

00119

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

2

No. 10-20206-CIV-MARTINEZ

LORRENE DA SILVA FERREIRA and
ARLETTE DA SILVA FERREIRA,

individually and on behalf of
all other similarly situated,

6

Plaintiffs,

7 vs.

EFG CAPITAL INTERNATIONAL CORP.
and EFG BANK f/k/a EFG PRIVATE

BANK SA,

Defendants.

11

201 S. Biscayne Blvd.

12

Miami, Florida

December 2, 2010

13

1:11 p.m. - 5:34 p.m.

14

VIDEOTAPED DEPOSITION OF MICHAEL DONNELL

16

Taken before KIMBERLY FONTALVO, REGISTERED

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1 APPEARANCES:

2

On behalf of Plaintiffs:

3

LEVINE, KELLOGG, LEHMAN, SCHNEIDER & GROSSMAN, LLP

4

201 S. Biscayne Blvd., 34th Floor

Miami, FL 33131

5

BY: JASON KELLOGG, ESQ.

6

7

On behalf of Defendant:

8

GREENBERG, TRAURIG

9

777 S. Flagler Dr., Ste. 300 East

West Palm Beach, FL 33401

10

BY: JOHN C. COATES, III, ESQ.

BY: JONA A. JACOBSON, ESQ.

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1 VIDEOGRAPHER: Okay. We're now back on
2 the record. The time is 1:11.

3 DIRECT EXAMINATION

4 BY MR. KELLOGG

5 Q. All right. Mr. Donnell, you were telling

6 me that you had a number of meetings with Fairfield

7 up in New York City, correct?

8 A. Yes.

9 Q. And you said you met with Mr. Tucker,

10 correct?

11 A. Yes.

12 Q. Do you know what his position was at

13 Fairfield?

14 A. I believe he was perhaps president or some

15 other title of a senior manager.

16 Q. And do you know what -- you -- you met

17 with Mrs. Barreneche as well?

18 A. Yes.

19 Q. And what was her title?

20 A. Marketing.

21 Q. Did -- did you meet with any of the other

22 officers or directors of Fairfield?

23 A. During the time period or specifically in

24 New York?

25 Q. During that time period. Or talk to them

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- 1 on the phone.
2 A. Yes.
3 Q. Okay. Who else did you speak with?
4 A. Walter Noel.
5 Q. And what was Mr. Noel?
6 A. He was the chairman and founder of
7 Fairfield Greenwich Group.
8 Q. Did you speak with anyone else?
9 A. At Fairfield Greenwich Group?
10 Q. Right.
11 A. Yes.
12 Q. Who else?
13 A. Veronica Barco.
14 Q. What was her role?
15 A. She was in investor services.
16 Q. Anyone else?
17 A. Amit -- I don't remember last name. It's
18 something Vihagi [sic].
19 Q. And what did he do?
20 A. He was head of risk for the Fairfield
21 Sentry fund.
22 Q. Does his last name have a V, start with a
23 V?
24 A. I believe so, yes.
25 Q. Okay. So he might have -- he would have

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- 1 A. No.
2 Q. Do you know who that person was?
3 A. No, I do not.
4 Q. Is that someone -- is the chief
5 information officer someone you would typically
6 speak with relating to due diligence issues?
7 A. Typically on an initial due diligence,
8 yes.
9 Q. Do you know the reason you didn't speak
10 with the CIO of Fairfield specifically?
11 A. I did not perform the initial due
12 diligence on -- on the Fairfield Sentry fund.
13 Q. Okay. When you -- when you're doing
14 initial due diligence --
15 A. Uh-huh.
16 Q. -- what's the reason you talk to a CIO,
17 typically?
18 A. To a chief information officer?
19 Q. Yeah.
20 A. Depending upon how their company defines
21 that -- that officer's role, to learn about the
22 standards they have in place for information and
23 firm security, systems and other types of
24 infrastructure issues.
25 Q. So was it your understanding that someone

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- 1 been the chief risk officer or something equivalent?
2 A. His area was risk, yes.
3 Q. Who else?
4 A. Andrew Smith.
5 Q. And what did Mr. Smith do?
6 A. Mr. Smith is a portfolio manager for the
7 Fairfield fund of funds.
8 Q. Okay.
9 A. Joseph Diaz.
10 Q. What was his role?
11 A. Fairfield fund-of-funds team.
12 Q. Anyone else?
13 A. Yes.
14 Q. Who else?
15 A. I don't recall their names.
16 Q. Okay. Do you recall whether any of them
17 held a position of either an officer or a director
18 of -- of Fairfield?
19 A. No, the names -- the names I'm referring
20 to are names of portfolio managers of various funds
21 around the Fairfield platform.
22 Q. Okay. Did you -- did you get to talk to
23 the chief information officer there?
24 A. Of Fairfield Greenwich Group?
25 Q. Uh-huh.

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- 1 else at EFG Capital had already spoken with the CIO
2 of Fairfield during the initial due diligence
3 review?
4 A. Can you repeat the question?
5 Q. You didn't speak with the CIO of Fairfield
6 because that was something you would only do in an
7 initial due diligence, and you -- you never did the
8 initial due diligence of Fairfield. That was done
9 by someone else, right?
10 A. Correct.
11 Q. Before you got to EFG Capital?
12 A. Correct.
13 Q. Okay. Do you know whether the persons who
14 conducted the initial due diligence at Fairfield
15 spoke with Fairfield's CIO?
16 A. No.
17 Q. Okay. Did you ever ask anybody at EFG
18 Capital, specifically the folks who did the initial
19 due diligence, whether they'd ever spoken to the CIO
20 of Fairfield?
21 A. No.
22 Q. Is the chief operating officer someone you
23 would typically speak with during the due diligence
24 process?
25 A. As part of the initial due diligence

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1 process.

2 Q. Okay. Do you know who the initial -- the
3 COO of Fairfield was?

4 A. Of Fairfield Greenwich Group?

5 Q. Yeah.

6 A. No.

7 Q. Do you know whether you ever spoke with
8 the COO of Fairfield?

9 A. No. I don't know.

10 Q. Is the funds controller someone you would
11 typically speak with about due-diligence-related
12 issues?

13 A. Yes.

14 Q. Okay. What is the -- what's a fund
15 controller's duties?

16 A. The funds controller duty is the handling
17 of inflows and outflows, so the management of cash
18 positions and their allocations to the financial
19 provider.

20 Q. Okay. And is -- did you speak with the
21 controller at Fairfield?

22 A. No.

23 Q. Okay. Is that something that would
24 typically be done in the initial due diligence?

25 A. Yes.

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1 Q. Okay. And who -- do you remember who that
2 person was?

3 A. I don't remember his name.

4 Q. Did you speak with that person relating to
5 due diligence issues?

6 A. No.

7 Q. Do you recall what you spoke to them
8 about?

9 A. I spoke to the gentleman prior to Bernie
10 Madoff's arrest in December.

11 Q. Okay. So after you learned of the Madoff
12 scandal, you spoke with the chief compliance
13 officer?

14 A. I participated in a conference call with
15 the chief compliance officer, yes.

16 Q. How did you find out about the Madoff
17 scandal?

18 A. Bloomberg.

19 COURT REPORTER: I'm sorry?

20 THE WITNESS: Bloomberg. Bloomberg news.

21 BY MR. KELLOGG

22 Q. Do you recall when you -- when you found
23 out?

24 A. On the day of -- in the afternoon on the
25 day of his arrest.

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1 Q. And do you know whether anyone at EFG
2 Capital spoke to the Fairfield controller about due
3 diligence issues?

4 A. I don't know.

5 Q. Did you speak with the chief technology
6 officer at Fairfield?

7 A. No.

8 Q. And what's the reason?

9 A. It's not part of our ongoing hedge fund
10 review.

11 Q. Is it part of the initial due diligence to
12 speak to the technology -- chief technology officer?

13 A. Generally yes.

14 Q. Okay. And do you know whether anyone at
15 EFG Capital spoke to the CTO of Fairfield during the
16 initial due diligence?

