

EXHIBIT 9

To: Lawrence Howell, Marcelo Alvarez, Victor Echevarria, Mark McCluskey

From: Dart Montgomery

Notes of Meetings with Jeffrey Tucker (JT) of Fairfield Greenwich (the Manager) and document review on July 11 and 12, 2000 re: Fairfield Sentry Limited (the Fund)

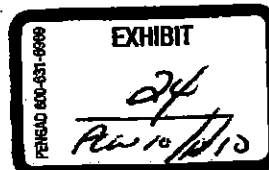
A. Discussions with Jeffrey Tucker-

1. **Confirms**- JT stated that confirmations of all security transactions done in the Fund's account are sent by the Fund's discretionary investment advisor, Bernard Madoff Investment Securities (Madoff), on a real time basis to both Citco (the Fund's administrator) and the Manager. JT then advised me that the Manager then checks all confirms to see if the prices shown on the confirms fall within that day's trading range. The Manager also does a p+l analysis each day for the Fund's positions.
2. **Options**- JT advised me that the Fund always owns puts on the stocks that it owns (presumably because stocks owned are all in the S&P 100. The Fund also sells calls (proceeds from which partially offset the cost of the puts) from time to time, but not all the time. Options purchased are usually exchange-traded (listed) options, but over-the-counter options are also purchased for the Fund. Prices for o-t-c options are the same or very close to the prices for listed options. Generally, options purchased/sold are no more than 2-3% out of the money. All options settle for cash. Madoff acts as the Fund's agent, not as principal in option transactions. Madoff is never the Fund's counter party in option transactions.
3. **Accounts**- The Fund's accounts at Madoff are in its own name. The Fund has a total of 4 accounts at Madoff - 2 option and 2 stock accounts.

B. Documents-

1. **Contract between the Fund and Madoff-**

- a. The contract is dated 11/9/90 and references a 'C&M Trading Account' because originally the Fund's account was going to be pooled with other accounts; however as it grew in size it began trading only in its own account (the Fairfield Sentry account). Thus the clause in the contract discussing allocation of gains and losses among account participants is irrelevant (per JT).
- b. The 'Account' (as defined in the contract) includes cash securities or other assets deposited in or which become part of the Account as a result of transactions in the Account. Dividends, interest etc. are retained in the Account.
- c. The Fund must give Madoff 90 days, notice prior to withdrawal of assets from the Account.
- d. Madoff has "full discretion and authority to manage the investment of the Account and shall use its best efforts to increase the value of the Account by causing assets therein to be invested and reinvested in such manner as Madoff considers appropriate. In furtherance of the foregoing, the "Account" hereby designates and appoints Madoff as its agent and attorney-in-fact, with full power and authority and without further approval of the "Account" (except as may be required by law) to carry out the following:
 - to effect purchases, sales (including short sales) and otherwise trade in securities of any kind and any options (except naked options) thereon
 - to make all decisions relating to the manner, method and timing of investment transactions and to select brokers and dealers for the execution, clearing and settlement of any transactions
 - to trade on margin (check with JT on this)



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- to take any and all steps necessary to protect itself in connection with put or call transactions, including without limitation, the right to buy and sell short and short exempt and risk all or any part of the shares represented by options endorsed by Madoff for the Fund's account, or to buy, sell or exercise (including exercising long options and hedging short positions) for the Fund's account and risk any puts and calls that Madoff deems necessary to protect itself
- to direct custodians to deliver funds or securities for the purpose of effecting transactions and to instruct custodians to exercise or abstain from exercising any privilege or right attaching to assets of the Fund
- to make and execute documents (customer agreements in connection with brokerage accounts etc.) for the Fund as Madoff from time to time deems appropriate.

c. "In no event can I (the Fund) have losses which exceed my investment"

2. Option Agreement between the Fund and Madoff

a. This contract is also dated 11/9/90 and again references the C&M Trading Account (which per JT is no longer relevant).

b. Includes the following clauses:

- "investment technique offers no guarantee of gain or assurance against loss"
- the Account will only write (sell) covered calls against long stock positions and buy stock index puts or puts on individual stocks owned by the Account and this is consistent with my (the Fund's) investment objectives and with the degree of risk I (the Fund) am willing to assume in relation to leveraged option transactions
- the Fund will advise of material changes which affect its suitability for options transactions and acknowledges (i) receipt of Options Disclosure Booklet and (ii) that transactions are subject to rules and regs. of option exchanges, NASD and Options Clearing Corp. or relevant market
- contains clause identical to bullet point 4 in Section 2 d above
- this agreement applies to all puts/calls already executed and those purchased/sold/handled/ executed for the Fund's account in the future
- Madoff assigns exercise notices on a random basis; will provide further information on request
- provides for binding arbitration
- discretionary account- all decisions are made by Madoff
- the Fund may withdraw equity at any time as long as sufficient written notice is given to protect other investors - no more than 90 days' written notice will be required

3. Investment Management Agreement between Fund and Fairfield Greenwich

a. original is dated as of 11/15/90; current version is dated as of 1/1/98; governing law provision left out of 98 version (was NY law in original contract)

b. Fund retains Investment Manager (Fairfield Greenwich) to manage assets as described in Fund's Information Memorandum (as amended 1/1/98) - management includes maintaining account in the Fund's name at Madoff for the purpose of trading in equity securities and options on securities

- c. "Investment Manager shall use its best efforts to monitor the activities and performance of BLM [Madoff]"
- d. "Within 5 days after the end of each week, month or fiscal quarter of the Fund, as the case may be, the Investment Manager shall send to the Fund weekly and monthly valuations of the account with BLM [Madoff] maintained by the Fund" / the Investment Manager (IM) shall send all information to the Fund
- e. IM "an independent contractor of the Fund and not an agent or employee of the Fund" and "shall have no authority to act for, represent, bind or obligate the Fund except as specifically provided herein"
- f. Fund's investments shall conform to and be in accordance w/ provisions of applicable law and the Provisions of the Fund's Certificate of Incorporation, Memorandum of Association and Articles of Association
- g. Fund and IM each to pay their own expenses
- h. IM's fee – 20% of New High Net Profits payable at end of each calendar quarter; calculated by the Fund or independent public accountants
- i. IM not liable to the Fund except for loss resulting from willful misfeasance, bad faith or gross negligence in the performance of its obligations and duties hereunder or reckless disregard of obligations and duties hereunder / Fund indemnifies IM except for such misfeasance/ bad faith etc.
- j. conflicts of interest between IM, its officers etc. and the Fund ok
- k. IM Agreement remains in effect until written notice given 10 days prior to the end of any calendar quarter / IM can only be removed by unanimous vote of Fund's Board of Directors if 3 or fewer directors or by 75% vote if 4 or more directors (Note – Fund currently has only 3 directors, one of whom, William Noel, is also a principal of the IM)
- l. IM contract cannot be assigned without consent of the other party
4. Administrative Services Agreement between the Fund and Citco Fund Services (Europe) B.V.
- a. dated as of July 1, 1998; governing law is BVI
- b. Administrator (Citco) has following duties:
- to perform all administrative duties and functions
 - maintain all bank, brokerage, custodian and other accounts for the Fund
 - act as registrar and transfer agent for the Fund's shares
 - process issuance, transfer and cancellation of the Fund's shares and maintain all shareholder records
 - hold shareholders' meetings
 - prepare and distribute annual reports
 - answer questions from shareholders and general public
 - prepare and maintain all customary financial books and records in appropriate form so that annual independent audit can be performed
 - compute annual NAV
 - handle subscription/redemption payments
 - convene Board of Directors' meetings
 - maintain records; disburse payments

- c. Compensation \$225,000 payable in arrears, plus expenses
 - d. Scope of Liabilities – Administrator not liable for loss, damage etc. "other than as a result of its negligence, willful misconduct or reckless disregard of its duties hereunder"
 - e. Indemnification Fund indemnifies Administrator for anything arising out of this contract except for Expenses, losses, liability or damage caused by Administrator's own negligence, willful Misconduct or reckless disregard of its duties
 - f. books and records belong to Fund
 - g. contract automatically renewed unless 30 days' prior notice of termination given
5. Custodial Services Agreement between the Fund and Citco Bank Nederland NV (as the Fund's bank) and Citco Global Custody NV (as the Fund's depository)
- a. agreement is subject to Citco's General Rules for the Custody of Securities and to Bank's Rules & General Terms and Conditions to the extent they don't conflict with this agreement
 - b. Citco can use sub-custodians of its choosing and will not be liable for their shortcomings if it exercised due care in their selection; but will assist client in recovering losses from any such 3rd party custodians
 - c. Fees are \$35,000 per annum, plus 25.00 per transaction fee, plus reimbursement of sub-custodian fees and expenses

EXHIBIT 10

00001
1 IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

2
3 No. 10-20206-CIV-MARTINEZ
4 LORRENE DA SILVA FERREIRA and
ARLETTE DA SILVA FERREIRA,
5 individually and on behalf of
all other similarly situated,

6 Plaintiffs,

7 vs.

8 EFG CAPITAL INTERNATIONAL CORP.
and EFG BANK f/k/a EFG PRIVATE
9 BANK SA,
10 Defendants.

11
201 S. Biscayne Blvd.
12 Miami, Florida
December 2, 2010
13 9:55 a.m. - 12:40 p.m.

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15 VIDEOTAPED DEPOSITION OF MICHAEL DONNELL

16
17 Taken before KIMBERLY FONTALVO, REGISTERED

Page 1

00003
1
2 INDEX

3
4 Examination Page
4 Direct By Mr. Kellogg 4
5
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Page 3

00002
1 APPEARANCES:
2
3 On behalf of Plaintiffs:
4 LEVINE, KELLOGG, LEHMAN, SCHNEIDER & GROSSMAN, LLP
201 S. Biscayne Blvd., 34th Floor
Miami, FL 33131
5 BY: JASON KELLOGG, ESQ.

6
7 On behalf of Defendant:

8 GREENBERG, TRAUIG
9 777 S. Flagler Dr., Ste. 300 East
West Palm Beach, FL 33401
10 BY: JOHN C. COATES, III, ESQ.
BY: JON A. JACOBSON, ESQ.

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Page 2

00004
1 VIDEOGRAPHER. Good morning. We are now
2 on the video record. This is the videotape
3 deposition of Michael Donnell in the matter of
4 case Lorrene and Arlette Da Silva Ferreira v.
5 EFG Capital International Corporation. Today
6 is Thursday, December 2, 2010. The time is
7 10:02. Counsel present to those themselves,
8 for the record, and after this, court reporter
9 swear in the witness.

10 MR. KELLOGG: Good morning, Mr. Donnell,
11 my name is Jason Kellogg. I am an attorney for
12 the plaintiffs in this case.

13 Can you state your full name for the
14 record?

15 THE WITNESS: Michael Ross Donnell.

16 Thereupon:

17 MICHAEL DONNELL

18 a witness named in the notice heretofore filed,
19 being of lawful age and having been first duly
20 sworn, testified on his oath as follows:

21 DIRECT EXAMINATION

22 BY MR. KELLOGG

23 Q. And you swear that your name is Michael
24 Ross Donnell?

25 A. Yes.

Page 4
Pages 1-4

00005

1 Q. Mr. Donnell, have you ever had your
2 deposition taken?
3 A. Yes.
4 Q. Okay. How many times?
5 A. Three times.
6 Q. When was the last time you got your
7 deposition taken?
8 A. In 2004, I believe.
9 Q. And what was that deposition, what did it
10 pertain to?
11 A. Pertaining to an order I entered into with
12 the SEC.
13 Q. What was the order that was entered into
14 with the SEC?
15 A. I entered an order with the SEC in 2008
16 related to my -- my previous employment.
17 Q. Okay. What was your previous employment?
18 A. I worked for -- the reference employment
19 was Mercantile Bankshares Corp.
20 Q. Okay. Why did you -- what was the
21 circumstances of having to enter into an order with
22 the -- did you say it was the SEC?
23 A. (Nodding head.)
24 Q. -- with the SEC about your previous
25 employment?

Page 5

00007

1 A. The SEC alleged that I aided and abetted
2 improper activities by myself and by my firm.
3 Q. Okay. And did you go in -- did the SEC's
4 allegations detail what it thought the alleged
5 activities were that you had engaged in?
6 A. The order that I entered into did describe
7 the SEC's allegations.
8 Q. Okay. And what did that order say about
9 the SEC's allegations against you relating to aiding
10 and abetting?
11 A. The order that I entered into described a
12 series of events that the SEC allege occurred, and
13 then, as a result of that punitive action and as
14 result of that, the fine and other -- other results
15 of the order.
16 Q. Okay. And what was the punitive action
17 that the SEC took?
18 A. The order that I entered into barred me
19 from being employed by a registered investment
20 advisor for a period of three years.
21 Q. Prior to that, were you a registered -- or
22 working for a registered investment advisor?
23 Strike that.
24 Prior to that, were you a registered
25 investment advisor?

Page 7

00006

1 A. It's stated in the order.
2 Q. It's stated in the order?
3 A. Uh-huh.
4 Q. And what does the order state?
5 A. The order, as I recall, is an agreement
6 with regards to certain allegations that were made
7 and in certain sanctions imposed by the SEC that I
8 agreed to.
9 Q. What were the allegations that were made
10 against you?
11 A. I don't recall the specific allegation.
12 Q. Who made the allegations against you?
13 A. The Securities and Exchange Commission.
14 Q. And I'm not asking for the specific
15 allegations or your memory about specific
16 allegations.
17 But, generally, what were the allegations
18 that the SEC made against you in 2004?
19 A. Generally, the allegations pertained to a
20 conflicts case.
21 Q. Okay. What's a conflicts case, meaning
22 that there was alleged conflict of interest?
23 A. Yes.
24 Q. And what did the -- what was the conflict
25 of interest that the SEC alleged against you?

Page 6

00008

1 A. No.
2 Q. But you were working for a registered
3 investment advisor?
4 A. No.
5 MR. COATES: I was going to say: Can you
6 clarify the -- the time that you're discussing?
7 BY MR. KELLOGG
8 Q. Okay. The order's entered in 2008, right?
9 A. Yes.
10 Q. Okay. And it bars you from -- I thought
11 you said working for a registered investment advisor
12 for a period of three years, correct?
13 A. Yes.
14 Q. Okay. At the time the order was
15 entered -- or maybe more specifically I should ask:
16 The bank that you worked for, the Mercantile Bank,
17 did you -- were you an investment -- registered
18 investment advisor for that bank?
19 A. When I worked at Mercantile?
20 Q. Right.
21 A. I don't recall if Mercantile was a
22 registered investment advisor.
23 Q. Okay. But were you a registered
24 investment advisor?
25 A. No, I was not.

