Giovanni Prezioso: Thank you. I want to acknowledge Chairman Cox here because this event is completely attributed to his seizing upon the opportunity of folks being willing to get together. I am just so delighted that this group is able to be here today and that he has made this opportunity available broadly to the public.

I do want to emphasize the point that Si made about this group as alumni and the continuity. I come to this with at the opposite end of the telescope that Harvey comes from, which is, these are all folks whom I view as the pillars who set the benchmark that I need to aspire to. As I have struggled to meet that goal, and it is a struggle sometimes, I have found, remarkably, that each of these former General Counsels, at various times, in various ways, has been more than willing to assist with an issue that merits the perspective of folks who have been associated with the agency in the past. They know its traditions, and they have each been willing to make their time and experience and expertise available not only to me but others at the Commission and the Commission itself in advancing those long-term goals. I think that is awfully important.

We have heard about the perspective of the General Counsel's office and I agree with the things that have been said. One element that I want to add, that I think strikes me very often, is that the General Counsel's office sometimes has not only a different perspective from the view of the Commission, but a longer term perspective. Matters that have come before the agency in legal context have often require years to resolve. Briefs are designed to have an impact on cases that will set precedence for the future and so the policy assessments are often looking at a longer timeframe.

Recently, we got a request a few weeks ago from the Second Circuit to file a brief in a case. The issue in this case is whether or not the Commission acted properly under the statute in adopting a regulation. You will be glad to know that the regulation was first adopted in 1935 and last amended in 1966, I believe, before the time of everyone here on this panel. But it does illustrate that the issues of how we do this are issues that are sustained over time.

The second thing I would note is an incremental one. I don't think that anything can happen in one fell swoop but I think over the years, like the Commission in general, the office has become bigger. I think that the ability to serve as a kind of a senior partner in a small law firm and really be involved in everything, which may never have been exactly the case, certainly has declined over time. The amount of time that the General Counsel has to spend as a manager in maintaining morale and maintain quality of the work has shifted incrementally. I think in that regard you are incredibly fortunate. Everyone here shares this view about the quality of the people who work in the office and their ability to maintain a high degree of morale with very little in the way of tangible rewards or thank yous or kudos because they are often in a position, as has been noted, of disagreeing with division directors and office heads and telling people things they don't want to hear. I don't know how people sustain that. I do know, and I am sure that the others share this, but the opportunity to come in here and work with folks who, in the case of Mike

Eisenberg as Deputy General Counsel started in 1959, Jake Stillman in 1962, three Associate General Counsels who started here in the mid '70s and the baby Associate General Counsel who been here 15 years, is just an incredible resource and is critical to the management of the office.

The last thing I'll note is that there have been a lot of issues and every era has its own. The most different from what we are doing now from what others here have done is the change in the statutory framework for regulation of attorneys, which has always been a function that has been in the General Counsel's office. But until Sarbanes-Oxley, the affirmative mandate to adopt regulations and setting forth minimum standards of professional conduct wasn't nearly so clear and nearly so affirmative. Grappling with some of those challenges, being in a position not only of a viewer of rules and actions by the Enforcement division, but having to step back and think about how to approach these problems, has been one of the most interesting and probably distinct challenges, even though it does build on an awful lot of learning done by folks here at the table.

Christopher Cox: Well, I want you to know how disappointed I am that I didn't get to gavel anybody down and say your time has expired. This is a pretty disciplined professional group. But now we are going to go to the free forum part, so that nobody can be gavelled down for anything including interrupting somebody else unless it gets physical.

Let me just put some red meat on the table. David was good to say that he thinks the Commission is not doing as well as it could in a certain area. Why don't you just let your hair down and tell us what we are doing wrong and how to fix it.

David Becker: One thing I think the Commission has not done is recognize its own success in the cease and desist area. We got the Remedies Act passed. People wanted the Remedies Act because federal courts were too busy to deal with the kind of menial problems that were to be presented under the Remedies Act. The cease and desist power is now used competently, monitors have been added, many of these remedies are more flexible, and they are more regularly employed. The Commission has yet, I think, to see that the effect of an individual taking a cease and desist can be career ending. Does the Commission really want to exile permanently from positions of directorships or senior officer's status anyone who ever takes a cease and desist order or who takes a fine? I think not. I think if in fact there is any reservation about that we could talk about the reasons why. But I think you've got to do something to alert the corporate world to the fact that just because Mr. X has consented to some kind of a cease and desist order does not mean that he is considered to be a pariah and that he should never be brought into the fold of a corporate board. But I think that's in effect where we are now.

