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## ***Going Public* by Norm Champ: A Tell-Some Exposé of “Bureaucratic Warfare,” “Bizarro Decisions” and “Political Hit Jobs,” by a Former Director of the SEC’s Division of Investment Management**

*By Gary O. Cohen*

**N**orm Champ, on his first day as director of the Securities and Exchange Commission’s (SEC) Division of Investment Management (Division) in Washington, DC, couldn’t get into his office. He found the door locked, and no one in the Division had a key. After security personnel finally let him in, he couldn’t log onto his computer. It took him more than an hour to have assistants get him online. He assesses these mishaps as “portents of the larger breakdowns in accountability I would soon encounter.”

Champ, in his recount of a five-year sojourn with the federal agency (McGraw-Hill Education), reveals these and other obstacles he encountered trying to achieve the SEC’s mission, the tactics he summoned to overcome as many as he could, the hard-won successes he celebrates, and the “dragons remained to be slain.”

Other former directors, notably Joel Goldberg, Barry Barbash, Paul Royce, and Buddy Donohue, to their credit, have freely recounted—and even critiqued—their adventures as division directors. But they have done so largely in speaking at legal conferences and bar association meetings. Champ is the first to write a book.

Make no mistake, there is much in the book about the positives of the SEC and its Staff and their dedicated pursuit of the agency’s three-part mission: protecting investors, ensuring fair and orderly markets, and facilitating capital formation. There is also a good bit in the book about the negatives that Champ discovered and sought to eliminate or at least neutralize.

The readership of this periodical consists mainly of practicing lawyers rather than probing historians. So, this review, at the risk of misrepresenting the book, focuses on what lawyers face in practicing before the SEC on an ongoing basis.

This is really two books in one. It’s “Going Public” in the sense of Champ’s making known inside SEC information. It’s also “Going Public” in the personal sense of Champ’s moving from the private to public sector.

### **Inside SEC Information**

Champ’s story covers the five-year period from January 2010 to January 2015, when he joined the SEC Staff as Associate Regional Director for

Examinations in the SEC's New York Regional Office, became deputy director of the Office of Compliance Inspections and Examinations, and served two and a half years as Division director in the SEC's headquarters in DC.

He lays out, in no uncertain terms, his confrontation with what he figured to be "a chaotic and messy situation" and "anarchic dysfunction." He soon learned that "the SEC wasn't a typically dysfunctional bureaucracy that needed to fix what had been broken. Rather, there were parts of it that had never been built." He wryly notes that the Staff calls the Division "The Wax Museum," because "it's frozen in time and place."

Champ's difficulties at the SEC ranged from the macro to the micro.

As an example of the *macro*, some of the more intriguing commentary has to do with Champ's battle, as an SEC representative, to prevent the Financial Stability Oversight Council (FSOC) from "staging a hostile takeover of the SEC's role in regulating America's mutual funds, investment advisers and other investment management firms." Champ caricatures the FSOC as "the Frankensteinish super-regulator" and describes his role in resolving the tensions between the FSOC and the SEC over the threat to the economy of money market funds and the risk of their "breaking the buck," that is, not maintaining a \$1 net asset value per share.

Another example of the *macro* is the book's final chapter, titled "Preventing the Next Crisis," where Champ floats his ideas for reform. He recommends changing the FSOC to a coordinating board only activated by severe economic crises, forcing government to analyze the consequences before instituting new regulation, merging the SEC with the Commodity Futures Trading Commission, and the Office of the Comptroller of the Currency with the Federal Reserve System, and—somewhat jarringly—eliminating government sponsorship of lotteries and casinos. He also urges the president to "empanel a bipartisan group of elected officials and labor and

management representatives to tackle the work rules and well-meaning practices" for federal government employees.

As an example of Champ's difficulties at the *micro* level, he regrets that "[w]e of course could offer no coffee or tea in our conference rooms as we had no budget for it." He "once requisitioned a water pitcher for the main [Division] conference room, but the bureaucrats let me know that was not allowed!"

For lawyers practicing before the SEC, what is of particular interest is Champ's enumeration of the personnel and operational obstacles to the SEC's achieving its mission.

### Personnel Obstacles

Champ dedicates his book to "those quiet patriots on the staff of the US Securities and Exchange Commission who pursue the mission despite the obstacles." He emphasizes that he "had many, many colleagues in government who are smart, serious, and passionate about their jobs." He praises certain named "talented and committed lawyers who have forgotten more about the securities laws than I will ever know."

At the same time, Champ has much to criticize about laws and practices relating to SEC personnel.

One of Champ's chief complaints is about "the time we spent chasing down" "nastygrams," complaints made by "anonymous" Staff members against "managers or co-workers" from "supposed whistleblowers." He regrets that he "was squandering my precious hours and energy on anonymous political hit jobs." He explains the difficulty he had investigating the "attacks," because they "inevitably left out critical details, such as the office where the note originated or specific examples of wrongdoing." While "efforts rarely turned up any facts to substantiate the misconduct alleged," Champ and other senior officials felt they had to follow up, because "*we* might be questioned about how we responded."

Another chief complaint is what Champ sees as the abuse by some SEC Staffers of the right "to work

from home.” He cites federal legislation “allowing employees to ‘telework’ as much as possible.” He says that “[t]he SEC to my knowledge lacked any internal plan to measure the impact of telework” and “[i]t was allowed to move into the house like a crazy old uncle in the family and stay as long as it wanted.” He asks: “Can professionals really collaborate, share critical information, and communicate with their supervisors when they are 20 miles from the office two, three, or even five days a week?”