Page 8
Pages 5-8

00009

1 Q. Were there any monetary punitive measures
2 taken by the SEC?
3 A. Yes.
4 Q. And what were they?
5 A. I was -- I agreed to pay \$75,000.
6 Q. In the order, does it state anything about
7 whether you acknowledged having participated in any
8 of the actions that were alleged against you by the
9 SEC?
10 MR. COATES: I'm going to object to the
11 form of the question.
12 You may answer.
13 A. I don't recall particularly the language
14 when -- when I signed the order, but it's entered
15 into the order.
16 BY MR. KELLOGG
17 Q. Did you have to acknowledge that what the
18 SEC was alleging against you was true?
19 MR. COATES: Same objection.
20 A. I've not reviewed the order in several
21 years and I don't recall.
22 BY MR. KELLOGG
23 Q. Does the order state that you dispute the
24 allegations made against you by the SEC?
25 MR. COATES: Object to form.

Page 9

00011

1 wrongful termination.
2 Q. And do you know why you were called as a
3 witness in that case?
4 A. No, I do not.
5 Q. Did you work with that employee?
6 A. Yes, I did.
7 Q. Was he your supervisor?
8 A. Yes, he was.
9 Q. And when was that deposition taken?
10 A. I believe in 2003.
11 Q. Okay. And so there's a third deposition.
12 It would have been the first one that you ever took.
13 And when was that?
14 A. I believe in 1999 or 2000.
15 Q. And what did that deposition involve?
16 A. It involved a previous employer, Refco
17 Group.
18 Q. How do you spell that?
19 A. R-E-F-C-O Group.
20 Q. Okay.
21 A. Versus a hedge fund.
22 Q. And what was the issue in that matter?
23 A. I don't remember the specifics of the
24 case. The issue was requesting my testimony because
25 I was involved in the prime brokerage account of the

Page 11

00010

1 A. Again, specifically, I don't remember the
2 language in the order. I'd have to review it.
3 BY MR. KELLOGG
4 Q. And this was an order that was entered
5 into about two years ago?
6 A. March of 2008, yes.
7 Q. And how many depositions did you take in
8 relation to the SEC action that was taken against
9 you?
10 A. One.
11 Q. And previous to that -- so that was the
12 last deposition you took.
13 What was the one you took before that?
14 Or, actually, there were two that you took before
15 that. Let's talk the one just before, in time, the
16 2004 deposition.
17 A. The one that preceded that was a civil
18 matter.
19 Q. Okay. And what did that involve?
20 A. It involved an employee at my previous
21 employer, Mercantile Bankshares. Suit against
22 Mercantile Bankshares.
23 Q. What did -- what was the nature of the
24 lawsuit against Mercantile by the former employee?
25 A. My recollection is that he was suing for

Page 10

00012

1 fund at Refco.
2 Q. So you were -- you were an employee at
3 Refco, correct?
4 A. Yes.
5 Q. And the hedge fund that Refco was in
6 litigation with was a hedge fund that you had --
7 were involved in -- involved with, correct?
8 A. I had --
9 MR. COATES: Object to form.
10 You may answer.
11 A. Can you repeat the question?
12 (Thereupon, the requested portion was read
13 back by the reporter as above recorded.)
14 A. During my employment at Refco, I had been
15 involved with the hedge fund that was involved in
16 the deposition.
17 BY MR. KELLOGG
18 Q. Okay. Do you remember what was at issue
19 in that case?
20 A. The issue was in reference to emerging
21 market securities, and that's all I recall about the
22 case.
23 Q. Was it -- was it some kind of business
24 dispute about trades?
25 A. I don't recall.

Page 12
Pages 9-12

00013

1 Q. And what was your role? You were a
2 witness?
3 A. Yes.
4 Q. Were you named as an individual party to
5 the lawsuit?
6 A. No.
7 Q. So you -- you've had some experience with
8 depositions, but just to remind you of a few of the
9 ground rules: Let me finish my question. There's
10 going to be times when you -- you know what I'm
11 asking and you know the answer and you're going to
12 want to tell me, but just hold off on telling me
13 until I finish the question so that the court
14 reporter gets a chance to transcribe it.
15 Is there any reason you can't give full
16 complete honest testimony today?
17 A. No.
18 Q. Are you on any medications that would
19 prevent you from doing so?
20 A. No.
21 Q. The other ground rule is: If you -- you
22 need a break, let me know and we can take one.
23 I've gotten a little bit of your work
24 history, but if you could kind of just -- I guess --
25 let's start from, say, where you graduated high

Page 13

00014

1 school and just take me through your background,
2 through education and work experience.
3 A. Okay. I graduated from St. Lawrence
4 University in 1992.
5 Q. Okay. What was -- what was your major?
6 A. Political science.
7 Q. Any minors?
8 A. No.
9 Q. Where did you go from St. Lawrence?
10 A. I went to Eastman Kodak.
11 Q. What did you do with Eastman Kodak?
12 A. I was in sales.
13 Q. Okay. How long did you work at Eastman?
14 A. Approximately two years.
15 Q. Then where did you go?
16 A. The family business with -- at the
17 Meadowlands Convention Center.
18 Q. And what was your role with the family
19 business?
20 A. I was in sales.
21 Q. Okay. What was the name of the family
22 business?
23 A. Meadowlands Convention Center.
24 Q. And how long were you in sales with
25 Meadowlands Convention Center?

Page 14

00015

1 A. About one year.
2 Q. What was your next employment?
3 A. With Refco Group.
4 COURT REPORTER: I'm sorry. What was the
5 name?
6 THE WITNESS: Refco, R-E-F-C-O.
7 COURT REPORTER: Oh. Thank you. Thank
8 you.
9 A. Specifically Refco Capital Markets.
10 BY MR. KELLOGG
11 Q. And what did you do at Refco Capital
12 Markets?
13 A. I was in sales.
14 Q. And what were you selling at Refco Capital
15 Markets?
16 A. Prime brokerage services to hedge funds.
17 Q. Can you give me a little description of
18 what prime brokerage -- what prime brokerage
19 services to hedge funds means?
20 A. Providing capital -- capital markets
21 brokerage to -- to hedge funds.
22 Q. Was that the first brokerage employment
23 that you had?
24 A. Yes.
25 Q. And how did you get into that field?

Page 15

00016

1 A. Through a family friend.
2 Q. Someone who worked at Refco?
3 A. Yes.
4 Q. And so how long did you work at Refco?
5 A. About three years.
6 Q. And that was in New York City?
7 A. Yes.
8 Q. Did you receive any promotions while you
9 were at Refco?
10 A. No.
11 Q. And what was your official position?
12 A. Sales representative.
13 Q. Where did you go from Refco?
14 A. Caxton Symmetry.
15 Q. How do you spell that?
16 A. C-A-X-T-O-N, S-Y-M-M-E-T-R-Y.
17 Q. Okay. And what did you do with Caxton?
18 A. Sales.
19 Q. Same title, sales rep?
20 A. I don't recall.
21 Q. And was it the same type of sales that you
22 did while you were involved with -- with Refco?
23 A. No.
24 Q. Okay. What was -- what kind of sales were
25 you involved with at Caxton?

Page 16
Pages 13-16

00017

1 A. Third party marketing of hedge funds to
2 investors.
3 Q. And what does that mean?
4 A. It means that the firm had a universe of
5 hedge funds that it offered or recommended to its
6 clients.
7 Q. And so you dealt with marketing the
8 company's products to its clients?
9 A. Yes.
10 Q. Did you have any -- going back to Refco
11 Group, did you have any due diligence functions as a
12 sales representative?
13 A. No.
14 Q. And what about at Caxton? Did you have
15 any due -- due diligence functions?
16 A. Yes.
17 Q. Okay. What were those functions?
18 A. I participated in the due diligence of the
19 funds that were on the company's platform.
20 Q. And approximately how many funds did it
21 have on the platform?
22 A. My recollection is that we had up to
23 12 funds.
24 Q. And did you participate in due diligence
25 for each of those funds?

Page 17

00019

1 marketable to our investors.
2 Q. And how was the information -- I guess
3 information was inputted onto the template so that
4 the committee could review it?
5 A. Yes.
6 Q. Okay. And was that part of your function,
7 gathering information?
8 A. Depending upon the fund, there was
9 certain -- certain information that I was tasked
10 with collecting, yes.
11 Q. What was -- typically what was your task
12 or your role in the due diligence?
13 A. What would, in the industry, be referred
14 to as desk due diligence. So collection of the
15 offering materials of the fund, related
16 documentation, historical performance, things of
17 that nature.
18 Q. And were there other people at Caxton who
19 had other functions relating to the due diligence
20 whom you worked with?
21 A. Well, I worked for Caxton Symmetry at
22 Caxton Corp, our affiliate. It was a hundred-person
23 or more investment company.
24 Q. And it had a team of people that were
25 dedicated to due diligence?

Page 19

00018

1 A. Yes.
2 Q. And what did the due diligence consist of
3 at Caxton?
4 A. The due diligence at Caxton was -- was
5 supervised and driven by our affiliate, Caxton Corp,
6 which -- which is one of the largest global macro
7 hedge funds in the world in fund of funds. Bruce
8 Kovner, the head of the firm and the fund-of-funds
9 team, put together the template and -- and required
10 due diligence that was needed so that the committee
11 could evaluate it.
12 Q. Okay. And what was -- what was the
13 template then?
14 A. The template was a very common
15 industry-type template which had fields for both
16 quantitative and qualitative information about the
17 hedge fund as well as required document collection.
18 Q. And what would -- what would Caxton do
19 with that template?
20 A. What --
21 Q. How would -- how would -- how would he use
22 it?
23 A. Caxton Symmetry's investment committee
24 would use that template as a means of evaluating if
25 the fund was suitable for our platform and

Page 18

00020

1 A. It did. Yes.
2 Q. Approximately how many people did due
3 diligence at Caxton Corp?
4 A. I don't know.
5 Q. More than ten?
6 A. It's a difficult question to ask because
7 there was so many different roles and -- and so many
8 different investment teams, that I couldn't answer
9 the question.
10 Q. But one of your roles was, you said, desk
11 due diligence.
12 While you were there, did you participate
13 in any other due diligence functions?
14 A. Yes, I participated in the manager visits.
15 Q. Okay. And what -- what is a manager
16 visit?
17 A. A manager visit is a typical part of the
18 due diligence process where a potential investor or
19 sponsor meets with the portfolio manager of a hedge
20 fund or the investment advisor to a hedge fund, as
21 well as other members of the team, to perform
22 on-site due diligence, both investment due diligence
23 and operational due diligence.
24 Q. And what were the types of things you were
25 looking for during those manager visits?

Page 20
Pages 17-20

00021

1 A. It's an opportunity to, as I said, speak
2 with members of the firm about their investment
3 methodology, their investment strategy, the
4 background of the -- of the portfolio manager, the
5 structure of the trading team, the structure of the
6 operational team, and the structure of the back
7 office.
8 Q. Who would you typically talk to during
9 these visits?
10 A. During a typical visit, a manager meeting,
11 one would speak with the portfolio manager, all of
12 the principals of the firm. However, it wasn't
13 limited to senior people. It also included
14 operational people, back office people, and
15 marketing.
16 Q. Okay. Did you have any other functions
17 other than desk -- desk due diligence and manager
18 visits?
19 A. Yes.
20 Q. And what were those?
21 A. The development of the marketing materials
22 and sales literature that we used to recommend funds
23 to our clients.
24 Q. Okay. Any other roles with Caxton?
25 A. No.

Page 21

00023

1 purchased?
2 A. Copenhagen.
3 Q. And so what was your role with the real
4 estate development?
5 A. It was raising money for the John J. Stock
6 (phonetic) Company, who was the principal investor
7 in this private equity transaction.
8 Q. And how much money were they looking to
9 raise?
10 A. They were looking for equity of
11 approximately 50 million.
12 Q. And were you successful in raising money
13 as part of this project?
14 A. No.
15 Q. Did the project ever -- was it ever
16 completed?
17 A. No. As a result of 9/11, the project was
18 never completed.
19 Q. And then, after this project, I guess,
20 was -- was ended, what did you do next?
21 A. I was employed by a firm called
22 "PlusFunds," P-L-U-S Funds.
23 Q. And what did -- what did PlusFunds do?
24 A. PlusFunds was a company that created a
25 secondary market for hedge funds traded on the

Page 23

00022

1 Q. And how long did you work at Caxton?
2 A. I worked at Caxton for approximately two
3 years.
4 Q. And did you receive any promotions or
5 changes in title while you were with Caxton?
6 A. No.
7 Q. Where did you go after Caxton?
8 A. After Caxton, I worked at an independent
9 project.
10 Q. Okay. And what was that?
11 A. It was a real estate development project.
12 Q. Where was it located?
13 A. In Manhattan.
14 Q. And what were you involved in developing?
15 A. Food courts at the World Trade Center.
16 Q. And what time did you start doing this
17 project, year, just around?
18 A. 1999.
19 Q. And was this a project that you were --
20 had ownership in?
21 A. I did have an ownership stake through a
22 company, yes.
23 Q. Was this one of your family companies?
24 A. No, it was not.
25 Q. What was the name of the company that you

Page 22

00024

1 Bermuda stock exchange.
2 Q. And what was your role there at Plus?
3 A. Sales.
4 Q. Did you have any due diligence functions
5 while you were with Plus?
6 A. Yes.
7 Q. Okay. What were those?
8 A. To participate in the due diligence
9 process.
10 Q. Okay. And you told me earlier that, at
11 Caxton, you did specific -- there were specific
12 things that you participated in.
13 What were some of the things that you
14 participated in while you were with Plus?
15 A. I was tasked with various requests for
16 quantitative or qualitative due diligence.
17 Q. Did you do desk due diligence?
18 A. Yes.
19 Q. And did you meet with managers?
20 A. No.
21 Q. Was there any reason you didn't meet with
22 managers while you were with Plus?
23 A. It wasn't part of my just responsibility.
24 Q. There were someone else there who --
25 A. Yes.