Harvey Pitt: I have to say, with a certain amount of trepidation, I disagree with that. I think that what we saw after Enron and WorldCom caused us to ratchet up the individual sanctions. The Commission has difficulty marshalling its evidence, bringing its cases but when somebody really mis-serves the public trust the, question we really have to ask is do we want those people to get second and third and fourth bites of the apple? Where I would agree with you is that I don't think that any permanent bar has to necessarily and truly be permanent. I think people can always reapply for readmissions, showing changed circumstances. But it seems to me if you have been a party to a real fraud and we won't go quite there in terms of what a real fraud is, the presumption ought to be, you

don't get to do it again unless you make a considerable showing that your misconduct has taught you a lot of lessons and that the public isn't at risk. I look at it from a slightly different perspective.

Unidentified Speaker: In that kind of situation, wouldn't you be able to use at least the traditional injunction? I think that the cases you are talking about might be appropriate for a criminal.

Dan Goelzer: I guess I have a sense that the Remedies Act has caused the program to become more, what I would call, punitive. It looks to impose fines perhaps at least some people use it. It looks to bring administrative cease and desist proceedings and settle them in cases that wouldn't have passed muster in a federal court.

Harvey Pitt: I think there is a very punitive element but the traditional injunctive remedy may not have been well utilized by the Commission going back to its inception. If you look at the Eleventh Circuit's footnote reference, the fact that an injunction that instructs people to do no more than obey the law even as they say we didn't really violate the law is very, very difficult. And you take a look at what the Commission has done to the injunctive remedies, this goes way back long before the Eleventh Circuit rule, has been hardly ever to bring recidivism cases for contempt based on injunctions that the Commission has granted. In my former days as a lawyer, I represented Armand Hammer and every two years he used to get another injunction.

I think that the punitive aspects of things are troublesome. Sometimes, the Commission's hand is forced because people get criticized not for what they do so much as what they haven't done or where people think they should have done. The staff and the Commissioners have a lot of pressure on them, if they don't show real toughness or even beyond that. But I think that still doesn't mean that people who abuse the trust, who are found to have abused the trust, should get a second shot at it.

Unidentified Speaker: I would like to go back to what David said more precisely. I found it troublesome, at the same time that I sympathize with parts. My concern is that the Commission has perhaps been too prescriptive. I think to my mind what's wrong with the Sarbanes-Oxley 307 Part 205 of lawyer conduct rules is they try too hard to detail what lawyers in certain circumstances may or may not, must or must not do so that you get into dotting the i's and crossing the t's. Dan, it gets into the same questions you all think about, in the rules based versus the principle based accounting analyses. I remember years ago Harvey objecting to 10b-5, and when we all recall, Stan Sporkin said that 10b-5 should be rewritten to say it is unlawful, Stan gets to define it. And some have suggested 10b-5 essentially did that, that it gives too much arbitrary power to the enforcers to decide what Bill McLucas used to call fraud d'jour and to go after it. But I'd be interested in your thoughts, Dan, because you have been looking at the same question from the accounting side as to whether the Commission really is too much principle based and too little rules based. I don't think so anymore.

Dan Goelzer: I am not quite so sure I see the analogy from a PCAOB perspective. As I have said there's certainly broad and important questions about whether our GAAP system should be more principle based, and, in the same token, whether our auditing standards should be more principles based. You know that's throughout everybody's favorite subject, auditing standard number two, while long from our perspective, is principle based. It's certainly not a cookbook as to how audit ought to be performed.

We have so little of a track record of an enforcement program that it is hard for me to respond to you -- but I think you are suggesting about the impact of enforcement.

Harvey Pitt: There is a huge sort of dilemma that gets created. I am in favor of being more principles based than prescriptive based. On the other hand, people need to realize that if you become more principles based, then you are going to be making a lot more law through the use of enforcement than through the use of the Commission's abilities because you are not going to be laying out for people every job title about how they perform. I think that's a better system ultimately because it gives the Commission appropriate flexibility.