17 A. I don't know.

18 Q. I think you had mentioned before that
19 there was a compliance person that you spoke with.

20 Am I recalling that correctly?

21 If not, have you ever spoken --

22 A. No.

23 Q. -- with the chief compliance officer at
24 Fairfield?

25 A. Yes.

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1 Q. And what was your reaction?

2 A. I was surprised.

3 Q. Did you speak with anyone when you found
4 out, anyone at EFG Capital?

5 A. Yes.

6 Q. Okay. Who'd you speak with?

7 A. Victor Echevarria and Sixto Campano.

8 Q. Okay. Did you go into their offices and
9 talk to them about it?

10 A. I don't recall.

11 Q. Do you remember where the conversations
12 were, physically? Or were they over on the phone?

13 A. I'm sorry. They were in person.

14 Q. Okay. Were they at EFG Capital's office?

15 A. Yes.

16 Q. Did you speak to the gentleman
17 individually or together?

18 A. We spoke both individually and together.

19 Q. Who was the first person you spoke with
20 about it?

21 A. I don't recall.

22 Q. Do you recall what you talked about with
23 Mr. Echevarria and Mr. Campano?

24 A. Yes.

25 Q. What -- what do you recall?

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1 A. What I recall about the conversation is we
 2 verified the report that we had heard through
 3 publicly available information. And then we took
 4 the next step, which was to contact the funds
 5 administrator and to contact the legal counsel
 6 listed in the fund's offering prospectus.
 7 Q. And the fund's administrator was Citco,
 8 right?
 9 A. Yes.
 10 Q. Do you recall who you contacted at Citco?
 11 A. We called the general number for Citco at
 12 the time, and I believe it was after hours for them,
 13 so we did not actually reach anyone at Citco.
 14 Q. Okay. Were you looking to talk to a
 15 specific person at Citco or you just called the
 16 general line?
 17 A. We called to speak to the person
 18 responsible for the Fairfield Sentry fund --
 19 Q. Okay.
 20 A. -- at the administrator.
 21 Q. And do you know who that was?
 22 A. I don't recall.
 23 Q. Did you know at the time you called who
 24 that person was?
 25 A. No, because that -- that information is

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1 Juan Massens.
 2 Q. Okay. So you -- you attempted to contact
 3 Citco and you said you attempted to contact the
 4 counsel listed on the Fairfield offering memorandum?
 5 A. Yes.
 6 Q. Do you remember who that was?
 7 A. I believe his first name is Ira.
 8 Q. He would have been a lawyer for Fairfield?
 9 A. Yes. In the prospectus, it's listed as
 10 counsel to the fund.
 11 Q. And would -- were you successful in
 12 getting ahold of him?
 13 A. Yes.
 14 Q. And what did you talk to -- talk about
 15 with Ira?
 16 A. Identified myself and asked him to please
 17 confirm whether or not Bernie Madoff had been
 18 arrested and what was the state of the fund.
 19 Q. And what did he tell you?
 20 A. He had not been aware of Mr. Madoff's
 21 arrest at the time and the call ended quickly.
 22 Q. What did he -- what did he tell you?
 23 A. To summarize the conversation, he said,
 24 "Oh, my God. I can't believe it. I have to go."
 25 Q. Did you make an attempt to contact anyone

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1 not available in the -- individual name of the
 2 person.
 3 Q. You knew there -- there was someone at
 4 Citco responsible for the administration of the
 5 Fairfield fund, but you didn't know who that person
 6 was?
 7 A. At the time I made the call, no, I did not
 8 have that individual's name handy.
 9 Q. Had you ever asked Fairfield for the name
 10 of that person?
 11 A. No.
 12 Q. Not necessarily that day but prior to?
 13 A. Our operations group at EFG Capital, as
 14 part of its -- its obligations with regards to hedge
 15 funds, has contact information and regular contact
 16 with the fund's administrator. In my role, that was
 17 not information that I had readily available at this
 18 time of crisis.
 19 Q. So the EFG Capital's operations people
 20 would have had the name of that person --
 21 A. Yes.
 22 Q. -- at Citco?
 23 Okay. And who -- who were the EFG Capital
 24 operations people?
 25 A. The head of operations at EFG Capital is

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1 else?
 2 A. Yes.
 3 Q. Okay. Who else did you attempt to
 4 contact?
 5 A. Lourdes Barreneche.
 6 Q. Did you get ahold of her?
 7 A. No.
 8 Q. Have you spoken with Lourdes Barreneche
 9 since -- since the Madoff scandal broke?
 10 A. Yes.
 11 Q. Okay. When did you talk to her?
 12 A. I don't know specific dates, but for a
 13 period of perhaps 15 to 20 days from the date of the
 14 arrest.
 15 Q. And what did she tell you?
 16 A. She had very limited information. Our
 17 conversations consisted of me requesting information
 18 with regards to the firm's statement and its plan of
 19 action.
 20 Q. And did she provide you any of that
 21 information?
 22 A. No, she did not.
 23 Q. Did she -- did you talk about anything
 24 else other than the exchange of information during
 25 this 15-to-20-day period?

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- 1 A. No.
2 Q. Did she offer or did you ask for her
3 impression of what had happened?
4 A. No.
5 Q. You didn't ask her if she was surprised,
6 what she felt about the fact that Madoff had -- had
7 scammed the company that she worked for?
8 A. No.
9 Q. Who else did you talk to at -- at
10 Fairfield about the -- the Madoff scandal?
11 A. Following Mr. Madoff's arrest, I spoke
12 with -- I participated in the conference call and
13 spoke with Jeffrey Tucker.
14 Q. And --
15 A. And Mark McCluskey.
16 Q. Mr. McCluskey worked at Fairfield?
17 A. Yes.
18 Q. So Mr. Tucker, what did he -- what did he
19 tell you, in the conference call?
20 A. In the conference call he told us that
21 Fairfield Sentry and Fairfield Greenwich Group would
22 be providing investors with information about the
23 Madoff scandal in a written format and that would be
24 forthcoming.
25 Q. And was that ever provided, that

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- 1 information?
2 A. Yes, it was published on the Fairfield
3 Greenwich Group's web site.
4 Q. Was that conference call open to any
5 investors or was it specific to EFG Capital?
6 A. We initiated that call with Fairfield
7 Greenwich Group.
8 Q. So it was just Fairfield representatives
9 and EFG Capital?
10 A. Yes.
11 Q. And was Mr. McCluskey on that call or was
12 there a separate call with Mr. McCluskey?
13 A. Mr. McCluskey was on that call. And I do
14 apologize. It may not be the correct last name.
15 Q. Okay.
16 A. I'm not really certain of the name.
17 Q. But you remember the first name as being
18 Mark?
19 A. Yes.
20 Q. Okay.
21 A. General counsel for Fairfield Greenwich
22 Group.
23 Q. Okay. And what did Mr. McCluskey say on
24 that call?
25 A. I don't recall specifically. The purpose

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- 1 of the call was to -- was for EFG Capital to obtain
2 information from Fairfield Greenwich Group about
3 what steps the firm would be taking in terms of
4 communicating to its investors with regards to the
5 Madoff scandal.
6 Q. Did you get a chance to talk to the chief
7 risk officer Amit?
8 A. No.
9 Q. How many times had you either met with or
10 spoken with Amit prior to the scandal breaking?
11 A. I'm sorry. You said met and spoke with?
12 Q. Or.
13 A. Either/or, I would estimate between 10 to
14 15 times.
15 Q. Okay. Do you know how many times you
16 actually met with him?
17 A. I do not.
18 COURT REPORTER: I'm sorry.
19 THE WITNESS. I do not.
20 COURT REPORTER: Thank you.
21 BY MR. KELLOGG
22 Q. More than once?
23 A. Yes.
24 Q. And were those meetings always in New
25 York?