Page 24
Pages 21-24

00025

- 1 Q. -- took those functions?
2 A. Yes.
3 Q. Did you have any other due diligence
4 functions other than desk due diligence at Plus?
5 A. No.
6 Q. And you said you were in sales there as
7 well?
8 A. Uh-huh.
9 Q. Okay.
10 A. Yes.
11 Q. And the other rule is -- yeah. Okay.
12 A. Sorry.
13 Q. Did you receive any promotions or changes
14 in title while you were with Plus?
15 A. Yes.
16 Q. Okay. And what was that? What was the
17 change?
18 A. I was promoted from a sales representative
19 to the head of sales.
20 Q. And as head of sales, how many salesmen
21 did you oversee?
22 A. I believe I oversaw three salespeople, but
23 I did not have direct supervision that you would
24 normally see on an org chart.
25 Q. And -- and what's the reason?

Page 25

00026

- 1 A. It was a dot-com startup and they didn't
2 have a formal structure in place. So --
3 Q. It was informal?
4 A. Right.
5 My role as head of sales was really about
6 the development of our marketing and branding
7 campaign for the firm.
8 Q. How long were you at Plus?
9 A. I was at PlusFunds for approximately two
10 years.
11 Q. Is -- is PlusFunds still around?
12 A. PlusFunds -- PlusFunds became the S&P
13 Hedge Fund Index. It was acquired by Standard &
14 Poor's.
15 Q. So it was a successful dot-com startup?
16 A. It ultimately was a successful dot-com
17 startup. I left prior to the S&P acquisition.
18 Q. Did you have any ownership interest in
19 PlusFunds?
20 A. No, I did not.
21 Q. And how long were you -- you said you were
22 there for two years?
23 A. About a year and a half, yes.
24 Q. What was the circumstances of your leaving
25 PlusFunds?

Page 26

00027

- 1 A. The firm was become insolvent and we were
2 voluntarily allowed to terminate our employment.
3 Q. But after you left, the firm continued on
4 and ultimately was sold to the -- to, I guess, the
5 S&P organization?
6 A. Ultimately the firm became S&P Hedge Fund
7 Index.
8 Q. Where did you go after PlusFunds?
9 A. To Mercantile Bankshares Corp.
10 Q. Okay. And what -- around what date was
11 that, the year?
12 A. That would be around 2001.
13 Q. And how long were you at Mercantile?
14 A. Three years. Two and a half years.
15 Sorry.
16 Q. And what was your role at Mercantile?
17 A. Alternative investments distribution.
18 Q. Okay. And what did that mean?
19 A. It meant selling hedge funds and other
20 alternative investments to investors.
21 Q. As -- was due diligence part of your
22 function there at Mercantile?
23 A. Yes.
24 Q. And what were some of the due diligence
25 functions you had, or responsibilities?

Page 27

00028

- 1 A. Identifying fund-of-funds managers based
2 upon the criteria set forth by product development
3 board.
4 Q. What was the criteria that was set forth
5 by the board?
6 A. The criteria included specifications with
7 regards to the investment strategy and the type of
8 underlying investment in the fund of funds.
9 Q. Was -- did that strategy change over time?
10 A. No. There were three strategies which
11 were consistent throughout my time.
12 Q. Okay. And what were those strategies?
13 A. One strategy was relative value fund of
14 funds, the second strategy was long/short equity
15 fund of funds, and the third strategy was small cap
16 equity fund of funds.
17 Q. And what is -- what is a relative value
18 fund of funds?
19 A. A relative value fund of funds is a fund
20 of hedge funds that invests in underlying strategies
21 that are nondirectional in nature.
22 Q. And what does that mean?
23 A. It means that they generate returns
24 through the use of arbitrage and other sophisticated
25 investment strategies rather than relying on market

Page 28
Pages 25-28

00029

1 movement solely for gains or losses.

2 Q. And what's a long/short equity?

3 A. Long/short equity fund of funds is a fund
4 of hedge funds that invests in underlying long/short
5 strategies, typically in equities.

6 Q. And what's the difference between a
7 long/short strategy and a relative value strategy?

8 A. The difference between long/short strategy
9 and relative value is that a long/short strategy is
10 a -- is a fair strategy which has some
11 directionality to it or dependency on the market,
12 where a relative value strategy is very low
13 volatility arbitrage-related strategy.

14 Q. And what's a -- what is a small cap fund
15 of funds?

16 A. A small cap fund of funds is a fund of
17 hedge funds that invest in equity strategies that
18 invest only in small cap companies as the underlying
19 securities in the portfolio's.

20 Q. What -- in addition to the identification
21 of those types of fund of funds, what other due
22 diligence responsibilities did you have?

23 A. Well, within that responsibility was the
24 usual due diligence of the fund of funds.

25 Q. Okay. And while you were at Mercantile,

Page 29

00031

1 A. I participated in the creation of the
2 template.

3 Q. And so I think, at some point during your
4 time at Mercantile, the events arose that allege --
5 that -- that led to the allegations made against you
6 by the SEC, correct?

7 A. Yes.

8 Q. So now that I know a little bit more about
9 what your role was at -- at Mercantile, what exactly
10 were the things that the SEC said you did as --
11 during your role as an alternative investments
12 distribution person?

13 MR. COATES: I'm going to object to the
14 form of the question. Jason, we covered this
15 extensively this morning, and I'm going to
16 allow a few more questions on this and then ask
17 you to move on.

18 BY MR. KELLOGG

19 Q. Did you understand the question?

20 A. Yes.

21 I entered into an order with the SEC in
22 2008 with regards to a conflicts case.

23 Q. Is that order available on the public
24 records, as far as you know?

25 A. I believe so, yes.

Page 31

00030

1 what was the usual due diligence that was conducted?

2 A. The completion of a due diligence
3 template.

4 Q. So Mercantile had a template?

5 A. Yes.

6 THE WITNESS: My apologies.

7 BY MR. KELLOGG

8 Q. And what was the type of information that
9 would go on or that -- that you found on the
10 Mercantile template?

11 A. It was quantitative and qualitative due
12 diligence information.

13 Q. Okay. And what did it include?

14 A. The quantitative due diligence included
15 specific information about the investment fund. For
16 example, its assets under management, its historical
17 track record, specific strategic allocations.
18 Qualitative due diligence was about the investment
19 strategy, the background of the manager, the
20 background of the firm, et cetera.

21 Q. Did you have any role in creating or
22 modifying the template?

23 A. Yes.

24 Q. And what was -- what was your role in that
25 regard?

Page 30

00032

1 Q. And so it's your testimony that the
2 information contained in that order will answer my
3 question as to what the SEC's allegations were
4 regarding your employment, or the things that it
5 alleged you did as part of your employment at
6 Mercantile?

7 A. I don't know.

8 Q. And you don't know if that information is
9 contained in the order?

10 A. I don't know if it will answer your
11 questions.

12 Q. I'm sorry?

13 A. I don't know if it will answer your
14 questions. I believe your question was a little bad
15 to answer to my questions [sic.] and I don't know
16 what the questions are.

17 Q. Well, the question I just asked, would it
18 answer that question as to what the SEC's
19 allegations were?

20 A. Yes, that's in the order.

21 Q. Was there anything in the order that you
22 dispute?

23 A. I entered into the order --

24 MR. COATES: I'm going to object to the
25 form of the question.

Page 32
Pages 29-32

00033

1 You may answer. I think it was already
2 asked earlier this morning. You can answer it
3 one more time.
4 A. I entered into the order and the order
5 speaks for itself.
6 BY MR. KELLOGG
7 Q. Does the order say whether or not you
8 dispute or do not dispute the allegations made
9 against you?
10 A. I don't recall.
11 MR. COATES: Object to the form of the
12 question.
13 You may answer, sir.
14 A. I don't recall.
15 BY MR. KELLOGG
16 Q. What were the circumstances of you leaving
17 Mercantile?
18 A. I was terminated.
19 Q. And was it relating to the allegations
20 that were eventually made by the SEC?
21 A. Yes.
22 Q. And where did you go after Mercantile?
23 A. EFG Capital.
24 Q. When did you start with EFG Capital?
25 A. In 2005.

Page 33

00034

1 THE WITNESS: Can we take a break?
2 MR. COATES: Yeah, sure.
3 MR. KELLOGG: Yep.
4 VIDEOGRAPHER: Let's go off the record.
5 The time is 10:34.
6 (Thereupon, a recess was taken, after
7 which the following proceedings were held:)
8 VIDEOGRAPHER: We're now back on the
9 record. Time is 10:40.
10 BY MR. KELLOGG
11 Q. Mr. Donnell, before we took the break, we
12 had just gotten to the EFG Capital part of your work
13 history.
14 You said you started at Mercantile in
15 2001, correct?
16 A. Yes.
17 Q. And you worked there for about two and a
18 half years, you said?
19 A. Yes.
20 Q. So you would have ended your employment
21 there sometime in 2003 or 2004?
22 A. That's correct.
23 Q. What did you do between that time and the
24 time you started at EFG Capital?
25 A. I had part-time employment.

Page 34

00035

1 Q. Okay. And what -- what was the part-time
2 employment?
3 A. I was an administrative assistant.
4 Q. For what company?
5 A. An employment agency in New York. I don't
6 recall the name of it.
7 Q. Was that a family business?
8 A. No, it was not.
9 Q. Then you came to be employed at EFG
10 Capital, correct?
11 A. Yes, as a consultant in 2005.
12 Q. And what was your role as a consultant?
13 A. I was engaged by the firm to assist in the
14 marketing of hedge funds to its clients.
15 Q. And when you started at EFG Capital, were
16 you in the New York or the Miami office?
17 A. Miami.
18 Q. The employment agency that you had worked
19 at part-time, was that in Miami or New York?
20 A. That was in New York.
21 Q. How did you come to learn about EFG
22 Capital and -- and get a job there?
23 A. Through a colleague.
24 Q. Who was that colleague?
25 A. Sixto Campano.

Page 35

00036

1 Q. And where did you know Mr. Campano?
2 A. Previous employer.
3 Q. Was that Mercantile?
4 A. No.
5 Q. With which employer?
6 A. Refco.
7 Q. So you were hired at EFG Capital by
8 Mr. Campano?
9 A. I was hired as a consultant by
10 Mr. Campano, yes.
11 Q. In addition to the marketing and sales
12 responsibilities you had as a consultant, did you
13 have any other responsibilities for EFG Capital,
14 while you were -- while you were a consultant?
15 A. No.
16 Q. You didn't have any due diligence function
17 while you were a consultant?
18 A. Yes.
19 Q. You did?
20 A. I did, yes.
21 Q. Okay. And what were your
22 responsibilities?
23 A. Generally my responsibilities was to
24 assist the firm in the standardization and
25 systematic reporting of its due diligence activities

Page 36
Pages 33-36

00037

1 and compliance of its sales literature.

2 Q. So part of your role as consultant for EFG

3 Capital was to systemize their due diligence

4 functions?

5 MR. COATES: Object to the form of the

6 question.

7 You may answer.

8 A. Part of my role as a consultant at EFG was

9 to take existing due diligence and to put it into a

10 standardized format.

11 BY MR. KELLOGG

12 Q. Prior to that, there wasn't a standardized

13 format used by EFG for its due diligence?

14 A. There was not a written template used by

15 EFG for all of the funds that it had performed due

16 diligence on.

17 Q. So are you saying there was a written

18 template for some of those funds --

19 A. Yes.

20 Q. -- that existed when you started?

21 A. No, if I may change -- there was written

22 documentation with regards to the due diligence that

23 had been performed, but to suggest that there was a

24 template, to answer your question, the answer would

25 be, no, there was no standard template for the

Page 37

00039

1 Q. Did you ask Mr. Campano whether there had

2 been any issues?

3 MR. COATES: Object to the form of the

4 question.

5 You may answer.

6 BY MR. KELLOGG

7 Q. Did you have any conversations with

8 Mr. Campano about whether EFG was having issues with

9 its compliance review procedures?

10 A. Within discussion --

11 Q. Compliance --

12 MR. COATES: Excuse me, sir.

13 BY MR. KELLOGG

14 Q. Compliance procedures.

15 MR. COATES: Object to form.

16 You may answer, sir.

17 A. Yes.

18 BY MR. KELLOGG

19 Q. And what was said in that conversation?

20 A. I don't recall the specifics of the

21 conversation. The purpose of the conversation was

22 to understand if EFG Capital had any complaints

23 related to the sale of hedge funds in the past, and

24 in that conversation, I recall that there had been

25 no complaints related to hedge funds.

Page 39

00038

1 recording of all the due diligence information

2 obtained by the firm with regards to its hedge

3 funds.

4 Q. So one of the things you were asked to do

5 was to create the template, correct?

6 A. Yes.

7 Q. Okay. And then take the existing

8 information that you had on the funds that EFG

9 Capital was selling and to put that information into

10 the template that you created?

11 A. Yes.

12 Q. And you were asked to do that by

13 Mr. Campano?

14 A. Yes. It was part of my engagement as a

15 consultant.

16 Q. And did Mr. Campano tell you why EFG

17 Capital wanted to do this?

18 A. Yes.

19 Q. And what did he say?

20 A. They wanted to review their compliance

21 with the offering of hedge funds to EFG clients.

22 Q. Were there any issues that had arisen that

23 had prompted EFG Capital to review its compliance

24 procedures relating to hedge funds?

25 A. No.

Page 38

00040

1 Q. But EFG felt, nonetheless, it was in its

2 best interest to review its compliance procedures

3 for its hedge funds?

4 MR. COATES: Object to form.

5 You may answer.

6 A. Yes.

7 BY MR. KELLOGG

8 Q. How long were you a consultant at EFG

9 Capital?

10 A. Approximately eight months, I believe.

11 Q. And what happened at that point? Were you

12 promoted or given a -- a full-time position?

13 A. I was given a full-time position.

14 Q. Okay. And what was the position you were

15 given?

16 A. Sales representative.

17 Q. And what was the time frame, more or less?

18 Was it 2006 when you were given the full-time

19 position or was it still in 2005?

20 A. I believe it was the end of 2005.

21 Q. And what were your responsibilities as a

22 full-time member of the sales staff?