Dan Goelzer: Perhaps I misunderstood you, but I thought that you were suggesting that we were in the enforcement context, which practically means in the settlement of enforcement cases, more guidance should be given about what was done wrong and what should have been done differently. And I think I always felt that the problem the Commission had was too much law made through settlement.

David Becker: No. I am suggesting that too much of law comes from that context and that for a variety of reasons that is an unhelpful context in which to make the law. And as a result between that and the press release, people don't get much information as to what they ought to do. I must say, I have yet to find much coherence in this business about whether it should be principle-based or it should be a rules-based. I understand the difference between crappy writing and good writing, but I understand the difference between how much discretion you give people and how little discretion you give people and a lot depends on who you're giving the discretion to, and how much credits you're going to give to whom for a discretion given. You go to the court and say, they're enforcing the law, we'll give them the discretion -- imagine the DC Circuit doing that. That's the SEC's home court, where it seems to have permanent home court disadvantage.

I don't really see that as an issue, but the point is that the Commission has to communicate to the humans out there, who are the directors and who are the lawyers, and who are the accountants, who are actually doing things that the Commission doesn't want them to do. Conduct doesn't get changed simply through settled orders and through press releases saying moralistic stuff.

Richard Walker: Let me pick up on David's point a little bit because I think obviously there's many ways that the Commission can give guidance and communicate. The harshest, bluntest way is an enforcement action, someone's done something wrong, there's either a clear explanation or not. But the Commission has lots of tools at its disposal and so does the staff -- accounting bulletins, frequently asked questions, releases, any number of ways that the Commission can give guidance to people. I do think that there is a lot of opportunity to use some of those tools more efficiently and more effectively, and I'll give you just one example.

Several years ago, Steve Cutler gave an enormously influential speech in which he told the entire financial services industry to go out there and scour your firms for conflicts of interest because we found that conflicts of interest frequently lead to bad things and to enforcement actions. So he issued a challenge to the firms. Go find your own conflicts of interest, remediate them, fix them, and you're going to be better off, and people took up that challenge. People took that very, very seriously and I can tell you that every

financial services firm is out trying to live up to the spirit of that speech. Many have come in and discussed what they found with the Division of Enforcement, with OCIE, with Market Reg and others. Many of us have said, look, we're happy to do this, we think this is a constructive effort. Can the Commission give us some sort of feedback? You're seeing and talking to all of the firms. You're hearing what all of us are doing. Can you give us some feedback? Are there things that you see that are troubling to you? Are there other things that you see that you would consider to be best practices? It doesn't have to be formal, it can be informal guidance that no one is going to say that the Commission is bound by this if it's given in the right spirit.

I would note that just week the FSA, the regulator in the U.K, has issued best practices for managing conflicts of interest, something that's enormously helpful. And no registrant's going to be able to come in if they've got a problem and say, well the FSA didn't cover this. I don't think that there should be a fear that you're going to be held accountable, but whatever you do in this regard, it's going to be helpful and constructive. And there are just so many ways of doing that. I think of some of the best things that the Commission has done, for instance, SAB 99, which I think David had quite a hand in. Whether you like what it says or you don't, it's very good, very helpful guidance for people that are preparing financial statements, and daily have to grapple what does materiality mean. I think that more and more of those kinds of efforts would be enormously beneficial and helpful.

David Becker: How many times have people heard in this room, don't tell them what the guideline is, because then they'll just come right up to it. That's terrible. I want people to be able to conform their conduct to what the expectations are.

Harvey Pitt: I've listened to this and I do agree that the Commission wisdom and insight can be very helpful. But I guess my thought really was, the major deficiency of so much of the business community has been that it has waited for the government to tell them what best practices are or what it should do. I really think that the place to look is in modern zone industry, and that industries ought to take to lead and coming up with best practices, and then get the Commission to buy into that process, but not sit back and wait for the Commission to tell them what they should be doing. I think the Commission can do a lot more. So I agree with the fundamental point. I just think that the business community has been exceedingly slow to take the initiative and that leads to my conclusion that basically government is just like nature, it abhors a vacuum when nobody else is taking the lead.

James Doty: But Harvey, that's important because the carrot and stick has been only half. I think business has not seen the carrot, they've seen the stick, but I don't know the directors who want to do the right thing by shareholders and by the public industry, are convinced that by taking the initiative, there will be a carrot, there will be a reward.