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- 1 A. Yes.
2 Q. Other than the time you talked to the
3 Fairfield counsel -- you called him
4 "Mr. McCluskey" -- after the scandal broke, had you
5 ever spoken with him relating to due diligence
6 issues or part of your due diligence -- as part of
7 your due diligence function?
8 A. No.
9 Q. Did EFG Capital ever perform any
10 background checks on any of the Fairfield
11 principals?
12 A. I don't know.
13 Q. Is that something you would typically
14 advise doing as part of due diligence --
15 A. Yes.
16 Q. -- of a fund -- of a fund? Okay.
17 A. Sorry.
18 Q. Was there anything in the due diligence
19 file, when you started in 2005, the due diligence
20 file for Fairfield, that indicated that some kind of
21 a background check had been conducted?
22 A. I don't recall.
23 Q. Did you talk to any of the gentlemen who
24 were -- who were involved in the original due
25 diligence about whether a background check had been

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Pages 17-20

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1 conducted of Fairfield's principals?
2 A. No, I did not.
3 Q. Do you know whether any background check
4 was conducted by EFG of Bernard Madoff?
5 A. No, I do not.
6 Q. In your experience of doing due diligence
7 for fund of funds, have you seen circumstances where
8 background checks are conducted of the underlying
9 fund manager, investment advisor, whatever --
10 whatever name you want to give that person who makes
11 the decisions at the --
12 A. At the fund of funds?
13 MR. COATES: Object to form.
14 You may answer.
15 A. If you're -- if you're referring to the
16 portfolio manager of a fund-of-funds company, yes,
17 it is industry standard to perform a background
18 check on key personnel.
19 BY MR. KELLOGG
20 Q. But you don't know if EFG Capital
21 conducted a background check of Bernard Madoff in
22 this instance?
23 MR. COATES: Object to form of the
24 question.
25 You may answer.

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1 MR. KELLOGG: We'll mark Plaintiff's
2 Exhibit 46, please. If you'll give me some
3 stickers --
4 (Thereupon, the referred-to document was
5 marked by the court reporter for Identification
6 as Plaintiff's Exhibit 46.)
7 BY MR. KELLOGG
8 Q. Mr. Donnell, I'll ask you whether you've
9 seen this document.
10 A. No.
11 Q. This appears to be an annual audited
12 report of BMIS.
13 Is that what it looks like to you?
14 A. What it appears to me, it's an annual
15 audited report of a broker/dealer named Bernard L.
16 Madoff Investment Securities LLC.
17 Q. Right. We'll use shorthand BMIS.
18 A. Okay.
19 Q. Was this part of the EFG Capital due
20 diligence file on Fairfield Sentry?
21 A. I don't know.
22 Q. Do you see the handwritten notations up on
23 the top right corner?
24 A. Yes, I do.
25 Q. Do you know what those are?

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1 A. No, I do not.
2 BY MR. KELLOGG
3 Q. Who is EFG Capital's auditor; do you know?
4 A. EFG Capital is audited by BWC, I believe.
5 Q. Do you know which office?
6 A. No, I do not.
7 Q. Do you know who Fairfield's external
8 auditor was?
9 A. No, I do not.
10 Q. I asked you earlier whether you had ever
11 met with -- about Bernard Madoff, and you said no.
12 Have you ever met with anyone that was
13 involved with Bernard Madoff Investment Securities?
14 A. No, I've not met an employee of Bernard
15 Madoff Investment Securities.
16 (Thereupon, a discussion was held off the
17 record, after which the following proceedings
18 were held:)
19 VIDEOGRAPHER: Let's go off the record.
20 The time is 1:33.
21 (Thereupon, a discussion was held off the
22 record, after which the following proceedings
23 were held:)
24 VIDEOGRAPHER: We're on the record. The
25 time is 1:34.

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1 A. No, I do not.
2 Q. Was -- were the audited -- the annual
3 audited reports of BMIS considered by EFG as part of
4 its due diligence on Fairfield Sentry?
5 MR. COATES: Object to form of the
6 question.
7 A. I don't know how to answer it considering
8 EFG, as part of our document collection for due
9 diligence review of Fairfield Sentry Limited, did
10 not obtain the audited reports of BMIS.
11 BY MR. KELLOGG
12 Q. And so it's your testimony that this
13 wasn't part of the Fairfield due diligence file?
14 A. I don't know.
15 Q. It could be; you just don't know?
16 A. Yes.
17 Q. Was there anybody else who collected or
18 gathered documents for the Fairfield due diligence
19 file after you started, other than you?
20 A. The task of completing the collection of
21 documents for our due diligence process was
22 exclusively my task.
23 Q. Did you have any help?
24 A. Interns from time to time.
25 Q. So if this was this annual audited report,

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1 Plaintiff's Exhibit 46, was -- in the EFG Capital
2 due diligence file, it would have been collected by
3 you. Is that fair to say?
4 MR. COATES: Object to form.
5 You may answer.
6 A. I don't know -- what is this -- I don't
7 know the date of this document and I don't know that
8 I would have put it into the file. There -- it may
9 have been in the file. I don't know this document.
10 I don't know if it's in the file, so I can't answer
11 the question.
12 BY MR. KELLOGG
13 Q. If -- if it was put in the file, is there
14 anybody else who would have put it there? And I'm
15 asking you a hypothetical. I know you don't know --
16 A. I don't --
17 MR. COATES: Object to form.
18 But you -- you can answer, sir.
19 A. I don't know.
20 BY MR. KELLOGG
21 Q. I'm just trying to find out if there's
22 anybody who, even clerically, helped you gather
23 documents and, as a result, there would be a
24 document either that you didn't ask for or that you
25 don't remember that was in the EFG Capital due

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1 of BMIS be something that EFG Capital would consider
2 or request as part of its due diligence of
3 Fairfield?
4 MR. COATES: Object to form.
5 A. No. The requirements for EFG Capital's
6 due diligence review of Fairfield Sentry Limited
7 required the audited financials of Fairfield Sentry
8 Limited.
9 BY MR. KELLOGG
10 Q. And when you say "required," where did
11 those requirements come from?
12 A. Those requirements come from EFG Capital's
13 written procedures for hedge funds.
14 Q. So EFG Capital's written procedures on
15 hedge funds requires the collection of the audited
16 financial statements of the fund but not necessarily
17 the entity that is responsible for being the -- I
18 don't know what you would call them -- an exchange
19 agent?
20 What would you call -- you -- you
21 understand that Mr. Madoff had the -- the investment
22 discretion for Fairfield's fund, basically?
23 MR. COATES: Jason, why don't you just try
24 to clean that up and just ask the last
25 question, because I -- I don't want him

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1 diligence file.
2 So are there any people that you -- that
3 you know of --
4 A. No.
5 Q. -- who would put things in the --
6 A. No.
7 Q. -- file? Okay.
8 MR. KELLOGG: I'll show you what we'll
9 mark as Plaintiff's Exhibit 47.
10 (Thereupon, the referred-to document was
11 marked by the court reporter for identification
12 as Plaintiff's Exhibit 47.)
13 BY MR. KELLOGG
14 Q. First question will be whether you
15 recognize this.
16 A. No.
17 Q. This appears to be a statement of
18 financial condition of BMIS, correct?
19 A. Yes.
20 Q. Dated October 31, 2005.
21 Do you have any recollection of whether
22 this was in EFG Capital's due diligence file on
23 Fairfield Sentry?
24 A. I don't recall.
25 Q. Would the statement of financial condition

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1 answering what appears to be several questions.
2 So just ask that -- let's rephrase the
3 question.
4 BY MR. KELLOGG
5 Q. You understand --
6 MR. COATES: I want a clean record, so let
7 him rephrase the question and then you can
8 answer it.
9 BY MR. KELLOGG
10 Q. You understand now that Mr. Madoff had the
11 discretion over the investment of the Fairfield
12 fund, right?
13 A. Well, the funds --
14 Q. Okay.
15 A. The funds were never invested, so I can't
16 answer that truthfully saying yes or no.
17 Q. Okay. All right. Setting that aside,
18 whether he actually -- actually invested in anything
19 or not.
20 A. What I know about Mr. Madoff's involvement
21 of Fairfield Sentry is what's stated in the offering
22 memorandum. The last offering memorandum indicated
23 that he was the executioner of the
24 split-strike-conversion strategy.
25 Q. Okay.