23 A. To -- to continue the development and

24 implementation of standardized due diligence and

25 hedge fund review, to comply with our regulatory

Page 40
Pages 37-40

00041

1 requirements.
2 Q. What were the regulatory requirements that
3 you were attempting to comply with?
4 A. Compliance with the general conduct rules
5 of FINRA.
6 Q. And what are those rules, just generally
7 speaking, as far as you understand them?
8 A. FINRA 2210 with relation to sales
9 literature as well as various notice to members
10 regarding the sale of hedge funds.
11 Q. Do you know what, if any, restrictions are
12 laid out in FINRA 2210 regarding the sales
13 literature?
14 MR. COATES: Object to form.
15 You may answer, sir.
16 A. Yes.
17 BY MR. KELLOGG
18 Q. Okay. What -- what are those? What's
19 your understanding?
20 A. Rule 2210 generally requires the sales
21 literature present a fair and balanced presentation.
22 It's not promissory. It's not forward-looking.
23 Does not use exaggerated information and does not
24 include hypothetical information.
25 Q. And as part of your -- as part of your

Page 41

00043

1 Q. Had that process completed?
2 A. Yes.
3 Q. Okay. About how long did it take you to
4 complete that process?
5 A. The process of inputting information or
6 the development of the template or both?
7 Q. Both.
8 A. About five months.
9 Q. Okay.
10 A. Three to five months.
11 Q. Did you -- and we're -- we're back to the
12 time when you were hired full-time.
13 A. Uh-huh.
14 Q. What other due diligence functions were
15 you tasked with?
16 A. At the time I was hired full-time, the
17 same tasks as during my consultancy.
18 Q. So that didn't change.
19 Your relation to the due diligence
20 functions didn't change when you were hired
21 full-time?
22 A. Correct.
23 Q. And how long were you a sales -- how long
24 was your position at EFG Capital, the position of a
25 salesperson?

Page 43

00042

1 duties to ensure FINRA compliance, did you recommend
2 to EFG Capital that it change any of the existing
3 marketing literature that it had?
4 MR. COATES: Object to form.
5 You may answer.
6 A. My recommendation was a -- was a -- a
7 forward-looking recommendation suggesting that EFG
8 Capital use a standardized template for its sales
9 literature, in particular for what we refer to as
10 tear sheets.
11 BY MR. KELLOGG
12 Q. Was it your opinion that the -- the tear
13 sheets previously used by EFG Capital were in any
14 way in violation of the -- the FINRA rule that you
15 just described?
16 MR. COATES: Object to form.
17 A. No.
18 BY MR. KELLOGG
19 Q. By the time you had commenced the
20 full-time position at EFG Capital, had you completed
21 the completion of a due diligence template in the
22 entry of information that EFG Capital had already
23 gathered as part of its due diligence process and
24 incorporated it into the template?
25 A. Yes.

Page 42

00044

1 A. I continued to be in a sales role.
2 Q. Did you receive any promotions?
3 A. Yes.
4 Q. Okay. What was your first promotion?
5 A. Was promoted to head of marketing.
6 Q. And when did that happen?
7 A. That happened in late 2006, I believe.
8 Q. And what were your -- what was your job
9 responsibilities as head of marketing?
10 A. As head of marketing, my responsibilities
11 were the preparation of written materials used by
12 the CROs as collateral material marketing EFG
13 Capital.
14 Q. Any other tasks, responsibilities as head
15 of marketing?
16 A. The organization of marketing events for
17 customers of EFG.
18 Q. And when you say "marketing events," you
19 mean literal events that people go to?
20 A. Such as a polo match, a golf tournament,
21 things of that nature.
22 Q. Did you retain any due diligence functions
23 as head of marketing?
24 A. The role of head of marketing did not
25 include due diligence.

Page 44
Pages 41-44

00045

1 Q. At that point when you became head of
2 marketing in late '06, who at EFG was responsible
3 for due diligence?
4 A. Sixto Campano, as the head of new product
5 committee.
6 Q. Is it fair to say that you were tasked
7 with due diligence from '05 -- in -- in the time
8 frame of '05 and '06, and then, once you became the
9 head of marketing, that role fell to Mr. Campano?
10 MR. COATES: Object to form.
11 A. That's incorrect.
12 BY MR. KELLOGG
13 Q. Okay. What's -- how did -- did
14 Mr. Campano oversee your due diligence functions
15 while you were doing them?
16 A. Yes, during my consultancy and then
17 through my employment, my role was to complete the
18 required collection of information for hedge fund
19 due diligence and review for my supervisor.
20 Q. Who was Mr. Campano?
21 A. Yes.
22 Q. So Mr. Campano was the person ultimately
23 responsible for due diligence at EFG Capital?
24 A. Yes.
25 Q. And that didn't change when you became

Page 45

00047

1 Mr. Campano?
2 A. At EFG Capital, there was not.
3 Q. Did you work with anyone at any of the
4 other EFG entities on due diligence, from the time
5 you started until today?
6 A. We've had discussions with other
7 affiliates of EFG Capital with regard hedge fund due
8 diligence.
9 Q. What affiliates have you had those
10 discussions with?
11 A. EFG Bank.
12 Q. Any others?
13 A. EFG Asset Management.
14 Q. Is it EFG Capital Asset Management or is
15 there a different one called "Asset Management"?
16 A. There's a different entity called EFG
17 Asset Management.
18 Q. Where is the Asset Management entity
19 located?
20 A. EFG Asset Management is located in London.
21 Q. Who did you speak with or who did you work
22 with at EFG Bank related to hedge fund due
23 diligence?
24 A. I had discussions with EFG Bank employees
25 that included Jerome Schonbachler, Romy Cabrera,

Page 47

00046

1 head of marketing, correct?
2 A. No, it did not. I was both head of
3 marketing and also continued to serve in the -- in
4 the -- the functions I just described.
5 Q. So you -- you continued to be involved in
6 the due diligence functions even after you became
7 head of marketing?
8 A. Yes.
9 Q. Is Mr. Campano still the person in charge
10 of due diligence at EFG Capital?
11 A. Yes, he's still head of the new product
12 committee.
13 Q. And do you continue to have a role
14 relating to due diligence at EFG?
15 A. Yes.
16 Q. Okay. Is it the same role that you had
17 since 2005 when you started as a consultant?
18 A. Yes.
19 Q. Is there anyone else at EFG Capital,
20 besides you or Mr. Campano, who are involved in the
21 due diligence function of EFG?
22 A. Today, no.
23 Q. At some point between the time you started
24 in '05 until today, were there other people involved
25 in the due diligence process, other than you and

Page 46

00048

1 Gyongyi King.
2 Q. Any others?
3 A. There are others. I just don't recall
4 their names.
5 Q. Did you have any discussions with Lonnie
6 Howell?
7 A. With regards to hedge fund due diligence?
8 Q. Right.
9 A. No.
10 Q. In any of the conversations or
11 communications you had with EFG Bank about hedge
12 fund due diligence, was -- were any of the Fairfield
13 funds discussed?
14 A. Yes.
15 Q. Were any of the Fairfield's funds
16 discussed explicitly -- particularly?
17 MR. COATES: Object to form.
18 A. We spoke about various Fairfield funds.
19 BY MR. KELLOGG
20 Q. And what did you talk about with regard to
21 the Fairfield funds?
22 A. Generally we talked about matters of
23 performance and any material changes that one was
24 aware of to the funds on a Fairfield platform.
25 Q. Was -- were there a series of

Page 48
Pages 45-48

00049

1 conversations about Fairfield due diligence or
2 just --
3 A. As in any field, as a practitioner, you
4 discuss with your colleagues, especially in the
5 hedge fund space, what are you hearing, what are you
6 doing. EFG Capital performed its own due diligence
7 on all of the Fairfield funds as well as all the
8 funds in the platform. So there was not a regular
9 discourse. EFG Capital, in its function, its
10 obligation of doing due diligence, did so, and it
11 was not -- that process did not include discussions
12 with our affiliates as a matter of course.
13 Q. When you discussed Fairfield and,
14 specifically, Fairfield's performance, do you
15 remember specifically what was discussed?
16 A. Can you give me a specific fund?
17 Q. Fairfield Sentry?
18 A. Fairfield Sentry.
19 I don't recall any specific conversations
20 about the performance of Fairfield Sentry.
21 Q. Do you remember any conversations in which
22 anybody at EFG Bank discussed the performance of the
23 Fairfield Sentry fund?
24 A. I don't remember any specific instances or
25 conversations with regard to the performance of the

Page 49

00051

1 A. As I stated previously, I've had
2 discussions about the Fairfield funds with my
3 colleagues.
4 BY MR. KELLOGG
5 Q. About due diligence?
6 A. About the -- about the funds, about due
7 diligence, yes.
8 Q. EFG Bank was one of the affiliates that
9 you had these discussions with, correct?
10 A. Yes.
11 Q. And EFG Asset Management in London was
12 another?
13 A. Yes.
14 Q. Did EFG Asset Management invest or have
15 customers invest in the Fairfield Sentry fund?
16 A. I don't know.
17 Q. Do you recall having any conversations
18 about the Fairfield Sentry fund with EFG Asset
19 Management?
20 A. Yes.
21 Q. Okay. Do you remember any specifics of
22 those conversations?
23 A. Specifically the conversations related to
24 the introduction of a new fund by Fairfield
25 Sentry -- or by Fairfield that was similar in

Page 51

00050

1 funds.
2 Q. You just know that performance was one of
3 the things that was discussed?
4 A. Yes.
5 Q. And you said these discussions were
6 informal. But were there any -- were there any
7 formal mechanisms by which you would have
8 conversations with the EFG Bank folks? Were there
9 meetings that -- that occurred?
10 A. There were periodically meetings, because
11 each EFG affiliate who had exposure to hedge funds
12 was responsible for its own due diligence. So,
13 again, as practitioners in -- in a field
14 regularly -- not regularly -- periodically we would
15 organize calls, perhaps with myself and one of my
16 colleagues at one of the entities, or perhaps a
17 conference call to discuss each of our due diligence
18 and any opinions we may have had at the time. So it
19 was done an ad hoc basis, informally.
20 Q. Each affiliate was responsible for its own
21 due diligence, but I think you're telling me that
22 the affiliates also, when they were investing in the
23 same fund, would talk with each other about due
24 diligence relating to those funds, correct?
25 MR. COATES: Object to form.

Page 50

00052

1 strategy to Fairfield Sentry.
2 Q. What was that fund?
3 A. The name of that fund was Emerald.
4 Q. And approximately what time did Emerald
5 come on line?
6 A. Emerald came on line in -- sometime in
7 2008.
8 Q. Was it prior to December 2008, as far as
9 you can recall?
10 A. Yes.
11 Q. Okay. Was -- do you remember the people
12 at EFG Asset Management that you had conversations
13 with?
14 A. Gyongyi King.
15 Q. And what was his role at EFG Asset
16 Management?
17 A. It's Ms. King. Mrs. King.
18 Q. Ms. Chon? You said --
19 A. Gyongyi.
20 Q. Gyongyi. Okay.
21 A. Jonjee's role was to participate in the
22 due diligence process and review of hedge funds for
23 EFG Asset Management.
24 Q. Did Ms. King ask you any questions about
25 the due diligence you had conducted on -- on

Page 52
Pages 49-52

00053

1 Fairfield Sentry?
2 MR. COATES: Object to the form of the
3 question.
4 You may answer.
5 A. No.
6 BY MR. KELLOGG
7 Q. Did you ask her any questions about any
8 due diligence she may have done on Fairfield Sentry?
9 A. No.
10 Q. The conversations with the EFG Bank folks,
11 when was the time frame that those occurred?
12 MR. COATES: I'm going to object to the
13 form of the question.
14 A. Again, as a member of a global
15 organization, I had regular conversations with my
16 colleagues. I can't tell you specifically
17 conversations or times unless you have a specific
18 instance you want me to describe.
19 BY MR. KELLOGG
20 Q. Would you ever discuss due diligence
21 issues with EFG Bank through e-mail?
22 A. Yes.
23 Q. And the same for EFG Asset Management?
24 A. Yes.
25 Q. Was that a primary method of -- of

Page 53

00055

1 Mr. Echevarria, Mr. Campano, and Mr. Alvarez, you
2 were one of the persons who was responsible for
3 communicating with those entities.
4 Do you see that?
5 A. Yes.
6 Q. Okay. And would you agree that you're one
7 of the people who -- one of the persons who was
8 responsible for communicating with Fairfield
9 Greenwich Group?
10 A. Yes.
11 Q. And with Bernard Madoff Investment
12 Securities?
13 A. No.
14 Q. With Bernard Madoff?
15 A. No.
16 Q. Have you ever had a conversation with
17 anyone at Bernard Madoff Investment Securities?
18 A. No.
19 Q. Have you ever had a conversation with
20 Mr. Madoff?
21 A. No.
22 Q. But you did have conversations and
23 communications with Fairfield Greenwich Group,
24 correct?
25 A. Yes.