Richard Walker: I agree with him.

James Doty: I just don't think they have a choice.

Richard Walker: You may well be right and may be they haven't seen the carrot.

James Doty: And that's because the remedies have grown to an omnivorous level. The Commission does not, in view of the private bar, listen to their General Counsel

about the dynamics of what happens in the business corporation, why it is not a simple process for decision making, gone off-track. It is the job of the General Counsel to keep that in front of the Commission and to show that there are dimensions and shadings in human conduct and the transaction has gone off-track.

Richard Walker: I agree with you Jim, and Harvey, certainly when you were Chairman, the Sea Board case was very instrumental in setting out the principles of what people should do in enforcement investigations to demonstrate co-operation, and the kinds of credit that people could be expected to receive, but if you look in the post-Sea Board world, I think there's a real credibility gap. What you see are lots of orders in which the Commission says, you didn't co-operate, and therefore you're going to get fined 10 million, 20 million, whatever the number is, but there is very little that establishes here's what you get for co-operating. I know that the staff regularly says that these benefits are real but they're not very transparent.

Some of the difficulties come from the person who is not charged saying, 'here's a great example, Si Lorne, he committed a fraud, but we didn't charge him because of his co-operation.' You can't do that, but there has to be ways in getting that message across. Just kidding. Speaking figuratively, of course.

Harvey Pitt: Let's just think about the way to get the most effective adherence to law. It's by encouraging companies to keep track of what their own processes and activities are, to take immediate and effective steps before the problems get out of control, and then to get some reward for having done it. But the Commission's enforcement effort can never catch up with all of the miscreants in society. So if your program is constantly retroactive or retrospective, you wind up depriving the public of the greatest good possible, which is to instill the culture on the part of companies that, if we do the right thing, we're going to get real meaningful credit for having done the right thing, and it's going to be cheaper in the long run for us to do the right thing, than to try and cut corners and make a quick buck.

Simon Lorne: Let me pick up on Dick's comment on the FSA, and your comment, Harvey. I was out before we started making a phone call to my office, and as the Chairman noted, I'm now Vice Chairman of a hedge fund. The first thing was my office saw U.S. Securities and Exchange Commission light up on the phone, and they sounded very nervous when they said, hello. But, beyond that, there happened to be lying on the counter next to the telephone a document from the Managed Funds Association entitled, "Best Fund, Best Practices for Hedge Fund Managers," which is not unlike the FSA best practices effort and interestingly comes out of the self regulatory or more of the industry association if you will, of a group that has not been regulated by the Commission. The Hedge Funds, which are a quite independent and private group, that group is doing something along these lines and should the Commission be doing more to encourage private groups, director's round table, etc. to be coming out with best practices in the useful kind of way? I don't see the Commission as itself putting out best practices, and I'm not sure why, but it's different from the FSA and I don't see it happening, but I do think, it could be encouraging much more from the private sector.

Daniel Goelzer: I suppose of the point of what you were suggesting but in the wonderful world of internal controls, the Commission has largely done that with COSO. In other words, rather than trying itself to promulgate a framework for internal controls, greater structures, how companies ought to evaluate internal controls, they've got a

private group with no particular statutory sanctions try and create those rules. Now you might get in debate about whether that's worked out well or not, but with some restraint, perhaps it's a model that could be followed in other areas.

Christopher Cox: I just wanted to add that this time has gone by really fast. We're down to 15 minutes before we're going to go to your one-minute wrap ups. So if you got something that you've been concealing, we want to hear it now.

Daniel Goelzer: There was a reference to Staff Accounting Board in 99 and its guidance on materiality, which I think is a great document and has some great principles in it. I have been places where people aren't crazy about SAB 99. Harvey, when you were Chairman, on the outside we had a sense that was a great restraint on the SAB of giving guidance. It seems like no action letters or the other documents that didn't come through the Commission. Should something like SAB 99 have been issued without a notice and comment process or without a vote of the Commission?

Harvey Pitt: SAB 99, I mean my problem with SAB 99 goes more to the substance. I differentiate that between that and SAB 101, which is in a sense more controversial and less controversial, because it's the whole action of the Commission took to define revenue recognition. And part of this, because the FASB which had been created in 1975, has still yet to tell us what the principles of revenue recognition are. This is one of the biggest fundamental failures in this country that we have a private sector group that's supposed to set standards and doesn't set them or when they do set them, comes out with a 100 paragraph decision.