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Pages 25-28

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1 A. He was neither an investment advisor nor a
2 hired party to the fund.
3 Q. Then -- then the question I asked you
4 before, I think I say "exchange agent." I should
5 have said "execution agent."
6 Can we agree on that term?
7 A. I don't remember the particulars of the
8 document other than my recollection of
9 "executioner".
10 Q. And that was in the last version, you
11 said, of the Fairfield offering memorandum?
12 A. Yes.
13 Q. Do you remember the -- the date that that
14 last version came out?
15 A. I don't recall.
16 Q. Do you know whether that information was
17 contained in previous versions of the offering --
18 offering memorandum?
19 A. The description of Madoff's involvement in
20 the fund varies in the four different offering
21 memorandums that I reviewed.
22 Q. Did you know that there were variances in
23 the offering memorandum -- memoranda? Did you know
24 prior to December 2008 that there were variances in
25 the various offering memoranda?

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1 A. I have not conducted that review.
2 Q. Who would conduct the review of the
3 offering memoranda at EFG Capital?
4 A. I don't know. Prior to 2005, I don't know
5 specifically who reviewed the offering memoranda.
6 Q. So the offering memoranda of Fairfield
7 were in the due diligence file, but you don't know
8 who actually reviewed those memoranda prior to 2008?
9 A. I know who's responsible for conducting
10 EFG's due diligence of Fairfield Sentry Limited. I
11 don't know who specifically was tasked with reading
12 and reviewing the file.
13 Q. And who is responsible, Mr. --
14 Mr. Campano?
15 A. The review initially of -- in terms
16 conducting of due diligence, was Marcelo Alvarez,
17 another representative of EFG Capital, and Victor
18 Echevarria.
19 Q. Who was the other representative of EFG
20 Capital?
21 A. I believe it was either the chief -- I
22 believe it was the chief compliance officer.
23 Q. Do you remember his name or her name?
24 A. Dash or something. I apologize. I don't
25 remember the name.

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1 Q. Is it Dart?
2 A. Dart -- yeah, Dart Montgomery. Thank you.
3 Q. So Mr. Alvarez was responsible for the
4 initial due diligence that was conducted of EFG --
5 of Fairfield, correct?
6 A. I don't know if Mr. Alvarez was
7 responsible. I know that there were three parties
8 who conducted the initial due diligence of Fairfield
9 Sentry for EFG Capital, and those are the three
10 people whose names I stated.
11 Q. Right. Alvarez, Echevarria, and Dart --
12 A. Yes.
13 Q. -- and Montgomery.
14 A. Yes.
15 Q. After the initial due diligence of
16 Fairfield was conducted in the late '90s, Fairfield
17 continued to put out offering memoranda, correct?
18 A. Yes.
19 Q. And those offering memoranda were placed
20 in the Fairfield due diligence file, correct?
21 A. When I arrived in 2005, there were
22 multiple offering memorandum in the due diligence
23 file that I was -- that I was presented with, yes.
24 Q. But you weren't tasked with reviewing
25 those offering memoranda, were you?

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1 A. No.
2 Q. Were -- was any of the information in the
3 offering memoranda put into the template that you
4 created for due diligence of Fairfield?
5 A. Yes.
6 Q. And that was your responsibility, to take
7 that information and put it into the template,
8 correct?
9 A. Yes.
10 Q. And as -- as part of that placement of the
11 information in -- into the template, you would have
12 had to review the offering memoranda, correct?
13 A. Yes.
14 Q. Okay. But you don't know whether there
15 was anyone else at EFG Capital who reviewed the
16 offering memoranda as part of the due diligence
17 function?
18 A. No. I don't know.
19 Q. Okay. This has been previously marked as
20 Exhibit 21, and I believe it's Plaintiff's
21 Exhibit 21.
22 MR. COATES: Yes, that's right. It's a
23 plaintiff's exhibit.
24 BY MR. KELLOGG
25 Q. And so my question will be whether you

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Pages 29-32

00151

1 recognize this document?

2 A. Yes.

3 Q. Is this the due -- Fairfield due diligence
4 memorandum we've been talking about?

5 A. Yes, it is.

6 Q. Okay. And this is the template that you
7 created?

8 A. Yes.

9 Q. Okay. So when you arrived in 2005, you
10 created this template and you took information from
11 what was contained in the Fairfield due diligence
12 file when you arrived and you placed it into this
13 due diligence memorandum, correct?

14 A. Yes.

15 Q. Okay. Do you know approximately when this
16 was created?

17 A. This was created in March probably of
18 2005, as indicated by the AMs and the program date.

19 Q. And you created one of these for each of
20 the funds that EFG Capital was offering at the time,
21 correct?

22 A. Yes.

23 Q. And were -- were these due diligence
24 memoranda updated?

25 A. No.

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1 there are other documents that form other specific
2 purposes in the review process.

3 Q. But how do they differ, other than their
4 purpose?

5 A. They have different information.

6 Q. Okay. And what -- what are the different
7 information that they have?

8 A. They're different in that the ongoing
9 reviews have updated information about the
10 performance data, the performance statistics, and a
11 whole series of what are called "quarterly portfolio
12 characteristics," which are obtained by Greenwich
13 Alternative Investments which cover both
14 quantitative and qualitative aspects of the fund
15 that I described earlier. All of that information
16 is then put into a series of reports, the
17 performance reports, the risk reports, the risk
18 dashboard, and the audit report.

19 Q. And those ongoing reports were created for
20 Fairfield Sentry?

21 A. Yes, they were.

22 Q. If you notice, down at the bottom of the
23 memo, there's a P: drive listing for the document
24 name?

25 A. Yes.

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1 Q. And what's the reason that they weren't
2 updated?

3 A. It was not part of the process, the
4 ongoing review had other guidelines which were
5 different from this initial template.

6 Q. Describe to me how the guidelines differed
7 between the due diligence memoranda that you created
8 and the ongoing due diligence that was conducted?

9 A. Well, this document was used as an initial
10 due diligence template in our efforts to standardize
11 our written reports of our due diligence. The -- it
12 was prepared for funds that were already on the
13 platform as a means of having a consistent report
14 for each fund.

15 On a forwards basis, as I've described
16 before, we had different quantitative and
17 qualitative measures, based upon our written
18 procedures, for the review of the funds on a monthly
19 basis. So this document is an initial due diligence
20 template, and then we have reports on an ongoing
21 basis for the review of the funds.

22 Q. Yeah. And I understand that. I'm just
23 asking what the differences are.

24 A. The difference is this is a document that
25 serves a singular purpose. And on a forwards basis,

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1 Q. Are these the folders you were talking
2 about?

3 A. Yes.

4 Q. So it's in the administrative folder of
5 the P: drive on EFG Capital's network?

6 A. At the time this document was published,
7 that is the path for the file, yes.

8 Q. And has that changed?

9 A. Yes.

10 Q. Okay. How has it changed?

11 A. Specifically?

12 Q. Yeah.

13 A. It is now at P:\investments
14 service\private client service\HFN Miami\Miami
15 approved funds\Miami delisted --

16 Q. You got to -- got to slow -- slow down.

17 A. I'm sorry.

18 -- Miami delisted\Fairfield Sentry.