Page 55

00054

1 communicating about these issues with EFG Bank and
2 EFG Asset Management?
3 A. Yes, as a matter of course, most
4 communication today is done by e-mail.
5 Q. I don't think we'll need to mark these,
6 but I'll show it to you.
7 A. Okay.
8 Q. These are EFG Capital's responses to the
9 plaintiff's second set of interrogatories.
10 And my first question would be: Have you
11 seen this document before?
12 A. No.
13 Q. If you turn to page 5, you'll see there is
14 an Interrogatory No. 3 --
15 A. Uh-huh.
16 Q. -- asking EFG Capital who the persons are
17 who are responsible for communicating with Fairfield
18 Greenwich; BMIS, which is Bernie Madoff Investment
19 Securities --
20 A. Uh-huh.
21 Q. -- or Bernard Madoff regarding Fairfield
22 Sentry.
23 Do you see that?
24 A. Yes, I do.
25 Q. And it says that in addition to

Page 54

00056

1 Q. And what were the circumstances of those
2 communications? Why were you talking with
3 Fairfield?
4 A. To obtain information that we required
5 as -- for hedge fund review.
6 Q. That was during -- that was for the due
7 diligence process?
8 A. That was for the due diligence review of
9 the funds, yes.
10 Q. I'll instruct you to turn to the next
11 page. And at the bottom of that page, there's an
12 Interrogatory No. 5 that asks for the persons with
13 the most knowledge of EFG Capital's policies and
14 procedures relating to due diligence.
15 Do you see that?
16 A. Yes.
17 Q. And you're listed along with
18 Mr. Echevarria and Mr. Campano as one of the persons
19 with the most knowledge, correct?
20 A. Yes.
21 Q. Would -- is there anyone at EFG Capital
22 you can think of that you believe should be included
23 with those three individuals?
24 A. No.
25 Q. If you turn to page 11, No. 12,

Page 56
Pages 53-56

00057

1 Interrogatory No. 12 says identify the most -- the
2 persons with the most knowledge of marketing of
3 Fairfield Sentry. And, again, Mr. Echevarria,
4 Mr. Campano, and you are identified as the people
5 with the most knowledge.
6 You see that?
7 A. Yes.
8 Q. Is there anyone else that you would
9 include among that group as being one of the persons
10 with the most knowledge at EFG Capital about
11 marketing?
12 A. No.
13 Q. You were named head of marketing in late
14 '06. Do you still hold that position?
15 A. I don't know. I had a title change.
16 Q. Okay. And what was the title?
17 A. I'm not --
18 Head of wealth management solutions.
19 Q. Was some -- was someone else put in charge
20 of marketing?
21 A. No.
22 Q. Your title was wealth -- head of wealth
23 management solutions? Solutions. Okay.
24 A. Yes.
25 Q. And did your job function change when you

Page 57

00059

1 A. This summer.
2 Q. And are you in charge of continuing to
3 manage that plan or that product?
4 A. Yes.
5 Q. Mr. Donnell, what -- what is the purpose
6 of doing a due diligence review of a hedge fund?
7 A. To determine if it's suitable for
8 recommendation to clients.
9 Q. And what are some of the things -- we've
10 touched on some of them. But what are -- what are
11 the things you look at when you're doing a due
12 diligence review?
13 A. Based upon the template developed by EFG
14 Capital, we look at both quantitative and
15 qualitative issues related to the specific
16 investment fund.
17 Q. One of the things involved in the due
18 diligence process is the evaluation of an investor's
19 risk in investing in hedge fund, correct?
20 A. Part of the --
21 MR. COATES: Object to form.
22 You may answer.
23 A. Part of the due diligence process is
24 reviewing the risk factors which are stated in the
25 fund's offering materials.

Page 59

00058

1 were named head of wealth management solutions?
2 A. Yes.
3 Q. Okay. What -- how did it change?
4 A. In addition to my existing
5 responsibilities, I was also tasked with developing
6 an international planning offering for our clients.
7 Q. What does that mean, "an international
8 planning offering"?
9 A. It includes the noninvestment financial
10 needs of a client.
11 Q. Okay. So give me some examples of what
12 those needs typically are.
13 A. Estate planning, business continuity
14 planning, wealth transfer planning, liquidity needs.
15 Q. And -- and when were you named to this new
16 position?
17 A. In 2009.
18 Q. Approximately what time in 2009?
19 A. Beginning.
20 Q. And since you were named to that new
21 title, have you -- has EFG implemented the plan they
22 had tasked you to do as head of wealth management
23 solutions?
24 A. Yes, it has.
25 Q. When did that roll out?

Page 58

00060

1 BY MR. KELLOGG
2 Q. Since the time you started at EFG, how has
3 the due diligence function been accomplished?
4 What's the -- what's the procedure?
5 A. The due diligence function has been
6 accomplished by EFG Capital establishing guidelines
7 for its hedge fund platform.
8 Q. And are those guidelines found in a -- any
9 written form?
10 A. Yes, they are.
11 Q. Were those guidelines produced as part of
12 this litigation?
13 A. I don't know.
14 Q. Were you at all involved in -- in putting
15 together the documents that were produced in this
16 litigation?
17 A. My participation was directed by company
18 counsel to deliver to them all documents I had
19 related to Fairfield Sentry.
20 Q. Did EFG Capital keep a due diligence file,
21 in other words, a hard copy file of due diligence
22 that --
23 A. On a specific fund or generally?
24 Q. Either.
25 A. Yes.

Page 60
Pages 57-60

00061

- 1 Q. Was it -- was it a general file, or was it
2 specific to funds, or were there many files specific
3 to funds?
4 A. May you provide a time period, please?
5 Q. When you started in 2005, how were the due
6 diligence files kept?
7 A. Each fund had a due diligence file.
8 Q. And has that changed?
9 A. No.
10 Q. Is there also a general type of due
11 diligence file in addition to the individual files
12 for each fund?
13 A. No.
14 Q. And what do each of the due diligence
15 files for each fund contain?
16 A. Each of the funds contained a due
17 diligence memorandum.
18 Q. Is that the same as the template you
19 created?
20 A. Yes. So it includes the EFG Capital's due
21 diligence memorandum template. It includes the
22 funds' document --
23 Q. Is -- sorry to interrupt.
24 A. Uh-huh.
25 Q. Are the guidelines reflected in the

Page 61

00063

- 1 A. Generally, they're one of the official
2 books and records of an investment fund.
3 Q. Okay. But what is -- what is the
4 importance of it, in the due diligence?
5 A. It provides -- provides transparency with
6 regards to the holdings of the fund during the time
7 of the audit, and is one of the best ways to ensure
8 that the fund is compliant with its strategy,
9 because they're generally done by a top-three
10 accounting firm. So we place a higher reliance on
11 them.
12 Q. What kind of things or what kind of
13 information contained in the audited financial
14 statements clue you in as to the transparency of the
15 funds?
16 A. The audited financial statement includes a
17 snapshot on the audit date of the security's health
18 in the portfolio.
19 Q. As part of its due diligence of Fairfield
20 Sentry, did EFG Capital collect audited financial
21 statements?
22 A. EFG Capital obtained audited financial
23 statements from the fund, yes.
24 Q. Okay. And when you say "from the fund,"
25 you're talking about what?

Page 63

00062

- 1 template. In other words -- I'm trying to -- I'm
2 trying to come up with the guidelines.
3 You're saying there's a document somewhere
4 that says it?
5 A. Yes.
6 Q. I just want to know if, when you're
7 talking about the written guidelines, you're not
8 talking about the template itself?
9 A. No, I'm not.
10 Q. Okay. So you'd expect to find the due
11 diligence memo?
12 A. Uh-huh.
13 Q. And what else would you expect to find in
14 the file?
15 A. The fund's offering materials.
16 Q. Which would include the offering
17 memorandum, correct?
18 A. Whether it be an offering memorandum or
19 prospectus, whatever the official offering documents
20 are of the issuer for sale of the product.
21 Q. What else would you expect to see?
22 A. Audited financial statements.
23 Q. What's the purposes -- the purpose of
24 reviewing audited financial statements in the due
25 diligence process?

Page 62

00064

- 1 A. Each investment fund has an administrator
2 who provides the audit financials to investors of
3 record or -- or ones who have access to the books
4 and record of the company.
5 Q. So what company was -- were the audited
6 financial statements focused on?
7 A. The -- the financial statements were from
8 Fairfield Sentry Limited.
9 Q. So when -- if you were to look into the
10 Fairfield Sentry due diligence file, you would
11 expect to see the audited financial statements of
12 Fairfield Sentry Limited --
13 A. Yes.
14 Q. -- right?
15 What other documents would you expect to
16 see in the due diligence file?
17 A. Information pertaining to historical track
18 record.
19 Q. And what -- what kind of information does
20 that -- what form does that information typically
21 come in?
22 A. Typically in the form of what's called "an
23 issuer's tear sheet."
24 Q. What other information in the file?
25 A. There would be records of manager visits.

Page 64

00065

1 Q. And what kind of information would you
2 expect to see included in the records of the
3 manager's visits?
4 A. Typically, you'll find a narrative, which
5 describes the agenda of the visit, the different
6 conversations that were had, and any takeaway
7 questions that perhaps the person having the manager
8 visit has for the manager that they met with.
9 Q. When you started with EFG Capital in 2005,
10 did the due diligence files that -- that you
11 reviewed of the various hedge funds include these
12 records of manager visits?
13 A. The Fairfield Sentry Limited due diligence
14 files did include records of visits that had been
15 made by the firm across all of the funds in the
16 platform when I arrived. There was not necessarily
17 standard written -- written records of manager
18 visits.
19 Q. Was one of the things you were tasked with
20 creating a standardized version of -- of the records
21 of manager visits?
22 A. Yes.
23 Q. Okay. And was that completed under
24 your -- under your supervision or did you do that?
25 A. Yes.

Page 65

00066

1 Q. So now every fund in the -- the due
2 diligence file of every file in the EFG -- EFG
3 Capital platform should include a standardized
4 record of manager visits?
5 A. Yes. And that task has been outsourced to
6 a top provider of risk management services to
7 financial institutions.
8 Q. And what's the name of that company?
9 A. Greenwich Alternative Investments.
10 Q. Okay. And did that company begin doing
11 the due diligence functions for EFG Capital?
12 A. In August of --
13 MR. COATES: I'm just going to object to
14 the form.
15 But you may answer, sir. Sorry.
16 A. A portion of the due diligence process was
17 outsourced to Greenwich in August of 2007.
18 BY MR. KELLOGG
19 Q. And specifically what portion was
20 outsourced?
21 A. The collection of performance data, the
22 preparation of tear sheets, the preparation of
23 internal-use-only risk reports, the operation of a
24 risk dashboard.
25 Q. What is that?

Page 66

00067

1 A. A risk dashboard is an online report which
2 shows the performance of a fund relative to various
3 metrics.
4 We also outsourced the quarterly hedge
5 fund review call that is conducted by Greenwich
6 Alternative Investments analysts with an expertise
7 in the strategy for the fund that they're collecting
8 information on.
9 Additionally, Greenwich is responsible for
10 maintaining and archiving all offering materials of
11 the fund, as well as for the collection of the
12 annual financial statement or audit from the fund.
13 Q. In what portion of the due diligence would
14 you say that EFG Capital retained after it hired
15 GAI?
16 A. EFG Capital retained a hundred percent of
17 the responsibility. It -- it derived work product,
18 which were evaluated from Greenwich.
19 Q. But what portions of the underlying due
20 diligence did EFG continue to do itself?
21 A. EFG continued to periodically meet with
22 Fairfield Sentry. In addition to that, it evaluated
23 the information that had been collected by Greenwich
24 Alternative Investments, which was the sole task of
25 the contract.

Page 67

00068

1 Q. Would it be fair to say that GAI took over
2 the quantitative aspects of the due diligence?
3 A. No.
4 MR. COATES: I'm going to object to form.
5 You may answer.
6 A. No. The -- the five or six items that I
7 mentioned were the task which GAI was given. It was
8 not given any fiduciary or oversight role, and EFG
9 retained its obligation to perform due diligence
10 based upon the hedge fund guidelines that we had
11 established.
12 BY MR. KELLOGG
13 Q. You mentioned, a couple times,
14 quantitative and qualitative due diligence, right?
15 A. Yes.
16 Q. What are the difference between the two?
17 A. In the due diligence process, there's a --
18 a large amount of data that -- that can be collected
19 and used to compare one investment to another. And
20 it's a -- a significant portion of the ongoing
21 monitoring given the characteristics of hedge funds.
22 A qualitative basis is more about
23 understanding the strategy and business plan of the
24 investment fund as well as the fundamentals driving
25 the performance of the fund.

Page 68
Pages 65-68

00069

1 Q. So what are examples of the qualitative
2 tasks that GAI was given, regardless of who had
3 ultimate responsibility? I understand you're saying
4 EFG Capital did. But what were some of the things
5 that they did qualitatively to gather info on due
6 diligence?

7 A. GAI had -- has, still, quarterly
8 conference calls with the portfolio manager or its
9 designate to discuss the portfolio for the reporting
10 period.

11 Q. Did GAI participate in any quarterly
12 conference calls with the -- any manager of
13 Fairfield Sentry?

14 A. Yes.

15 Q. And who was the person at GAI who was --
16 who participated in those calls?

17 A. I don't recall.

18 Q. Did you participate in those calls as
19 well?

20 A. No.

21 Q. Did anyone from EFG Capital, as far as you
22 know?

23 A. No.

24 Q. So we've talked a little bit about the due
25 diligence memo, the offering materials, audited

Page 69

00071

1 A. When I arrived in 2005, there were due
2 diligence files in hard copy form.

3 Q. Was there some point when the hard copy
4 files were put into electronic form?

5 A. There was never a wholesale effort to put
6 hard copies into electronic form.

7 Q. Was there ever a time when some of the due
8 diligence data collected was kept solely in
9 electronic form, or would it always be at least
10 printed to a hard copy file?

11 MR. COATES: Are we talking about
12 Fairfield Sentry now or just generally?

13 MR. KELLOGG: Generally.

14 A. Today, everything -- I would say while
15 it's not a policy, today, generally, as it is the
16 normal course of most business today, it's kept in
17 electronic format.

18 BY MR. KELLOGG

19 Q. And so I guess what I was trying to get
20 at -- let's talk specifically about Fairfield -- the
21 Fairfield Sentry file?

22 A. Uh-huh.

23 Q. Was it ever uploaded into electronic form?

24 A. No.

25 Q. In order to get the full scope of what is

Page 71

00070

1 financial statements, historical info, records of
2 manager visits, and documentation that may have been
3 generated by GAI as part of the things that you
4 would expect to see in the due diligence files of
5 EFG Capital.

6 Are there any other things that you can
7 think of?

8 A. The other things that one might find in
9 the files for Fairfield Sentry would be perhaps
10 marketing letters or other documents that had been
11 sent by the fund and retained by -- by the firm.

12 Q. With regard to the template, the due
13 diligence template, who was charged -- other than
14 the times that you did it, was there anyone else
15 charged with taking the data, the due diligence data
16 and inputting it into the template, or was that
17 solely your function?

18 A. That was solely my function.

19 Q. And you said the due diligence files were
20 kept in -- in hard copy, correct?

21 MR. COATES: Object to form.

22 You may answer.

23 A. During what period?

24 BY MR. KELLOGG

25 Q. Let's start from 2005 when you got there.

Page 70

00072

1 in the Fairfield due diligence file, would I have to
2 look not only in the hard copy file but also
3 somewhere in EFG Capital's electronic archives to
4 find the full EFG Capital due diligence file on
5 Fairfield Sentry?

6 A. Yes.

7 Q. Okay. And so what portions are kept
8 electronically?

9 A. EFG Capital initiated its due diligence on
10 Fairfield Sentry in 1998, and the records of the due
11 diligence that was completed at the time is in hard
12 copy format, or was in hard copy form when I
13 arrived. And additional information is available
14 both -- has been maintained or recorded on both hard
15 copy and, in some cases, electronic. From 2005 on,
16 as part of my job of standardizing the recordkeeping
17 for our hedge fund due diligence, we set up a
18 template for the storage of information about
19 Fairfield Sentry.