But the problem with SAB 101 was that you had some very intelligent, very responsible staff people labor very hard and long to establish what they saw were workable principles of revenue recognition. The fact of the matter is however that it's the Commission that has to create rules and it has a process for doing that. And I thought that having informal rule making that purported not to be rule making, but really was a rule making in a sense, was particularly troublesome because the Commission ought to have the courage if it wants to articulate standards, to defend those standards in a formal way.

The 101 got done and nobody on the outside had any input into it before it saw the light of day. The Commission never has taken responsibility for it as indeed it shouldn't because it's not a Commission document, and yet it has all of the force and effect of law. That kind of process I found was really inappropriate. I had the General Counsel come up with a set of guidelines on informal rulemaking by the agency, which is always been one of its strong points, the fact that the agency can give guidance. But the fine, dividing line is between prescribing legally binding requirements and giving meaningful guidance. I think it's not appropriate on major issues for the agency to speak through the staff without the agency taking responsibility for what the staff says.

Unidentified Speaker: We've been waiting from '99, David.

David Becker: Yes I understand, but as Harvey knows, we have a somewhat different view on this. Nobody on the staff to my knowledge shoved the Commission out of the way on this and on any other matter and said, don't you guys worry your pretty little heads about this. It is true that in the absence of Commission action, the staff does respond and not in the dead of night to requests for guidance. And it is also true that the

staff generally tells the Commission what it is doing and that these responses have the effect of provisional law, that is to say, in the absence of anything else, people out there rely on it knowing that it doesn't have the force of law in a technical sense, but that's what's out there to rely on. There is a remedy to do this and I understand that this is not always within the control of a Chairman. If the Commission doesn't like it, then the Commission on any of these matters ought to do it itself.

Harvey Pitt: You don't really believe that, do you? Because the Commission can't read.

David Becker: I know that, but they can pretend.

Harvey Pitt: I remember, when Ray Garrett was Chairman, and I was in his office, when the staff issued a no action letter that get reported in BNA, saying that law firms were investment advisors. And although he was balding, with little hair he had left, he started to yank it out of his head and he went berserk. And the only reason he knew about it was because he read about it in a publication and somehow he picked it up. I think giving informal guidance is terrific. But I think creating rules of law that don't go through the comment and process approach, or at least get ventilated by people who have some actual knowledge, is simply not what government is supposed to be.

David Becker: I guarantee you, the Commission knew about SAB 101. It's not like someone picked up SAB 102, and said, wait a minute, the last one I looked at was SAB 100.

Harvey Pitt: Then why is there an S in SAB 101? Why isn't it just AB 101?

James Doty: Just we have a General Counsel to explain to the Division of Enforcement that they are not allowed to take Staff Accounting Bulletin 99, and craft an enforcement proceeding entirely around that. They can't. Your objection is what is done with these. I frankly think that the SAB 99 is one of few helpful things that has been said in this area by way of guidance, and it is with all due respect to brother Becker, it's reasonably well written. You can actually read it. You can find the important guiding concepts in it.

David Becker: That will be insufferable.

James Doty: To explain to the division, a case of enforcement cannot be made out of an ostensible failure to do what SAB 99 says and offers as guidance. It's the use made of it and I agree with you that 101 is far too precise. There should be a more precise rule on revenue recognition.

Dan Goelzer: I would suggest that the problem isn't the lack of a Commission vote and at least in my experience, no-action letters aside, these things, which go out as staff documents, they've really been seen by the Commissioners and if they object to it, then they don't go out. But I think the problem is the lack of an opportunity for public comment and the input into something that is a practical matter is going to operate as a rule. Whether it's a basis for enforcement action or not, it's something that thousands of people out there have to pore through everyday.

David Becker: But that happens everyday with settled enforcement actions, which are treated as reflecting the law but never have public comment on the way to getting there.

Dan Goelzer: Well I miss your tack, David on that point or that, I guess in the way I think that's the problem too.

Giovanni Prezioso: I've sat on this front. I think settlements are a very challenging way to provide guidance. One of the things that struck me over the last several years is traditionally the way I thought the Commission addresses these kind of attentions. How do you write a rule when everybody can figure out their way around it and at the same time give people guidance with very broad proscriptions like 10(b)5 because there's always somebody that's going to argue that if it's a fixed interest return, it's not a security and so forth. And then safe harbor, some of which would go to the Commission, some of which would be called no-action letters.