19 Q. So because it was taken off the approved
20 list, it was put in a different folder?

21 A. All of the funds that were delisted were
22 put into a separate folder, no longer within the
23 approved folder.

24 Q. And in this file name, there's -- at the
25 end, it says "103 Fairfield Sentry due diligence."

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Pages 33-36

00155

1 What does the 103 stand for?

2 A. I don't know.

3 Q. Again, on this -- on this first page, the
4 last paragraph starts, "FIM has delegated the
5 management of the fund to Bernard L. Madoff
6 Investment Securities."

7 Do you see that?

8 A. Uh-huh. Yes, I do.

9 Q. Okay. Do you recall where you got that
10 information?

11 A. From the offering memorandum used to
12 prepare the document.

13 Q. In the -- in the next page at the very
14 top, it says, "Madoff has discretionary investment
15 authority over the fund's assets and also provides
16 custody of the assets through Madoff."

17 Do you see that?

18 A. Uh-huh.

19 Q. You just have to answer it.

20 A. Yes.

21 Q. In your experience reviewing hedge funds,
22 have you seen, other than -- than Fairfield, an
23 instance where the authority to make investments is
24 delegated to the same person who has custody of the
25 assets?

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1 A. In my experience, I have not seen that
2 arrangement with other funds.

3 Q. And is it your understanding that there's
4 a certain risk involved when the person who's making
5 the investment decision also has custody of the --
6 of the funds that he's investing?

7 A. It was a -- a risk factor highlighted by
8 the issuer of the fund.

9 Q. And in placing that information in the due
10 diligence memorandum, you didn't make any -- how do
11 I put it? I want to say you didn't -- you didn't
12 qualify or make any recommendations about whether
13 that information was a risk factor or not, correct?

14 A. Within the document, there is a section
15 called "risk factors," and there is reference made
16 to custodial relationship. I did not, however,
17 formulate any opinion or include any of my personal
18 opinions in the document, as I was not requested to
19 do so.

20 Q. So you took the information that was
21 contained in the offering memorandum about the risk
22 factors and put it in the appropriate box on the due
23 diligence memorandum, correct?

24 A. The offering memorandum was one source of
25 information used to complete this questionnaire.

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1 Q. What were the other sources? You

2 mentioned some of them earlier, but --

3 A. Other information that -- that was
4 obtained by myself as a representative of EFG
5 Capital, or existing information that we had on file
6 may have been used.

7 Q. And do you recall any conversations with
8 anybody that you had when you were putting this due
9 diligence memorandum together about what information
10 needs to go into it?

11 A. The format of the template had been
12 approved by the new product committee and the
13 information that went in it was based upon the
14 fields of information that you see here for a
15 standard template.

16 Q. Okay. What were the sources of
17 information, other than the offering memorandum,
18 that found their way into this memo?

19 MR. COATES: I'm going to object to asked
20 and answered. I thought we covered this
21 earlier today, but I'll let him answer it
22 again.

23 A. Generally speaking, the information that
24 is in this memorandum was obtained from the offering
25 materials of the fund, as well as other information

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1 in the existing EFG Capital due diligence file and
2 information that I may have obtained from the fund
3 or its administrator.

4 BY MR. KELLOGG

5 Q. And that's what I'm getting at.

6 Did you have any specific conversations,
7 when you were putting together this initial due
8 diligence memorandum, with anybody at Fairfield?

9 A. No.

10 Q. Just conversations with folks at EFG
11 Capital who had conducted the initial due diligence,
12 correct?

13 A. Yes.

14 Q. And review of the documents that were in
15 the file at the time?

16 A. Yes.

17 Q. If you turn to page -- the Bates label is
18 266. It's like the fourth or fifth page in.

19 A. Uh-huh. Yes.

20 Q. There is an operations box at the top.
21 And the first paragraph says, "Madoff makes all
22 trading decisions and executes all transactions for
23 the fund. Transaction confirms are" sent to
24 direct- -- "sent to directly to Citco for
25 processing. Copies of the confirmations are sent to

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Pages 37-40

00159

1 Fairfield where they are reviewed for
2 reasonableness. Given the nature and volume of the
3 transactions, the principal test is to verify that
4 the fund's transactions were executed within the
5 days' trading range."

6 Do you see that?

7 A. Yes, I do.

8 Q. And do you know where that information
9 came from?

10 A. I don't know specifically, but I believe
11 it was derived from a memorandum from the initial
12 due diligence completed by EFG Capital and Fairfield
13 Sentry.

14 Q. And the paragraph that I just read to you,
15 it's focusing on Madoff's operations, correct?
16 Because the -- Fairfield wasn't executing the actual
17 transactions, right?

18 A. No. This paragraph focuses on the
19 operations of the fund Fairfield Sentry, which is
20 the subject of the memorandum.

21 Q. Okay. And it's talking about transaction
22 confirmations of trades executed by Madoff that are
23 then sent to Fairfield, right?

24 A. No, this statement says, "Transaction
25 confirms are sent" -- with a typo -- "to directly to

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00161

1 A. I recall the source of information was a
2 written memorandum in the due diligence file I
3 received on Fairfield Sentry in 2005.

4 Q. That was -- that was a memo -- we're
5 talking about a memo that was created by either
6 Mr. Alvarez, Mr. Echevarria, or Mr. Montgomery, or
7 the three of them combined.

8 A. Yes.

9 Q. We're talking about the same memo? Okay.

10 A. Yes.

11 Q. Did you ever ask anybody at Fairfield how
12 they were receiving the confirmations?

13 A. No.

14 Q. Did you have an understanding as to
15 whether those confirmations were coming to Fairfield
16 in real time or with some delay?

17 A. No.

18 Q. Did you ever ask anyone at Citco about how
19 the -- the timing of the confirmations?

20 A. No.

21 Q. Okay. Did you ask anyone at -- at
22 Fairfield?

23 A. With regards to the timing of the --

24 Q. The timing.

25 A. -- confirmations?

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00160

1 Citco for processing."

2 Q. Okay. You're right.

3 To Citco first?

4 A. Yes.

5 Q. All right. Okay. And then it says that
6 copies of those confirmations are sent to Fairfield,
7 correct?

8 A. Yes, by the third-party administrator
9 Citco.

10 Q. Okay. Do you know how those confirms were
11 sent from Citco to Fairfield or from Madoff to
12 Fairfield?

13 A. No, I do not.

14 Q. Do you know whether they came from Madoff
15 or from Citco? Did the confirms that were sent to
16 Fairfield, did they come from Madoff or did they
17 come from Citco?

18 A. It's my understanding that the
19 confirmation sent from -- sent to Fairfield were
20 sent to them by Citco.

21 Q. And who told you that?

22 A. I learned that through the due diligence
23 that EFG Capital performed on the fund.

24 Q. And -- but do you remember what the source
25 of the information was?

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00162

1 No.

2 Q. Do you know whether anyone at EFG Capital
3 had a conversation with either Citco or Fairfield or
4 Madoff about the timing of the confirmations that
5 were being sent to Fairfield?