20 Q. And when you say a "template for storage,"
21 what does that mean?

22 A. It means that, on one of our network
23 drives, there is an area which is dedicated to hedge
24 funds that are on the approved list, and each hedge
25 fund on the approved list has a folder with a series

Page 72
Pages 69-72

00073

1 of subfolders that are standard for all funds.
 2 Q. And what are the standard subfolders that
 3 you would find?
 4 A. One folder is called "due diligence." A
 5 second folder is called "marketing docs." And a
 6 third folder is, I believe, tear sheets.
 7 Q. Are there any subsubfolders to any of
 8 those?
 9 A. For filing purposes, there may be, but
 10 that's the hierarchy that was established.
 11 Q. So to get the complete Fairfield Sentry
 12 due diligence file, I would look to not only the
 13 hard copy file that you've kept since 1998, but also
 14 the electronic subfolder -- sorry -- the electronic
 15 folder for Fairfield Sentry that you keep
 16 electronically in EFG Capital's database, correct?
 17 MR. COATES: I'm going to object to form.
 18 You keep saying "you." He wasn't there in '98.
 19 So if you can, just be a little bit more
 20 precise with your question. I'm going to
 21 object to form.
 22 But you may answer, sir.
 23 A. Today, the information related to
 24 Fairfield Sentry is in both electronic format that I
 25 described as well as in a hard copy file.

Page 73

00075

1 upon the firm's guidelines.
 2 Q. Is there any committee that's tasked
 3 with -- specifically with overseeing EFG Capital's
 4 due diligence function?
 5 A. For hedge funds?
 6 Q. For hedge funds.
 7 A. There is the hedge fund risk management
 8 committee.
 9 Q. And who is the head of the hedge fund risk
 10 management committee?
 11 A. Sixto Campano.
 12 Q. Has that always been a committee that's
 13 existed since you started?
 14 A. No.
 15 Q. When was that committee started?
 16 A. August 2007.
 17 Q. And what was the reason that committee was
 18 started?
 19 A. It was restarted -- it was started as a --
 20 it started as a result of the EFG's continued
 21 development of its due diligence process for hedge
 22 funds.
 23 Q. Were there any issues that had arisen
 24 prior to August 2007 that prompted the creation of
 25 the committee?

Page 75

00074

1 BY MR. KELLOGG
 2 Q. Okay. So if there was a prospectus that
 3 EFG received from Fairfield Sentry in 2000, at some
 4 point that would have been uploaded into the
 5 electronic folder?
 6 A. No. There was no uploading of
 7 documentation as a methodology of transferring hard
 8 copy documents to electronic documents.
 9 Q. Who has access to the electronic subfolder
 10 for Fairfield Sentry on the EFG Capital network?
 11 A. It's a public folder, so all the staff.
 12 Q. And are -- is any of the information kept
 13 in native format, in other words, it can be typed
 14 into, edits can be made, any of the information kept
 15 on the -- on the network?
 16 A. There may be documents that are, quote,
 17 "native," as you describe it. I don't -- I don't
 18 recall.
 19 Q. You said Mr. Campano was part of -- I
 20 forgot. Was it called the new product committee?
 21 A. The new product approval committee.
 22 Q. New product approval committee.
 23 Is that committee tasked with the due
 24 diligence oversight?
 25 A. It's tasked with approving product based

Page 74

00076

1 A. No.
 2 Q. And that was the same time that EFG
 3 Capital hired GAI, correct?
 4 A. Yes. It was part of the same
 5 implementation of our continued development of our
 6 due diligence.
 7 Q. Who else is on that committee other than
 8 Mr. Campano?
 9 A. Mr. Campano serves as committee head.
 10 There's a second member, which is compliance.
 11 Q. You said a "second member"?
 12 A. Of the committee.
 13 Do you want the names of the people?
 14 Q. Yeah. Yeah, names of the people.
 15 A. Noemi Schaefer.
 16 Q. How do you spell that?
 17 A. N-O-E-M-I, I believe. Second name,
 18 S-C-H-A-E-F-E-R.
 19 Q. Okay. Who else?
 20 A. Our financial operations, Juan Massens.
 21 Q. Okay. Anyone else?
 22 A. No.
 23 Q. Are you on that committee?
 24 A. No.
 25 Q. Had you ever been on the committee?

Page 76
Pages 73-76

00077

1 A. No.
2 Q. Once the due diligence is collected and a
3 template is created -- and I'm speaking generally --
4 how is that -- how is that information used to
5 decide whether a hedge fund will be included on EFG
6 Capital's platform?
7 A. It's evaluated by the new product
8 committee to see if the fund meets the requirements
9 set forth by our procedures.
10 Q. So the new product approval committee
11 takes the due diligence information, and maybe
12 incorporates other information it gets about a
13 certain product, and makes the ultimate decision on
14 whether it makes the approved list?
15 A. Yes.
16 Q. And as part of the new product approval
17 committee's consideration of hedge funds, did you
18 participate in presenting any of the due diligence
19 information to the committee?
20 A. Yes.
21 Q. Okay. And what did that typically entail?
22 Was it an actual presentation that you would give or
23 would you simply hand a file to someone?
24 A. Our guidelines required a certain document
25 collection and presentation.

Page 77

00079

1 Q. And you were also hired to the sales
2 staff, correct?
3 MR. COATES: Object to form.
4 You may answer.
5 BY MR. KELLOGG
6 Q. That -- that was my recollection. I may
7 be wrong.
8 A. It's correct. You know, specifically
9 looking at a org chart, my initial hiring was in the
10 sales group -- sales and marketing group of the
11 firm.
12 Q. Okay. And did you tell me you had a
13 title?
14 A. I had a title of vice president. I did
15 not have a functional title.
16 Q. Okay. Did -- did you have any
17 responsibilities for selling the -- selling the
18 hedge funds to customers?
19 A. I didn't have responsibilities for selling
20 hedge funds to customers. I assisted the CROs in
21 training them to understand how to present the risk
22 and benefits of hedge funds to their customers.
23 Q. But you weren't a CRO?
24 A. At the time of my consultancy, no, I was
25 not a CRO.

Page 79

00078

1 Q. Okay. And how did that -- how did that
2 work, typically?
3 A. How did I deliver the information?
4 Q. Yeah. How did you deliver it?
5 A. The information was put into the new
6 product template and stored in that fund's folder
7 and was accessible to committee members.
8 Q. Okay. So the committee members would be
9 responsible for retrieving the information from the
10 database, reviewing it, and then incorporating it
11 into their decision as to whether to approve or
12 disapprove a fund?
13 A. Yes.
14 Q. There wasn't any formal presentation where
15 you would sit down and explain to the committee what
16 was in the due diligence memo or anything like that?
17 A. No.
18 Q. Okay. At the time -- I think you said it
19 was about 2006 when you are -- or maybe late 2005
20 when you stopped being consultant and you began
21 working full-time?
22 A. Uh-huh. Right.
23 Q. And you said, during that time, part of
24 your responsibilities were due diligence, correct?
25 A. Yes.

Page 78

00080

1 Q. No. After.
2 A. After?
3 Q. Yeah.
4 A. During my tenure at the firm, I have
5 served as a CRO.
6 Q. Okay. What was -- what was the time frame
7 that you served as CRO?
8 A. I still serve as a CRO.
9 Q. Okay. So that means you -- you can have
10 clients and sell products on the EFG platform to
11 them, correct?
12 A. Yes.
13 Q. Okay. Have you ever sold Fairfield Sentry
14 to any of your clients?
15 A. No.
16 Q. Have you ever sold any of the Fairfield
17 products to your clients?
18 A. No.
19 For the record, I have one client.
20 Q. Okay. That makes it easy.
21 A. Okay. I didn't know if I was able to
22 interject, but I thought it would be helpful.
23 Q. Got you. Okay.
24 And is the -- you're with EFG Capital,
25 which means that you don't have any discretionary

Page 80

00081

1 authority over that client's investments --

2 A. Yes.

3 Q. -- is that correct?

4 As part of your role of putting together
5 the due diligence and presenting it to the new
6 product approval committee, were you ever asked your
7 opinion about any of the funds that you were doing
8 due diligence about, other than what was in the
9 template?

10 A. No, because our procedures for due
11 diligence and approval were based on a series of
12 requirements that it was my job to satisfy the data
13 collection to meet the requirements, and it was the
14 committee members' responsibility to review them for
15 completeness and to make their own judgment based
16 upon the information presented to them.

17 Q. Was any -- is it typical that the new
18 product approval committee generates some kind of
19 work product that describes the outcome of -- of
20 their consideration of a fund?

21 A. The approval form.

22 Q. And what is -- what is that form?

23 A. That form is a template which is standard
24 for new funds on the platform that evidences the
25 approval of each committee member by their

Page 81

00083

1 A. No.

2 Q. Is there any written product, as far as
3 you know, generated by the new product approval
4 committee that reflects that committee's
5 consideration of a potential new product?

6 A. I don't know.

7 MR. COATES: Jason, can we just take a
8 quick break?

9 MR. KELLOGG: Sure.

10 MR. COATES: It's quarter to -- to 12:00.
11 I'd like to see if we can just order in and
12 press on, because Mike has an engagement, you
13 know, late this afternoon. So I want to, you
14 know, kind of press on and get -- and get him
15 wrapped up rather than take any lengthy lunch.

16 MR. KELLOGG: Is the --

17 MR. COATES: You brought some menus.

18 MR. KELLOGG: Go off the record.

19 MR. COATES: This is off the record,
20 please.

21 VIDEOGRAPHER: Let's go off the record.
22 Time is 11.42.

23 (Thereupon, a recess was taken, after
24 which the following proceedings were held:)

25 VIDEOGRAPHER: We are now back on the

Page 83

00082

1 signature.

2 Q. And does the approval form state the
3 conclusion of the -- of the committee, in other
4 words, approved or disapproved? Does it indicate on
5 the form whether a product has been approved or
6 disapproved? Or is -- this is long question, I
7 understand. But you'll understand what I'm trying
8 to get at -- or was an approval form only done for
9 those products that were, in fact, approved?

10 MR. COATES: Do you understand the
11 question?

12 THE WITNESS: I do.

13 MR. COATES: Okay.

14 A. The approval form would only have been
15 presented -- a fund can go to committee and not be
16 approved. Evidence of that would be that the
17 approval form would not have the signatures of
18 committee members.

19 BY MR. KELLOGG

20 Q. Okay. When a fund is approved, does the
21 approval form contain any opinion or reasoning as to
22 why it's being approved?

23 A. No.

24 Q. Are there minutes for the new product
25 approval committee meetings?

Page 82

00084

1 record. The time is 11:56.

2 BY MR. KELLOGG

3 Q. Mr. Donnell, before we broke, we were
4 talking about the due diligence procedures of -- of
5 EFG Capital.

6 So am I clear that, in your role as the
7 person who would collect the due diligence
8 information for EFG Capital, you didn't provide the
9 new product approval committee or anyone who was
10 making the decisions on whether to recommend a
11 product, you didn't give them any of your own
12 recommendations based on the due diligence that you
13 conducted, correct?

14 MR. COATES: Object to form.

15 You may answer.

16 A. Yes, the due diligence process did not
17 solicit my opinion or recommendation with regards to
18 the fund that I was preparing the materials for.

19 BY MR. KELLOGG

20 Q. In addition to the experience, the work
21 experience you had doing due diligence with EFG
22 Capital and with previous companies that you worked
23 with, have you received any formal training on hedge
24 fund due diligence?

25 A. No.

Page 84

Pages 81-84

00085

1 Q. Is there such a thing that you know of or
2 that you're aware of?
3 A. Yes.
4 Q. And what are -- what are examples of some
5 of the formal training you can get relating to hedge
6 fund due diligence?
7 A. Specific to hedge funds, there is a --
8 some sort of a certification with regards to
9 alternative investments.
10 Q. And have you made any efforts to obtain a
11 certification --
12 A. No.
13 Q. -- relating to hedge fund due diligence?
14 A. No.
15 Q. And what's the reason?
16 A. I don't know.
17 Q. As part of the due diligence that was
18 collected for the various funds that you looked at,
19 were any legal documents collected, like
20 documentation about, you know, the way a certain
21 fund would deal with regulatory concerns or things
22 like that?
23 MR. COATES: Object to form.
24 A. I don't understand the question.
25

Page 85

00087

1 Q. Yeah.
2 A. Yes.
3 Q. Is legal compliance something that you
4 typically ask about during those interviews, legal
5 compliance issues or regulatory compliance issues?
6 A. We'll ask if there have been any material
7 changes with regards to the firm with its regulators
8 or with any other government agency, both the firm
9 itself as well as principals in the firm.
10 Q. And what else -- what are some of the
11 other things you typically ask the manager about
12 during these interviews?
13 A. Depending upon the fund -- it's particular
14 to the fund. But, generally speaking, the portfolio
15 manager provides us with an update on the
16 performance of the fund, gives a general outlook in
17 terms of the macro view of the economy, a specific
18 strategic view, and then we talk about the company
19 itself, its assets under management, inflows or
20 outflows, concentration of investors.
21 Q. Is that the information you speak
22 specifically to the portfolio manager about or is
23 that generally the scope of who -- what you'll talk
24 about with anybody at the manage --
25 A. It's the general scope but specific to

Page 87

00086

1 BY MR. KELLOGG
2 Q. Okay. We talked a little bit earlier
3 about how there are some regulatory -- there's some
4 regulatory oversight of -- of hedge funds and how
5 hedge funds are marketed?
6 A. Uh-huh.
7 Q. As part of the due diligence process, did
8 you collect any information relating to those
9 issues?
10 A. Yes, as part of the due diligence process,
11 we looked at who or what entity regulated the
12 investment fund or fund manager of the company.
13 Q. In addition to looking at who regulated --
14 who may have regulated the fund, did you collect any
15 information about how the fund dealt with or
16 attempted to comply with those regulations?
17 A. No, because what we would -- we do is to
18 see if there was any regulatory infractions or any
19 reports for the investment fund and the investment
20 advisor, so we relied on FINRA and the SEC's audit
21 reports and publicly available information.
22 Q. Did you participate in the manager
23 interviews at EFG or do you participate in those
24 interviews?
25 A. For the review of the funds?