Still another chief complaint is “statutes that make it almost impossible to fire poor performers” and make “for a federal workforce that stays in its job and is resistant to change.” Champ concluded that “[t]rying to fire someone takes so much energy and time that most managers decide as I did that if anything is going to get done, you find people with whom you can work and identify those whom you have to work around or keep away from your important projects.” He cites the rare exception where one manager succeeded in having an employee fired “who was a no-show for five years.”

### Operational Obstacles

Champ vents his frustration over the fact that “the SEC lacked formal procedures for anything,” specifying “formal procedures for dealing with” the “nastygrams,” “how the SEC went about its investment management exams,” and how Staff officials “would go about their job.” He observes that “[t]he SEC had evolved to rely on managers in every office to act as village elders passing down the knowledge to new members of the tribe. The longer I stayed, the more I felt like I had stumbled into some ancient society where all knowledge was handed down by oral tradition from generation to generation.”

This lack of “consistency in policy and procedure,” in Champ’s view, has given rise to Staff “fiefdoms” or “silos” where “each one will guard its own territory and power, often in competition” and “refuse to share information with their coworkers.” This was “an environment” where “many SEC employees never reached out or collaborated beyond

their immediate work team, but stayed in their silos repeating the same information practices.”

In the context of “conducting exams,” Champ reports that “[i]n reality, almost no one was doing anything in a consistent or agreed upon manner, and so their chances of finding frauds like [Bernie] Madoff and [Allen] Stanford were severely hampered.” He explains that “among the 12 offices from California to New York, we lacked any published guidance on how the SEC went about its investment management exams.” He adds that the SEC “didn’t have the tech infrastructure to do searches of internal exam reports to glean trends across regions.” He frets that “[e]xaminers were like air traffic controllers who couldn’t track their jets outside of local airspace.”

### Private to Public Sector

Champ, at times, is not shy about celebrating his accomplishments, touting how he and others had “dragged the SEC into the twenty-first century.” More specifically, he and others “had broomed out a lot of the bureaucratic cobwebs, put people in better jobs, got closer to industry trends, fixed the worst of the tech problems, and started turning paper files into searchable data.” He concludes that “[w]hile many dragons remain to be slain within the bureaucracy of the SEC, I know we had reinvigorated the leadership culture and the SEC’s processes and commitment to better handle the next market meltdown.”

But Champ balances the celebration of his accomplishments with surprisingly personal revelations. He questions himself about giving up “a partnership in a prestigious, established hedge fund manager at a time when my wife and I were raising four kids” and “taking a massive pay reduction.” He tells of “a long-running condition of irregular heartbeats” that ultimately required “an electric shock to burn and scar the precise area in your heart that is responsible.” And he bemoans “a highly misleading story about my family’s farm business receiving subsidies” that may have resulted in his “family being put in jeopardy.”

At times, Champ speaks of achingly personal traumas. He bemoans “a chaotic childhood with alcoholic parents and, truth be told, a lot of isolation.” He says that he “had a father who broke most of the rules on how you treat your family, squandered the family’s money, and ran the family business into the ground.” He becomes introspective at times, confessing that “I had looked deep into myself long ago, realizing that my respect for the law and for setting expectations and limits surely had something to do with my chaotic childhood.”

Champ also discusses his return to the private sector. He explains that, after almost five years, his “family was eager for me to return to the private sector and leave behind the constant public scrutiny and endless nastygrams.” He says that “[t]hinking about ethics requirements was enervating in and of itself,” noting that “[s]everal times I had to analyze whether I could accept a car ride home from one of my son’s baseball games from another parent who happened to be in the investment business.”

## Readability

The book is an easy read, written in a jaunty style with conversational language like “screwed up,” “zombie apocalypse,” “bizarro decisions,” and “political hit jobs.”

Champ peppers his narrative with battle allusions. He found that “some [S]taff had time to fire scud missiles at colleagues without any concern about blowback.” He concedes that “[b]orrowing another group’s [S]taff amounts to an act of bureaucratic warfare.” He condemns an FSOC report that “was essentially an act of war against the SEC.” He observes that, since 2008, “the SEC was in a war to assure its own existence.” And he describes SEC Chairman Mary Schapiro as leading “the SEC from a sleepier, clock-punching ‘peacetime’ operation to a modernized and energetic ‘wartime’ organization.”

This proclivity may derive from Champ’s time as a Fulbright Scholar at King’s College in London, where he received an M.A. in War Studies.

## Quibbles

Perhaps what’s missing is a feel for how the Commissioners deal with the Staff to sort out differences, overcome political obstacles, and reach consensus. To be sure, Champ recounts a number of interactions he had with the Commissioners, particularly Chairs Mary Schapiro and Mary Jo White. But we don’t get much revelation on how the Staff and Commissioners set priorities, how the Staff lobbies individual Commissioners for support of favorite projects, and how the Commissioners bargain among themselves and with the Staff.

Also, there’s no direct discussion of any downside for the public of the “revolving door,” where highly talented people like Champ go public and then go private again. He points out the value to the SEC of hiring persons with private sector experience, but does not describe the value of public service to persons moving back into the private sector, such as continuing contacts with SEC personnel and ready access to them on behalf of private sector clients.

## Summing Up

Champ ends on a high professional note. He refers to the SEC’s “mission to protect investors, ensure fair and orderly markets, and facilitate capital formation.” He says that these “three pillars of that mission have made the United States the greatest engine of wealth creation in world history. As I hope *Going Public* explains, we face some serious challenges in keeping that record going. I hope we can keep the country on that path for the benefit of all Americans.”

Champ also ends on a high personal note: “Happily, despite the challenges, it turned out to be the best experience of my working life.”

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