I don't know whether this happened in the '90s or before, or whether others even agree that it's a phenomenon, but I think a time came when people were less comfortable with the trade-off associated with if you want a safe harbor, you can't go right to the edge of the law. If you want to go right through to where the ice is going to crack, it's a very difficult challenge for the Commission, whether it's at the staff or at the Commission level, to draw that line that's supposed to be the floor and the ceiling. We've been through an era with significant new proscriptions put out there. The business community may need to take the lead on some of this with the staff and the Commission. Can we at least set some guidelines that are not going to take you to the outer edge of the law and if you go beyond that you are going to be taking your chances.

James Doty: Regulation FD has been tested, but Alan Beller has done something commendable, when he says, we have trouble with materiality and regulation FD. I think it's refreshing for the bar to hear that there is doubt within this building. And this is a case where the Commission clearly has some doubt, not as far as fundamental commitment to the principles that gave rise to FD, but that CEOs should not be speaking in codes as David Becker said, coming as close as they can to the line. Clearly, the Commission has gotten out a deal with the pressures that are put on the people by the analyst to get information. And when that information leaks out, it may not have been publicly disclosed but it may not be material, it may not have any significant dislocated effect on the capital markets. This is an area where you simply have a problem, which you haven't solved, and I think it's good for the bar to see that you are less than worried.

Unidentified Speaker: But Jim, is that a problem with FD or is that a problem with materiality? Why is the materiality issue under FD any different than materiality in general?

James Doty: I think what offended the court in the Sea Board case, and led it to a writing a discourse on materiality that I think no one really can appreciate or understand, I think what happened there is that the court felt that somehow the Commission was abandoning its initial commitment to use the rule only in cases, which were not lapses that are accidental and not there but for the grace of God, and if the court felt rightly or wrongly that the Commission was moving the rule over into a kind of strict liability faster. And so I think, maybe it's not with materiality.

Unidentified Speaker: I guess I just read it as maybe an unfortunate case selection. Maybe it's just a case that shouldn't have been brought.

James Doty: That was clear.

Unidentified Speaker: I think it's very positive to lose cases occasionally. That's not so terrible. It means that they not only just picking up the easiest cases. But the Commission will be more careful now.

Christopher Cox: Because of your strict observance of time rules, you get a minute and a half for parting thoughts. And we will start at the end with Harvey.

Harvey Pitt: Well, thank you. I just wanted to again say how enjoyable it is to be a part of the history of an agency where things like this happen. And I think the Chairman is to be commended as all my colleagues. I think the General Counsel's office labors hard and mightily. There are always difficult issues and I think the one thing I was always persuaded of is that the people in that office really bring real dedication and real wonderful sensitivity to issues to the practices. And I just hope we do this on a more regular basis. I like getting together with my former colleagues and General Counsels.

Dan Goelzer: At the risk of causing this panel to end early, I don't think I can add much to that. The two points I would make are, I hope the Commission appreciates what a tremendous resource it has in its General Counsel's office, and then the value that it gets over the office in its decision making.

Christopher Cox: Do you have any predictions for 2006? Who is going to win the Super Bowl?

Dan Goelzer: When I'm asked that, I usually say the Packers, but I don't think I can see that this year. I'll skip that part of it.

Christopher Cox: Even though we never know what's going to happen in the future we kind of know that one.

James Doty: I appreciate that the Chairman is elevating the importance of the office. I think all of us have this loyalty to the office and we all know that ultimately the importance of the office depends on the use the Chairman makes of it. And this is a good beginning. And as the Chinese say, a journey well commenced usually ends well. It is seen by the constituency of practicing securities lawyers as being the most important office in the Commission for its ability to influence policy and to cause a long-range right results. And I hope that I really believe this is the kind of thing that will make it continue, in that vein.

Simon Lorne: Some years ago, I don't remember who was Chairman, I don't remember who got it started -- it sounds like a Joe Grundfest ploy, but I am not sure it was -- there was an attempt to create a shadow Commission composed of former Chairmen and former Commissioners to publicly comment on activities of the current Chairmen and Commission. And whatever else comes of this session perhaps you can see why Giovanni would not encourage such a thing with respect to the office of the General Counsel.