Page 86

00088

1 each fund, and each fund company has different ways
2 in which it interacts on an investor relations basis
3 with an investor in the fund.
4 Q. During the due diligence process, do you
5 look at the fund's structural? And when I'm talking
6 about structural, I'm talking about information
7 technology structure, the systems it has in place.
8 A. Recently, different certifications,
9 whether it become, you know, as a result as it
10 relates to IT or operations and compliance, we do
11 ask questions about infrastructure changes and we do
12 focus on multidiscipline conversation with a manager
13 about their business and how it's structured.
14 Q. Okay. What does that mean, you focus on
15 multidiscipline conversation?
16 A. Well, we'll look at, as is the standard in
17 the industry, a company or a hedge fund, in any way
18 you would evaluate any other type of company. We
19 break it down into its component parts. And then,
20 to the best of your ability, we obtain information
21 about those various areas.
22 Q. And when you -- when you're talking about
23 component parts, do you mean like divisions within
24 the -- the fund, meaning division -- like divisions
25 within a corporation?

Page 88
Pages 85-88

00089

- 1 A. Exactly.
- 2 Q. Okay. What about the IT systems within a
3 hedge fund? Do you look at those?
- 4 A. We will perform an initial due diligence.
5 We will ask information about their systems and if
6 they have any special designations of compliance and
7 who their providers are, who develops their system,
8 do they have an IT department, what's the number of
9 personnel. If it's a systematic trader or someone
10 who relies on some type of computer strategy, we
11 talk about the development of the strategy, the
12 derivation of it. So we are using our due diligence
13 template to find out information. And most funds
14 will have a DDQ or a due diligence questionnaire
15 which they provide to us which covers all of that
16 information. It really is the starting point and
17 the standard in the industry, similar to a response
18 to an RFP.
- 19 Q. If a fund doesn't have the "DDQ," as you
20 called it --
- 21 A. Uh-huh.
- 22 Q. -- do you ask them to generate one?
- 23 A. Yes.
- 24 Q. And what's the importance of the DDQ?
- 25 A. The DDQ gives the -- the fund an

Page 89

00091

- 1 the service provider or is it done by letter? How
2 is it typically done?
- 3 A. It depends upon the requirements of the
4 service provider. So we conform to that.
- 5 Q. What do they typically require?
- 6 A. Authorization by the fund in writing.
- 7 Q. So the fund will give you the
8 authorization and then you will contact the service
9 provider. But how do you contact the service
10 provider?
- 11 A. We may contact the service provider by
12 telephone, fax, or e-mail.
- 13 Q. And what are -- what types of things do
14 you ask the service provider?
- 15 A. To confirm that they have a contractual
16 engagement to provide the services the fund has
17 outlined in the fund's offering materials.
- 18 Q. Okay. Do you ask to see what the
19 engagement is or what it entails, if it's, for
20 example, put in written agreement?
- 21 A. We'll ask for the -- an agreement between
22 a provider, whether it be an engagement letter with
23 an auditor or an administrative agreement with an
24 admin. It just depends upon the provider and what
25 is, you know, standard for the -- for that industry.

Page 91

00090

- 1 opportunity to present a comprehensive amount of
2 information using industry standards, which are
3 generally driven by institutional investors in terms
4 of their requirements for information. And it's
5 regularly updated and it is a standard part in
6 current industry standards for a fund to have.
- 7 Q. As part of the due diligence process, do
8 you look at the -- the various service providers of
9 a -- of a fund, the administrator, the custodian,
10 et cetera?
- 11 A. Yes, we do.
- 12 Q. Okay. And do you do any independent due
13 diligence of those service providers?
- 14 A. Our due diligence of the service provider
15 is to confirm that the listed service provider is
16 currently contracted with the fund to provide
17 services.
- 18 Q. Do you typically speak with anyone at the
19 service providers? How do you confirm that, I guess
20 is question?
- 21 A. We obtain approval from the manager to
22 request that the service provider communicate with
23 us to verify in some form that they, in fact, are
24 engaged to provide such services.
- 25 Q. And to confirm that, do you typically call

Page 90

00092

- 1 Q. And the written materials that you receive
2 from the service provider, how do you use those in
3 the due diligence?
- 4 A. Those are made part of the due diligence
5 file and we check the box, in fact, based upon our
6 standard procedures, that we've obtained that
7 information. So it is -- it satisfies that
8 requirement.
- 9 Q. Is the -- are the agreements themselves
10 reviewed by EFG Capital?
- 11 A. They're reviewed by EFG Capital to see
12 that they're consistent with the description in the
13 offering memorandum. So they're compared to the
14 offering memorandum.
- 15 Q. But they're not looked at in any detail?
- 16 MR. COATES: Object to the form.
- 17 A. I don't understand.
- 18 BY MR. KELLOGG
- 19 Q. When you receive the formal agreement that
20 evidences the engagement between the fund and its
21 service provider, do you do any kind of a detailed
22 review of that agreement?
- 23 A. The requirement that we have is that EFG
24 Capital, as part of its due diligence, confirm that
25 the provider is engaged to provide the services set

Page 92

00093

1 forth in the agreement and that we obtain, if
2 possible, the agreement.

3 Q. So other than confirming the -- what the
4 agreement says about the fact that the parties are
5 engaged to do business with each other, you don't --
6 you're not concerned with the other details, the
7 other provisions within those agreements?

8 A. No, specifically what we're looking for is
9 to review the document to see that it includes the
10 services described in the offering memorandum.

11 Q. If there's a fee relationship between the
12 fund and the service provider, is that reviewed by
13 EFG Capital during the due diligence process?

14 A. All fees and expenses of the fund are
15 reviewed by EFG Capital and generally disclosed in
16 the offering memorandum. To the extent that we're
17 able to obtain a document from a service provider
18 and that document includes the fees that the fund is
19 paying for the services, we'll review that and it's
20 included in the fees and expenses section of the due
21 diligence questionnaire template.

22 Q. Other than GAI, who came on board in 2007,
23 are there any other third parties who have been
24 involved in the EFG Capital due diligence process
25 since you started?

Page 93

00095

1 A. EFG Capital pays Greenwich Alternative
2 Investments a fee for setting up the fund on the
3 platform, and then an ongoing fee for the services
4 that it provides to EFG Capital for each fund.

5 Q. And you have the general -- a general idea
6 of what, in the two or three years you've been using
7 GAI, what that typically runs in -- in a year?

8 A. I don't recall.

9 Q. As part of the due diligence analysis that
10 EFG Capital does, does it look at whether the fund
11 it's examining pays fees to its distributors,
12 whether they be --

13 A. Yes.

14 Q. -- retrocessions or rebates?

15 A. Yes. And that's disclosed in the fund's
16 offering materials.

17 Q. Okay. Is there someplace on the due
18 diligence template where that information is
19 captured or placed?

20 A. Yes.

21 Q. Okay. What section of the due diligence
22 template is that put?

23 A. Rebates.

24 Q. And when the new product approval
25 committee approves a fund, it goes on EFG Capital's

Page 95

00094

1 A. No.

2 Q. Is there any -- does EFG budget direct
3 funds to the task of due diligence? In other words,
4 is -- is there money available to you to conduct due
5 diligence that's specifically earmarked for due
6 diligence?

7 A. No. However, EFG has entered into a
8 contract with Greenwich Alternative Investments for
9 the provision of these services and it has been
10 renewed twice.

11 Q. And so that engagement would be reflected
12 on EFG's budget?

13 A. Yes.

14 Q. But as far as you know, there aren't any
15 other monies that are specifically budgeted for the
16 due diligence function?

17 A. Yes.

18 Q. Do you know the -- the terms of EFG
19 Capital's engagement with GAI, and specifically the
20 compensation terms, what EFG pays GAI for their
21 services?

22 A. I don't recall the specific dollar
23 figures, but I know generally what the arrangement
24 is.

25 Q. What's the general arrangement?

Page 94

00096

1 approved list, correct?

2 A. Correct.

3 Q. Do you know approximately how many funds
4 are on the approved list?

5 A. Today, there are approximately 17 funds on
6 the Miami Approved List.

7 Q. When you said the "Miami Approved List,"
8 what does that mean?

9 A. That's the title of the document that we
10 use to record, on a monthly basis, what funds are
11 approved for recommendations by our client
12 relationship officers.

13 Q. Are CROs in other offices precluded from
14 selling what's on the Miami Approved List? Or why
15 is it called the "Miami Approved List," I guess
16 is --

17 A. Because EFG Capital, as a broker/dealer,
18 is required to have its own due diligence process
19 which includes providing the CROs with a list of
20 funds that are approved for recommendation to their
21 clients.

22 Q. Sure. There are CROs in New York City,
23 right, for EFG Capital?

24 A. Yes. EFG Capital has a branch in New York
25 City that has CROs.

Page 96

Pages 93-96

00097

1 Q. And are they able to sell the funds that
2 are on the Miami Approved List?

3 A. Yes.

4 Q. I'm just wondering why it's called the
5 "Miami Approved List."

6 A. Our geography is Miami relative to the --
7 our global affiliates, so oftentimes we're referred
8 to as Miami.

9 Q. Got you.

10 Have there been funds considered for the
11 approved list that were not approved by the new
12 product committee?

13 A. No.

14 Q. So, as far as you know, every product that
15 you've done due diligence for has been approved by
16 the new product approval committee?

17 A. Yes.

18 Q. In the time since you started at EFG in
19 2005, are you aware of any funds that were taken off
20 the new product approval list?

21 A. Sorry. Repeat the question.

22 Q. The -- the Miami approval list.

23 A. If you don't mind, can you repeat the
24 question?

25 Q. In the -- in the time that you started,

Page 97

00099

1 performance of the fund that have led to a product
2 being taken off the approved list?

3 A. Yes.

4 Q. Okay. What are some of the other reasons?

5 A. We apply industry standards and look at
6 matters, assets under management, change in key
7 personnel, style drift, excessive volatility that's
8 not consistent with the strategy, or a strategy --

9 pardon me -- a company which has in some way become
10 impaired or entered into liquidation.

11 Q. And how do you find out when these things
12 are happening?

13 A. EFG Capital's hedge fund, due diligence
14 reviews happen on a monthly basis, and so that's how
15 we're -- that's the information that we're obtaining
16 regularly from the funded on the Miami approved
17 list.

18 Q. Okay. So tell me what is the process for
19 the monthly due diligence review?

20 A. The monthly due diligence review is based
21 upon information which EFG evaluates from our
22 outsourced provider Greenwich Alternative
23 Investments.

24 Q. And prior to hiring GAI, did EFG do a
25 monthly due diligence review?

Page 99

00098

1 are you aware of any funds that were taken off the
2 approved list?

3 A. Yes.

4 Q. Okay. About -- approximately how many
5 funds have been taken off the approved list since
6 2005? Or, to be fair, I should say that you know
7 about.

8 A. Between 10 and 15.

9 Q. And what are the -- what are the reasons
10 that those funds were taken off the approved list?

11 A. As part of our due diligence review, EFG
12 Capital has certain standards with which we review
13 funds on a monthly basis, and those are both
14 quantitative and qualitative.

15 Q. What does that mean?

16 A. It means that we apply a standard review
17 to each fund looking at different quantitative
18 metrics as well as looking at qualitative matters.

19 Q. So, for example, if a fund's monetary
20 performance --

21 A. Uh-huh.

22 Q. -- falls off, then that might be a reason
23 to take it off the approved list?

24 A. Yes.

25 Q. Are there any other reasons other than the

Page 98

00100

1 A. Yes.

2 Q. Okay. And where did it get the
3 information prior to hiring GAI?

4 A. EFG Capital obtained the information
5 directly from the manager or its designate.

6 Q. And what kind of information -- and we're
7 talking pre-GAI.

8 What kind of information did EFG request
9 of its managers?

10 A. Performance data, as well as any other
11 investor communications that the fund may make
12 available to its investors.

13 Q. Okay. And then, when it -- when EFG
14 received this information, again we're talking --
15 until I say otherwise, we're going to be talking
16 pre-GAI.

17 A. Okay.

18 Q. When EFG obtained that information, the
19 due diligence people at EFG, which includes you and
20 Mr. Campano, would be the ones who would review it?

21 A. Yes. As part of our -- as part of our
22 hedge fund procedures, that data was put into a
23 template for all the funds on the platform that CROs
24 could recommend to their clients.

25 Q. And then who would make the ultimate

Page 100
Pages 97-100

00101

1 decision as to whether to take the product off the
2 approved list?

3 A. Sixto Campano.

4 Q. If one of EFG customers was invested in a
5 product that was taken off the approved list, would
6 those customers be notified that it was taken off
7 the approved list?

8 A. It would depend upon the circumstances.

9 Q. What -- what circumstances would it depend
10 upon?

11 A. It was not required that the CROs inform a
12 client who had an investment in a fund that was
13 removed from the Miami Approved List that, in fact,
14 the fund had been delisted.

15 Q. But are you telling me, in some instances,
16 the CROs did inform their clients that the
17 investment had been taken off the approved list?

18 A. I don't know.

19 Q. Have you -- are you aware of any
20 circumstances where a CRO told his or her client
21 that an investment had been taken off the approved
22 list?

23 A. I have no specific evidence of that.

24 Q. Have you ever seen any formal
25 correspondence from EFG Capital notifying its

Page 101

00103

1 Q. Which -- which documents do you recall?

2 A. I recall reviewing memos that had been
3 drafted by EFG employees who conducted manager
4 visits with Fairfield Sentry personnel.

5 Q. Do you recall anything else in the file?

6 A. Various tear sheets, investor letters,
7 marketing presentations, as well as offering
8 memorandum, various versions of offering memorandum,
9 and financial reports.

10 Q. When you reviewed the Fairfield due
11 diligence file, was there anything that you thought,
12 based on your experience doing due diligence
13 previously, that should be included or followed up
14 upon with regard to the information that was already
15 contained in the file?

16 A. Well, like any ongoing review, there are
17 time -- there are dated documents that require
18 review. The -- the paper file was one of the files
19 which I reviewed on Fairfield Sentry.

20 Q. What were the other files that you
21 reviewed?

22 A. An electronic file.

23 Q. Okay. And what was contained in the
24 electronic file?

25 A. Monthly tear sheets -- monthly tear sheets

Page 103

00102

1 customers that a specific product had been taken off
2 the approved list?