6 A. I don't recall.

7 Q. This phrase here, it says "reviewed for
8 reasonableness," that confirmations are reviewed for
9 reasonableness.

10 Do you see that?

11 A. Uh-huh.

12 Q. Do you know who reviewed the confirmations
13 for reasonableness?

14 A. No.

15 Q. Did you ever ask anyone at Fairfield what
16 the standard was that they used to review the trade
17 confirmations?

18 A. No.

19 Q. Did you think that was important?

20 A. It wasn't a focus of the due diligence
21 that I was performing as part of the review
22 function.

23 Q. Okay. But was it a piece of information
24 that you think is at least relevant to the due
25 diligence of Fairfield, how they were getting -- how

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Pages 41-44

00163

1 they were reviewing the trade confirmations that
2 they were receiving?
3 MR. COATES: Object to form.
4 You may answer.
5 A. Yes. The process for which or the basis
6 for establishing reasonableness is an important
7 element in performing initial due diligence on a
8 fund, and an ongoing basis in verifying that no
9 operational changes have been made to the operation
10 of the fund is sufficient, in my opinion.
11 BY MR. KELLOGG
12 Q. So if I heard you right, you're saying
13 that the ongoing review of the fund is sufficient to
14 overcome any lack of information about how the
15 confirmations are being reviewed?
16 MR. COATES: Object to form.
17 A. No, I stated that it's an important aspect
18 to understand the basis for establishing
19 reasonableness in the initial due diligence process.
20 And it's also important, on an ongoing basis, to
21 verify that no changes have been made to that
22 process.
23 BY MR. KELLOGG
24 Q. Do you know whether anyone at EFG had an
25 understanding about what this reasonable standard --

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1 availability of trade tickets. The question, which
2 I was asking, was: Has the operational process
3 changed and is that transparency still available and
4 the answer was yes. That satisfied my due diligence
5 requirements.
6 Q. So you asked whether the trade
7 confirmations were still available for review and
8 they said yes?
9 A. Yes.
10 Q. But you didn't ask to actually see them?
11 A. Correct.
12 Q. Or confirm that they existed?
13 A. Yes.
14 Q. Why didn't you ask to see whether they
15 actually existed?
16 A. The reason I did not ask is because
17 within --
18 MR. COATES: I'm going to object to the
19 form of the question. I think it misstates
20 testimony.
21 You can answer, sir.
22 A. As part of our review specifically of
23 Fairfield Sentry, the question which I was tasked to
24 ask for and obtain information about was whether or
25 not the trade tickets or confirmations were still

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00164

1 reasonableness standard was that Fairfield was
2 applying to the trade confirmations?
3 A. I know that, in completing the due
4 diligence process and adding the fund to the
5 approved list, it was satisfactory to EFG Capital
6 and its due diligence.
7 Q. But my question was whether you know of
8 anyone else at EFG Capital who knew what the
9 reasonable -- what the reasonableness standard was.
10 A. As I was not at the firm at the time, I do
11 not know.
12 Q. Did you ever ask, either Citco or
13 Fairfield, to see copies of the confirmations of the
14 trades that Madoff was executing?
15 A. Yes.
16 Q. And did you ever see those confirmations?
17 A. No.
18 Q. Who did you ask?
19 A. It may have been one of three people:
20 Veronica Barco, Amit, or Lourdes.
21 Q. Why did you ask to see the trade
22 confirmations?
23 A. Because in the initial due diligence
24 performed by EFG Capital, one of the factors that
25 was highlighted in the initial due diligence was the

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00166

1 available to EFG Capital. The answer was yes and
2 that was sufficient for my due diligence.
3 BY MR. KELLOGG
4 Q. Did -- do you know whether anyone else at
5 EFG Capital had ever seen the trade confirmations?
6 A. I know -- I recall that, in the written
7 memorandum regarding the initial due diligence
8 performed by EFG Capital on Fairfield Sentry
9 Limited, the gentleman performing due diligence did
10 see the trade tickets or confirmations you referred
11 to.
12 Q. And that was Mr. Montgomery?
13 A. It may have either been Mr. Montgomery,
14 Mr. Echevarria, or Mr. Alvarez.
15 Q. The last sentence in that paragraph talks
16 about the test for reasonableness being whether the
17 transactions were executed within the day's trading
18 range.
19 Do you see that, or that some component of
20 the review?
21 A. Uh-huh.
22 Q. And do you know what the acceptable
23 trading range was that Fairfield was applying to the
24 trade confirmations?
25 A. Well, it's actually a literal statement,

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Pages 45-48

00167

1 yes. It is: Did the price of the security trade
2 within the low or high of that day's on that market
3 in which the security traded?

4 Q. Okay. Did you have an understanding on --
5 on what would be the standard for establishing the
6 trading range, what exchange was being looked at to
7 see what the price was in a -- in a particular day?

8 A. Well, generally speaking, yes. Because
9 the investment strategy had a universe of
10 securities, which were the S&P 100, which are
11 marketable securities with a price transparency, the
12 range being the low and the high price of the day,
13 and that the security price reported fell within
14 that range.

15 Q. Okay. So, then, where would that
16 information be obtained? From where would that
17 information be obtained?

18 A. A pricing source such as Bloomberg or
19 Reuters or a proprietary pricing system.

20 Q. Okay. Did you have any understanding on
21 which or how many of those different places where
22 you can find out the price Fairfield was using to
23 determine what the day's trading range was?

24 A. No, we received a consolidated report with
25 that information from -- from Fairfield Sentry

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1 Q. Okay. Is it your understanding that
2 Fairfield was performing a function that was in any
3 way different to what Citco was performing as
4 administrator?

5 A. Yes.

6 Q. And what was the difference?

7 A. Citco was performing services as outlined
8 and -- or as stated in the offering memorandum
9 related to the operation of the fund. Fairfield, as
10 part of its value proposition, was, for its -- for
11 the clients of the firm, providing information and
12 reporting in viewpoints about the fund, which are
13 separate and distinct from the administrator who is
14 responsible for the operation of the fund.

15 Q. Okay. What does that -- what does what --
16 what does that mean, what you just told me?

17 In other words, you told me that Citco was
18 doing something relating to the operations and that
19 Fairfield was doing something relating to the
20 clients and investors.

21 A. Uh-huh.

22 Q. But what was the actual difference on what
23 they were doing? You were both reviewing trade
24 confirmations, correct? Is there a difference on
25 how they were using that information?

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00168

1 Limited.

2 Q. Okay. So it was contained in the reports
3 that they were giving EFG Capital?

4 A. Yes. And those reports were provided by
5 RiskMetrics.

6 Q. The fact that confirmations were being
7 sent to Fairfield, in addition to Citco, so that
8 Fairfield was essentially shadowing the
9 administrative functions of Citco, did that strike
10 you as unusual or had you seen that before?

11 A. I don't --

12 MR. COATES: Object to the form.

13 You may answer.

14 A. I don't understand your characterization
15 of -- of Fairfield shadowing Citco as an
16 administrator.

17 BY MR. KELLOGG

18 Q. Okay. Well, Citco was responsible for
19 confirming trades, right?

20 A. In the natural course of administration,
21 yes, they could confirm trades.

22 Q. And then they were also, according to your
23 due diligence memo, sending the confirmations to
24 Fairfield where they were being reviewed, correct?

25 A. Yes.

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1 A. Yes. As I stated, the administrator has
2 certain tasks, which are stated in the offering
3 memorandum.

4 Q. And what are those tasks?

5 A. Confirmation of trades, calculation of the
6 NAV, processing of subscriptions and redemptions,
7 maintaining the general books and records of the
8 company.

9 Q. Okay. And so one of the things you just
10 mentioned was confirming the trades, right? That's
11 one -- at least one of the functions that Citco had
12 as administrator, correct?

13 A. Yes.

14 Q. Okay. And that's also what Fairfield told
15 you they were doing, right, they were reviewing the
16 trade confirmations?

17 A. Yes.

18 Q. Just like Citco was reviewing the trade
19 confirmations, correct?

20 A. Yes.

21 Q. So at least, for that function, they were
22 performing the same task, correct?

23 A. No.

24 Q. Okay. What's -- what was the difference?

25 A. The definition of the task --

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Pages 49-52

00171

1 Q. Okay.

2 A. -- I suppose.

3 Q. What was the difference between the two

4 tasks?

5 A. While both entities reviewed the

6 confirmations, it was for different purposes

7 Q. Okay.

8 A. That's the distinction.

9 Q. Okay. What they did, the review of the

10 confirmations, was the same, correct?

11 A. Yes.

12 Q. But what they were doing it for, the

13 reason they were doing it was different, correct?

