

Dear Wayne

Some personal and impressionistic recollections of the MOU negotiations, perhaps influenced by hindsight – you may be able to confirm and add to them by access to documentation – I have no papers now at all and my memories on specifics are more or less non-existent more than 20 years later.

### *Policy background*

The object of the exercise from the UK point of view was to ensure that our policy of open access to broad and liquid deregulated UK markets post the London Big Bang was not undermined either by

- 1) US regulatory interference designed to ensure that operators with US connections (maybe slight and remote) were prevented from playing in London. We thought this was unlikely on either of two grounds – first the actual grounds of US enforcement for legitimate US public policy purposes. But the second of which we were also very conscious was that such legitimate objectives might be a cloak for protectionism or maybe just a means for a quiet life for US enforcers; or
- 2) at least equally important, by our inability to track down malpractice for lack of access to US evidence.

So we needed an effective MOU both to prevent a pre-emptive frustration of our objectives by US authorities' interference on the actual or ostensible grounds of absence of the means for legitimate US enforcement. We also needed it for our own purposes to ensure an adequate basis for a properly regulated liberalised London market.

We expected and were hoping for an integration for many purposes of US and UK securities operations and massive increases in volumes and efficiencies; but of course we had no conception of the coming explosion in regionalisation and globalisation of financial services businesses. Nor I think of the potential competitiveness of the London model, though we had a high level of confidence in our own ideas and capacities to deal with the problems.

### *The negotiations*

We dealt with the SEC and CFTC together. Gary [Lynch] led for SEC with Michael [Mann] – CFTC had a team – names now forgotten [Michael Mann suggestions: Andrea Corcoran, the Director of Trading and Markets, who also participated in the discussions, or Dennis Klejna, the Director of Enforcement; Jonathan Rickford response: Both names ring a bell – I remember them with great pleasure – both had a great sense of humour!]. The division of jurisdiction between SEC and CFTC seemed to us quixotic and unworkable in integrating markets, but we of course did not comment on that.

SEC polite in a cool and distant way, but initially not at all helpful. Raised wide range of apparently legitimate but technically difficult objections/demands. I certainly had the feeling that we began with a SEC presumption that we were not technically competent – the SEC were the experts. My impression was also that the SEC was at the start looking for grounds to frustrate the exercise – was this unfair – who will ever know? CFTC much more friendly and very high scores on sense of humour.

At the end of the first day I took away our initial draft MOU proposal and rewrote it overnight to accommodate the SEC objections. Frantic retyping in the UK embassy early the next morning before our 2<sup>nd</sup> day meeting. The redraft designed to accommodate every single one of the SEC points but still provide a viable basis for information exchange and co-operation.

I had the feeling as we discussed the re-draft the next morning that we had achieved the goal. We had also surprised them. Bear in mind that these were the days of the Reagan/Thatcher love affair – if the SEC were to throw us out they had to have a convincing set of arguments. As the day wore on relations became more friendly. My impression when we started had been that SEC were accustomed to dealing with outsiders who were all presumptively crooks and had not been able/willing to distinguish between such customers and ourselves as emissaries of a friendly foreign government. This duly changed as our discussions proceeded and we ended up (I think) good friends, as these things go.

The big irony is that I have little doubt that the SEC expected the traffic in information to be all one way – ie from UK to US to support SEC massive enforcement programs (which were indeed impressive in scale scope and resources by our then standards) and to prevent US frauds done in London.

In fact the MOU was used within days by us to ask for all the evidence relating to relations between Ernest Saunders (CEO of Guinness) and Ivan Boesky et al – the beginning of the great Guinness investigation over here (share ramping and market manipulation in connection with the takeover of Distillers). SEC had come across a meeting between Boesky and Saunders and mentioned it – we immediately asked for everything related.

I returned from Washington a few days later after addressing an ALIABA conference on securities co-operation and long arm jurisdiction (the latter a continuing bone of contention between us and State throughout the 70s and 80s), with huge boxes of documents provided by Michael and his colleagues. I was stopped at the barrier by an official (customs man I assume) who asked me what I had in the boxes. I replied “confidential US government documents” – he thought that was very humorous and waved me through. The dawn raid on Guinness by Department of Trade inspectors duly took place within a few days of my return.

This does not answer your specific questions – I have no recollection of the legal issues which I do not think figured very large – there were some statutory constraints in the UK on information sharing which we were going to remove – which we duly did in the then current legislation.

I do not recall the answers to your other questions. On operationalising the MOU and more generally, Brian Hilton might be more able to help you – he led the UK delegation and was director of the Company Law and Investigations Division at the time (I was the Solicitor – General Counsel – to the Department).

I hope this may be of some use to you – it does indeed give another perspective and has never been said publicly before. I have spoken to Brian Hilton who is content with what I have said.

Best wishes

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