3 A. No.

4 Q. And so is it fair to say that, once a
5 product is put on the approved list, EFG Capital
6 conducts monthly due diligence reviews of that
7 product to determine whether the product should
8 remain on the approved list?

9 A. Yes.

10 Q. Turning now to -- to Fairfield Sentry,
11 when you started at EFG Capital in 2005, Fairfield
12 Sentry was already on the EFG Capital approved list,
13 correct?

14 A. Yes.

15 Q. Okay. And as part of the task you were
16 given to systemize the due diligence function, did
17 you look at the Fairfield Sentry file --

18 A. Yes.

19 Q. -- among the other funds that you looked
20 at?

21 A. Yes.

22 Q. And do you recall what documents were in
23 the file, the Fairfield Sentry file, when you first
24 took a look at it?

25 A. I recall certain documents, yes.

Page 102

00104

1 for the fund, other financial reports, and other
2 offering memorandum.

3 Q. Was there a -- I think you called it a
4 "DDQ" in the file at that time?

5 A. Issued by the fund itself?

6 Q. By the fund.

7 A. I don't recall.

8 Q. Have you seen a DDQ from Fairfield?

9 A. For?

10 Q. For Fairfield Sentry?

11 A. No.

12 Q. Who -- who was the administrator of
13 Fairfield Sentry?

14 A. Citco.

15 Q. And was there information regarding Citco
16 in the file when you first looked at it in 2005?

17 A. I don't recall.

18 Q. Subsequent to you starting EFG Capital in
19 2005, did you conduct any or gather any information
20 either from or about Citco, as part of the due
21 diligence review that you did?

22 A. I don't recall.

23 Q. But what was your understanding about the
24 level of due diligence that had been conducted
25 already on Fairfield Sentry when you started?

Page 104

Pages 101-104

00105

- 1 A. Would you repeat the question?
2 Q. Maybe I'll rephrase it.
3 You saw what was in the Fairfield Sentry
4 file when you started in 2005, the due diligence
5 materials, correct?
6 A. Uh-huh.
7 Q. Okay. Did you have any -- did you get any
8 information from any other sources? Did you talk to
9 anybody about the due diligence that had been
10 conducted at Fairfield --
11 A. Yes.
12 Q. -- prior to your arrival?
13 A. Yes.
14 Q. Okay. Who did you talk about?
15 A. Victor Echevarria, Marcelo Alvarez, Sixto
16 Campano.
17 Q. Did you talk to these three individuals
18 about all the funds that you were doing due
19 diligence for at that time?
20 A. No.
21 Q. But you specifically had conversations
22 about this fund with those three people?
23 A. Yes.
24 Q. Okay. Was it all together, all four of
25 you in a room or how did -- how did those

Page 105

00107

- 1 diligence process that EFG completed at the time.
2 Q. And what did he tell you?
3 A. He bas- -- he -- he described a process
4 which was reflected in the memo and described, in an
5 ongoing basis, that --
6 Q. What does mean he described in an ongoing
7 basis?
8 A. He explained to me or he talked to me
9 about it, on an ongoing basis, that members of EFG
10 Capital continued to visit with personnel at
11 Fairfield Sentry to continue building upon the
12 process which they began in 1998.
13 Q. Did he say who the individuals were that
14 were meeting with Fairfield?
15 A. He was saying that -- he was saying that
16 both he and Sixto and others who I don't recall had
17 periodic communications with members of Fairfield
18 Sentry and its designates.
19 Q. Did he tell you who they were talking to
20 at Fairfield?
21 A. He said that they continued to talk with
22 the people who were referenced in the memo, as well
23 as others.
24 Q. Do you remember who those individuals
25 were?

Page 107

00106

- 1 conversations occur?
2 A. No, they occurred individually.
3 Q. Okay. Who did you speak to first?
4 A. I don't recall.
5 Q. What did you -- what was the reason you
6 were talking to them about the Fairfield Sentry due
7 diligence?
8 A. Because they conducted the manager visits
9 and were still available as employees or directors
10 of the company at the time that I began the due
11 diligence review.
12 Q. Okay. So if there was a fund that you
13 were reviewing whose file reflected that either of
14 these three guys had participated in the due
15 diligence of that fund, you would talk to those
16 individuals about the fund and the due diligence of
17 the fund?
18 A. Hypothetically, yes.
19 Q. Okay. And do you recall what you
20 discussed with Mr. Echevarria about the Fairfield
21 Sentry due diligence in 2005?
22 A. As I recall, after reviewing the memos
23 which documented the visits of various EFG personnel
24 to Sentry, I discussed with Victor the -- his
25 participation as well as his knowledge of the due

Page 106

00108

- 1 A. Jeffrey Tucker, Lourdes Barreneche. Those
2 are the two names I recall.
3 Q. And have you ever spoken to Mr. Tucker?
4 A. Yes, I have.
5 Q. When did you speak with Mr. Tucker?
6 A. I have had conversations with Mr. Tucker
7 beginning in 2005 up until 2008.
8 Q. Okay. And what were those conversations
9 about?
10 A. As part of investor services, funds will
11 often provide access to investors to senior
12 management of the firm as part of the ongoing due
13 diligence process about the business of the firm.
14 So conversations with Jeff, we were focused on those
15 issues.
16 Q. So you were given access to senior
17 management at Fairfield Sentry.
18 But what did you -- what did you talk
19 about?
20 A. Specifically, I don't recall. Generally,
21 we talked about the issues which I just relayed,
22 which is the state of the business, the business
23 plan, growth moving forward, the marketplace, the
24 industry, those types of things that you would speak
25 with senior management about.

Page 108

Pages 105-108

00109

1 Q. Prior to arriving in EFG Capital in 2005,
2 had you heard of Fairfield Sentry?

3 A. I had heard of Fairfield Greenwich Group.

4 Q. What did you know about Fairfield
5 Greenwich Group?

6 A. That it was one of the largest sponsors of
7 single strategy and fund of funds in the
8 marketplace.

9 Q. Was Fairfield -- any of the Fairfield
10 Greenwich Group's products offered by any of your
11 previous employers?

12 A. No.

13 Q. Do you recall about -- do you recall how
14 many conversations you had with Mr. Tucker between
15 '05 and '08?

16 A. I don't know the specific number, but I
17 would estimate between three and five conversations.

18 Q. Did you -- were any of those conversations
19 in person?

20 A. Yes.

21 Q. Okay. And where did they occur?

22 A. At Fairfield Greenwich offices in New
23 York.

24 Q. Would you go up to the offices in New York
25 from time to time to meet with folks at Fairfield?

Page 109

00111

1 approximately late 2006.

2 Q. Did you go up to Fair- -- New York to
3 specifically speak with Mr. Tucker during your
4 meeting?

5 A. No.

6 Q. It was part of meeting with some other
7 folks at Fairfield, I take it?

8 A. Yes.

9 Q. You said you had been up there 15 to 20
10 times. Who would you -- who would you typically
11 meet with when you went up there?

12 A. EFG Capital offered a number of
13 Fairfield-sponsored funds, so the meeting agenda
14 would be with the various portfolio managers or
15 their designates to discuss the funds that we had on
16 our Miami Approved List.

17 Q. So they were talking -- were these mostly
18 marketing-type meetings where they would pitch you
19 their products?

20 A. No, those were funds that were already on
21 the Miami Approved List, so they weren't pitch
22 meetings.

23 Q. But -- so what was the reason you were
24 going up there to -- to hear about these funds?

25 A. The reason to go up there was to conform

Page 111

00110

1 A. Yes.

2 Q. About how often would you go up there?

3 A. I don't know the specific number, but I
4 estimate between 15 and 20 times I visited
5 Fairfield's offices.

6 Q. And you said between three or five of
7 those times you actually met with Mr. Tucker?

8 A. No, I said that I spoke with Mr. Tucker on
9 three to five occasions. I estimate that I met with
10 him in person one time.

11 Q. And the time that you met him, did you
12 meet him in his office?

13 A. Yes.

14 Q. And in that meeting, do you recall what
15 you and Mr. Tucker discussed?

16 A. I don't specifically recall. Generally we
17 talked about Fairfield Greenwich Group and its
18 development as a business.

19 Q. What was the time frame of that in-person
20 meeting with Mr. Tucker?

21 A. I don't recall.

22 Q. Was it early on in your tenure at EFG
23 Capital or more toward the -- the end of Fairfield?

24 A. The meeting in question was most likely
25 within the middle of my tenure with the firm,

Page 110

00112

1 with our due diligence requirements or guidelines of
2 having face-to-face meetings with the portfolio
3 managers, as well as our obligation to remain
4 updated about the fund's activities.

5 Q. And would you -- were there folks from EFG
6 Capital that you traveled up to New York with to see
7 Fairfield?

8 MR. COATES: Object to form.

9 You may answer, if you understand the
10 question.

11 A. Can you repeat the question or --

12 BY MR. KELLOGG

13 Q. Yeah. I just want to know: Was anybody
14 from EFG, did they go up with you during those
15 meetings?

16 A. There may have been instances where EFG
17 Capital personnel was in New York for other business
18 and attended the meetings, but there was no -- no
19 one specifically who traveled with me with a
20 specific meeting agenda.

21 Q. You said you met with Lourdes Barreneche?

22 A. Yes.

23 Q. What did you meet with her about?

24 A. Lourdes was EFG Capital's marketing
25 representative for Fairfield Greenwich Group.

Page -112

Pages 109-112

00113

1 Q. And when you -- so what was it that you
2 discussed?

3 A. Generally the format of the meeting was
4 Lourdes, in her office, would coordinate visits with
5 EF- -- sorry -- with Fairfield investment personnel,
6 analysts, if you will, as well as with the portfolio
7 manager, and provide us with the report or
8 information that was made available by the various
9 funds for the period of time that we were reviewing.

10 Q. During the visits you made up to New York
11 to see Fairfield, did you have the opportunity to
12 look around their offices and see how their --
13 basically how their office worked?

14 A. The Fairfield Greenwich office?

15 Q. Yeah.

16 A. No.

17 Q. And you would -- when you traveled up to
18 Fairfield Greenwich, where would the meetings with
19 the folks at Fairfield take place?

20 A. In their conference room.

21 Q. So you were never given a tour of the
22 office to see kind of how the operational structure
23 was laid out?

24 A. No.

25 Q. Did you ever ask to take a tour around the

Page 113

00115

1 Sentry.

2 Q. And so that's what you talked to him
3 about?

4 A. That's what I talked to him about.

5 Q. And you recall what he -- what information
6 he gave you about Fairfield Sentry?

7 A. There was no additional information other
8 than the information we reviewed and he confirmed.

9 Q. And what about Mr. Campano? What did you
10 talk to him about relating to Fairfield's due
11 diligence?

12 A. With regard to Fairfield's due diligence,
13 my conversation with Mr. Campano were around the
14 history of EFG CROs recommending the fund to -- to
15 EFG Capital clients.

16 Q. Did you make any kind of a recommendation
17 to any of these gentlemen or to EFG Capital in
18 particular about additional information that you
19 would like to gather relating to Fairfield's --
20 and -- and due diligence?

21 A. I didn't make any specific recommendations
22 in relation to Fairfield Sentry.

23 Q. Were there other funds whose due diligence
24 files you took a look at and said, you know, we --
25 we need to supplement the file with X, Y, Z

Page 115

00114

1 office?

2 A. No.

3 Q. Okay. So you talked to Mr. Echevarria
4 about Fairfield Sentry.

5 And you also said you talked to
6 Mr. Alvarez?

7 A. Yes.

8 Q. And what is Mr. Alvarez's role at EFG
9 Capital?

10 A. I believe his role is that he's an
11 independent director.

12 Q. And was that the same in 2005?

13 A. Yes.

14 Q. And what did you discuss with Mr. Alvarez
15 about Fairfield Sentry?

16 A. I reviewed the memorandum that were
17 available in the due diligence file that EFG Capital
18 had completed on Fairfield Sentry.

19 Q. You completed the review.

20 But what did you talk to Mr. Alvarez
21 about?

22 A. I talked about the -- I reviewed the
23 memorandum that he had prepared and other memorandum
24 in the file of the due diligence that he
25 participated in for EFG Capital and Fairfield

Page 114

00116

1 information?

2 A. Generally across the board, the
3 application of the -- the standards that EFG adopted
4 in 2005 required updating of a -- of a number of
5 files because of the introduction of -- of new
6 information based upon changing industry standards
7 from the time that EFG Capital initially began its
8 due diligence on Fairfield Sentry.

9 Q. Did EFG Capital tell you what its due
10 diligence procedure was before you started in 2005?

11 A. We reviewed, in general, the information
12 which EFG Capital obtained prior to my consultancy
13 and employment with the firm. However, my primary
14 task was to create standards consistent with a
15 viewpoint in the future of the industry and -- and
16 about standardizing and systematizing the written
17 record of due diligence to comply with regulatory
18 standards for offering hedge funds.

19 Q. Prior to you arriving in EFG in 2005, was
20 there a standardized system in place that EFG
21 Capital used for due diligence?

22 A. I don't know. I know that, beginning in
23 2005, the firm sought to standardize its written
24 record of its due diligence. Prior to that, I don't
25 know.

Page 116

00117

1 Q. But you -- you got to come in and take a
2 look at the files.

3 Did you feel that they -- there was a
4 standardized procedure in place after reviewing all
5 the different files?

6 A. I felt that EFG had general guidelines for
7 the collection of data. However, they did not have
8 a standardized means of -- of recording their due
9 diligence process, in writing.

10 Q. As far as you know, was the standard
11 for -- or the procedure for product approval the
12 same before you arrived in 2005, in other words, due
13 diligence was conducted and then considered by the
14 new product approval committee before the decision
15 was made on whether to approve a product?

16 A. Yes.

17 Q. So that didn't change.

18 What changed was the synthesization of the
19 information, due diligence information EFG Capital
20 was getting and the presentation of it to the new
21 product approval committee, is that fair?

22 A. Yes.

23 MR. KELLOGG: You guys want to break now
24 for --

25 MR. COATES: Sure.

Page 117

00118

1 MR. KELLOGG: -- lunch?

2 VIDEOGRAPHER: All right. Let's go off
3 the record. Time is 12:40.

4 (Thereupon, a recess was taken, after
5 which the following proceedings were held:)

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Page 118