14 A. Yes.

15 Q. Okay.

16 MR. COATES: Jason, can we take a quick

17 break? We've been at it --

18 MR. KELLOGG: Sure.

19 MR. COATES: -- for over an hour.

20 VIDEOGRAPHER: Going off the record. The

21 time is 2:12.

22 (Thereupon, a discussion was held off the

23 record, after which the following proceedings

24 were held.)

25 VIDEOGRAPHER: All right. We're now back

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00173

1 BY MR. KELLOGG

2 Q. "To that extent, investing in the fund

3 represents one of the risks of investing in the

4 fund."

5 Do you see that?

6 A. Yes, I do.

7 Q. Do you know what that means?

8 A. The -- the due diligence questionnaire is

9 highlighting certain risk factors that were

10 disclosed by the issuer. And in this case, the

11 statement is not derived directly from the OM but

12 from the due diligence performed by EFG Capital

13 International.

14 Q. And where did -- where did you get this

15 information to put it into the due diligence memo?

16 A. This information was obtained from a

17 disclosure letter sent by EFG Capital to various

18 clients.

19 Q. Do you understand what the -- what they're

20 describing relating to the risk, though, that to

21 the -- "to that extent, investing in the fund

22 represents one of the risks of investing in the

23 fund"?

24 A. Yes.

25 Q. Okay. What does that mean?

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1 on the record. Time is 2:25.

2 BY MR. KELLOGG

3 Q. Mr. Donnell, we were looking at the page

4 Bates-labeled 266 on Exhibit 21. If you look at the

5 bottom of that page, there's a paragraph on custody.

6 Do you see that?

7 A. Yes.

8 Q. And there's a sentence that says, "Bernard

9 L. Madoff Investment Securities" had -- "had capital

10 as of October 31, '03 of \$478 million."

11 Do you see that?

12 A. Yes, I do.

13 Q. And it says, "This is much less than the

14 capital of a major international bank, to the extent

15 investing in the fund represents one of the risks of

16 investing in the fund."

17 Do you know what that is --

18 MR. COATES: I think you -- excuse me. I

19 think you misread -- I think you misread the

20 statement.

21 MR. KELLOGG: It says, "This is" --

22 MR. COATES: "To that extent." You said

23 "to the extent."

24 MR. KELLOGG: Oh. I'm sorry.

25

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1 A. It means that the capital of the

2 subcustodian, Bernard L. Madoff Investment

3 Securities, could be a unique risk factor to the

4 investment of the fund as capital base of a

5 custodian may be used in evaluating the financial

6 soundness and security of that entity.

7 Q. So because the capital base was relatively

8 small for BMIS, EFG Capital included that as a risk

9 factor in its due diligence memo?

10 MR. COATES: Object to form.

11 You may answer.

12 A. In preparation of the due diligence memo,

13 the majority of information was obtained from the

14 offering materials of the fund given the nature of

15 the product -- nature of the project which was a

16 standardization of information that we had related

17 to the funds. Generally speaking, initial due

18 diligence will include information obtained by the

19 person performing the due diligence. Where there is

20 information available of that nature, I try to

21 include it in here.

22 To answer your question directly, this

23 risk factor was highlighted in the offering

24 memorandum by -- by the issuer. I did not copy and

25 paste that information, but instead put the

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Pages 53-56

00175

1 information that EFG Capital had with relation to
2 that risk factor.

3 BY MR. KELLOGG

4 Q. So it -- so this didn't come from the
5 offering memorandum; it came from other information
6 that was in the due diligence file?

7 A. Yes, this risk factor, which was disclosed
8 by the issuer, I included information obtained from
9 an EFG memorandum from our source due diligence
10 rather than cutting and pasting the risk factor as
11 it was disclosed by the issuer.

12 Q. At the bottom of this page, page 267, it
13 says, "Legal counsel, Law Offices of Andrew
14 Goldstein." Do you see that?

15 A. Yes, I do.

16 Q. Is that the gentleman you called when you
17 found out about the Madoff scandal?

18 A. I believe so.

19 Q. If you turn to the page to page 268, it
20 list the administrator as being Citco Fund Services
21 (Europe) B.V. Do you see that?

22 A. Yes.

23 Q. Okay. Other than the information that's
24 contained here in the due diligence memo, was there
25 any other information in the due diligence file

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1 Q. Did -- as part of the due diligence
2 function, did EFG Capital ever review the agreement
3 between Citco and Fairfield?

4 A. The due diligence that I performed on
5 Fairfield Sentry did not include a review of that
6 document.

7 Q. Do you know whether it was contained in
8 the due diligence file prior to your review of the
9 file?

10 A. I don't recall.

11 Q. Do you know whether anyone at EFG Capital
12 ever confirmed Fairfield's relationship with Citco?

13 A. I don't know.

14 Q. But that's something that EFG Capital does
15 as part of its due diligence operations now,
16 correct, it confirms the relationship between the
17 fund and its service providers?

18 A. Yes. And on an ongoing matter, as a
19 course of business, the administrator provides the
20 monthly NAV as well as the contract notes associated
21 with subscription redemptions in the fund, so it's
22 clearly evident that the administrator is providing
23 the services in addition to the due diligence
24 guideline which is to confirm and annually that the
25 administrator is still in place.

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00176

1 relating to Citco or about Citco?

2 A. I don't recall.

3 Q. Okay. And what about on the next box, the
4 independent auditor, PricewaterhouseCoopers? Do you
5 see that?

6 A. Yes.

7 Q. Does this refresh your recollection as to
8 which office of PWC the -- the auditor of Fairfield
9 came from?

10 A. Yes, it does.

11 Q. And that was in Amsterdam?

12 A. Uh-huh. Yes.

13 Q. Is it common to see auditors from
14 overseas?

15 A. Yes.

16 Q. And I don't think I asked this
17 specifically.

18 But do you know whether anyone at EFG
19 Capital ever met with anyone at Citco regarding
20 Citco's administration of Fairfield?

21 A. No, I do not.

22 Q. Do you know whether anyone at EFG Capital
23 ever met with anybody at PWC in Amsterdam or their
24 Amsterdam office regarding Fairfield?

25 A. No, I do not.

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00178

1 Q. Right. So the -- so -- I understand the
2 points you are making.

3 Do you know whether anyone at EFG Capital,
4 as part of the initial due diligence, did anything
5 to confirm EFG Capital's relationship -- sorry --
6 Fairfield's relationship with Citco?

7 A. No, I do not know that.

8 Q. Do you know whether, as part of the
9 initial due diligence, EFG Capital ever confirmed
10 the relationship between Citco as custodian of -- of
11 the Fairfield funds and Fairfield?

12 A. No, I do not.

13 Q. Have you ever talked to anyone at Citco,
14 the custodian, about custody of the Fairfield funds?

15 A. No, I have not.

16 Q. Do you know whether anyone at EFG Capital
17 has ever spoken to anyone at Citco, the custodian,
18 about its custody of the Fairfield funds?

19 A. No, I do not.

20 Q. Do you know whether, as part of the due
21 diligence of Fairfield, EFG collected any
22 information regarding Fairfield's insurance
23 coverage?

24 A. No.

25 Q. Was it information that -- was that

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Pages 57-60

00179

1 information gathered by you at any time during your
2 due diligence of Fairfield?

3 A. Can you be more specific with regards to
4 the type of insurance?

5 Q. D & O, slip and fall, any kind of
6 insurance relating to Fairfield.

7 A. No, I did not obtain information with
8 regards to the types of insurance that you've
9 described.

10 Q. Was it EFG's -- EFG Capital's policy to
11 collect insurance-related information from the funds
12 that it was conducting due diligence of? Or was
13 that just not part of what you guys collected?

14 A. Acquiring information about the insurance
15 that you described is not within EFG Capital's hedge
16 funds due diligence guidelines.