These are all difficult issues. How far did you go toward prescribing conduct versus prescribing consequences? What's the role of the informal rule making? There are hundreds of others that could easily be the subject of debate and will in fact be the

subject of the debate. But I appreciate, Mr. Chairman, the chance to be here with my fellow formers to discuss some of the questions. I thank you.

Richard Walker: Let me echo my thanks, Chairman Cox, I think what started out is a group of old fogies that get together for dinner once a year and talk about some of the same issues. Chairman Cox, you've elevated this and given us a very nice setting, a nice opportunity to do it in the public. We will continue it tonight over dinner, and any one is welcome to comment here more if you can stand it.

I think for me, one of the hallmarks of this agency always has been its standards in the process that it provides. Having traveled around the world, I have yet to see anyone that gives as much thought, effort and attention to the tough issues of the day as the SEC does. And I certainly think that the General Counsel's office is the nerve center. The General Counsel reviews with an objective eye everything that passes through the Commission. For me, it was one of the most challenging jobs I have ever had, to try to keep things straight, the enormity, and the breadth and the diversity of the issues that come across the agency. But the importance of what it does is just second-to-none. I mean it just a phenomenal group of professionals, and has been.

Its diverse history in terms of the ability to really bring thought, care, and caution more necessary to the top issues and to give the Commission its best advice and I think it does it in a collegial and professional way, notwithstanding the tough nature of what it has to do sometimes disagreeing with his colleagues and other divisions. So I'm quite confident that that tradition will continue it. It's clear that it has under Giovanni's leadership. And I'm confident that it will in the future with the same professionals that have been in the office. Thank you for the opportunity, Chairman Cox.

David Becker: It's also the office with panache, notwithstanding the disgraceful behavior of this group here. Thank you very much.

Giovanni Prezioso: I gather that Ralph Ferrara has in fact made some heroic efforts to be here and is in the back of the room somewhere but didn't want to come up. Thank you, Ralph for making that effort.

Christopher Cox: Ralph, if you want to come down, we need to hear what you've to say.

Ralph Ferrara: I want to apologize for my tardiness; I've just stepped off the plane from Europe. The only contribution that I will make that I haven't heard yet here -- I wish the Commission would think long and hard about how vigorously and some would say inappropriately, the legislature, the regulators and the courts are applying extra territorially, not only the law but the regulations in United States. Whenever I go to Europe, and these days I go regrettably too much, CEOs and corporate board members get me in a corner and they say, why are they doing this? Don't they realize that they are jeopardizing the integrity of their capital markets by driving us out?

I should say last night, an important CEO of an important company said, you can play with your tax policy, your fiscal policy and your monetary policy. But, if you don't bring into the constitution of American executives the willingness to take risk once again, you will fail. Now that's a European talking about us. Of course we won't fail. But that attitude is there.

Christopher Cox: Thank you very much. Giovanni.

Giovanni Prezioso: The other thing I wanted to specially thank Harvey for his comments preparing you for the day. Otherwise I want to encourage everyone to continue not only in forum like this but on one-on-one basis or in letters or otherwise to be in touch with us. Our doors are always open and sustaining this kind of dialogue is a critical element of reaping the hearts that the Chairman has ploughed the ground for today.

Christopher Cox: Well, I again want to give the credit to you and thank Giovanni for organizing this. I certainly wanted to capitalize on the opportunity of you all being here in town and available and make this a public forum and share it with a wider audience and we succeeded in doing that. This is a remarkable congregation of intellectual firepower here. I have calculated that the 90 minutes that we spent together results in every member of the audience, if you were to pay the retail at market rates the hourly rate, the people up here are owing \$6,000 a piece.

Happily this is free today and you have donated your time pro bono to the good of the cause. This gives me an opportunity to thank you, not only for your service today but more importantly for your service over a period of so many years, as you all know and appreciate better perhaps than anyone, what the Securities and Exchange Commission does ultimately leads to the preservation of confidence in the America's capital markets, which is itself essential to the economic success of our country and the plans. So the mission here couldn't be more important and your contribution to it as outstanding Americans is once again recognized today. Thank you very much for being here with us. And thank all of you for joining us for what was a lot of fun and very informative.