17 Q. Okay. Is there any type of insurance
18 that -- that EFG Capital collects as part of its due
19 diligence?

20 A. Generally, no.

21 Q. Let me show you what we'll mark as
22 Plaintiff's Exhibit 48.

23 (Thereupon, the referred-to document was
24 marked by the court reporter for Identification
25 as Plaintiff's Exhibit 48.)

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00181

1 Do you see those?

2 A. Yes.

3 Q. Does that refresh your recollection about
4 what the meeting was about?

5 A. No.

6 Q. Did you ever have a meeting with Fairfield
7 Greenwich in Miami about their due diligence
8 functions or about due diligence in general?

9 A. No.

10 Q. Who was Silvana Carmelino?

11 A. Silvana Carmelino was a client
12 relationship officer.

13 And in reviewing this e-mail, I now recall
14 the purpose of this meeting, which was to introduce
15 a client of the CRO to Fairfield Greenwich Group who
16 was visiting Miami.

17 Q. Do you recall why you were a participant
18 to that meeting?

19 A. Because, from time to time, I worked with
20 CROs who were recommending hedge fund investments to
21 their clients as a person who had generally regular
22 contacts with the fund managers.

23 Q. Okay. So what would your role at this
24 meeting have been or, if you remember specifically
25 what it was, what was it?

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00180

1 BY MR. KELLOGG

2 Q. And I'll ask you whether you recognize
3 this document.

4 A. I recognize this document as an e-mail
5 that was sent to me by Veronica at Fairfield.

6 Q. Do you remember receiving this e-mail?

7 A. No.

8 Q. Any -- any reason to believe you didn't
9 receive this e-mail?

10 A. I don't remember receiving the e-mail, but
11 I -- I know that, in review of the document, I
12 received it, and I recall the meeting.

13 Q. It describes a meeting with Santiago Reyes
14 of Fairfield in Miami on November 14, 2005.

15 Do you see that?

16 A. Yes.

17 Q. And you say you recall the meeting?

18 A. Yes.

19 Q. What was the meeting about?

20 A. I recall the meeting. I'm unclear in my
21 recollection of the purpose of the meeting.

22 Q. Well, you'll see there are some
23 attachments: A firm profile, I guess an attachment
24 on firm capabilities, and then a white paper on due
25 diligence and risk monitoring.

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1 A. My role at this meeting would have been to
2 support the CRO in her effort of introducing the, in
3 this case, Fairfield Sentry to the client and
4 liaising or serving as just general support for the
5 CRO in the process.

6 Q. But what support was -- were you going to
7 give her?

8 A. The support is that when you're
9 introducing a client to a hedge fund -- and, in this
10 case, Silvana Carmelino perhaps was not familiar
11 with the fund, nor was Santiago Reyes -- is to
12 provide continuity, make introductions, and let the
13 client know that the firm is -- is familiar with --
14 is familiar with the people that they were meeting
15 with.

16 Q. So your role was to -- going to be the
17 person to show the potential client that EFG Capital
18 had a relationship with Fairfield and -- and had
19 some knowledge about particulars of the fund that
20 and -- and could answer questions that might arise
21 about the fund?

22 MR. COATES: Object to form.

23 A. That overstates. The purpose was to
24 simply act as a -- as a liaison between the members
25 of the -- of the scheduled meeting.

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Pages 61-64

00183

1 BY MR. KELLOGG

2 Q. And what -- what does that mean, you would
3 put them in touch with Fairfield if they wanted
4 to --

5 A. No, it means that, in this -- in this
6 particular case, the client relationship officer had
7 made a request to have a client meeting with a
8 representative of Fairfield Greenwich Group in
9 Miami. And through investment services with
10 Veronica Barco, I facilitated that meeting and then,
11 as part of that process, attended that meeting to
12 make appropriate introductions.

13 Q. And do you recall making any presentations
14 or -- or talking at that meeting?

15 A. Other than introductions, no.

16 Q. If you look at some of the attachments
17 here --

18 A. Uh-huh.

19 Q. -- the first one is firm profile and
20 capabilities. Do you see that?

21 A. Yes.

22 Q. Was this something that was contained in
23 the due diligence file for Fairfield?

24 A. I don't recall.

25 Q. Is this something that you would expect to

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00185

1 MR. COATES: Object to the form.

2 You may answer.

3 A. I asked if the trade tickets or
4 confirmations were still available to EFG Capital
5 for review and received a response, "yes." And that
6 satisfied my due diligence requirement.

7 BY MR. KELLOGG

8 Q. If you turn to page 8206, tell me if you
9 disagree, but I think this is part of the second
10 attachment to Plaintiff's Exhibit 48. And this is
11 the firm profile, Fairfield firm profile?

12 MR. COATES: I'm sorry. We're at Bates
13 No. 8206?

14 MR. KELLOGG: Right. Because I think the
15 first exhibit is -- I'm sorry. It's a little
16 confusing. Because the first exhibit says
17 "first firm profile and capabilities," and this
18 document that we're looking at now doesn't
19 really have a cover page.

20 BY MR. KELLOGG

21 Q. And so my question to you is going to be:
22 Do you recognize this document that contains
23 page 8206.

24 A. I don't recall this document.

25 Q. If you turn to page 8206, Fairfield's

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00184

1 see in the due diligence file?

2 A. Depending upon the guidelines for the due
3 diligence process, it's something which may be
4 included, yes.

5 Q. Did Fairfield tout itself to EFG Capital
6 as providing full transparency to the operations of
7 each fund?

8 A. One of the features that Fairfield
9 Greenwich Group described as part of its service
10 offering was providing transparency and reporting to
11 investors on the funds that they sponsored.

12 Q. And what did you understand full
13 transparency to mean, or transparency?

14 A. Transparency? In the case of the
15 Fairfield Sentry fund, transparency meant that the
16 sponsor, Fairfield, was receiving information about
17 the trades of the fund, the company Fairfield Sentry
18 Limited and, in turn, was using that data to provide
19 reports to investors.

20 Q. And you testified earlier that, those
21 trade confirmations, you had asked Fairfield whether
22 those trade confirmations were still available to
23 EFG Capital for their review, but you didn't
24 actually ask nor did you ever see those trade
25 confirmations, correct?

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1 talking about its client support capabilities.

2 Do you see this general description here?

3 And there's some bullet points in the
4 middle that say "dedicated, experienced, FGB
5 personnel provide," and then there's a list of
6 things?

7 A. Yes, I see that.

8 Q. One of them is "customized due diligence
9 reporting." Do you see that?

10 A. Yes.

11 Q. What -- what does that mean? What -- do
12 you know what due diligence reporting is?

13 A. I don't know what that means.

14 Q. Did you ever have a conversation with
15 anyone at Fairfield about whether they could provide
16 customized due diligence reporting?

17 A. No.

18 Q. Did you ever ask anyone at Fairfield or
19 did you have an understanding of how they came to do
20 business with Bernard Madoff?

21 A. No.

22 Q. If you go to page 8214, this is another --
23 this is page 15 of the same attachment, and this is
24 talking about -- this is the section called
25 "Detailed Due Diligence." And in the first

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Pages 65-68

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1 paragraph, third sentence, it says there are a
2 number of areas of inquiry -- or "A number of areas
3 of inquiry are examined by a team of FGG
4 professionals who specialize in evaluating
5 respective areas of risk."
6 Do you see that?
7 A. Yes.
8 Q. Do you know -- what's your understanding
9 of who -- what the team of FGG professionals were?
10 A. FGG was a global organization consisting
11 of many different units, investment advisors,
12 foreign advisors, fund-of-funds teams, each of which
13 had the required staff investment professionals to
14 analyze the risks associated with the -- with the
15 investments that they were sponsoring.
16 Q. With regard to Fairfield's due diligence
17 function, did you have any understanding of whether
18 there was one or two, three key individuals who you
19 would go to when you wanted information about due
20 diligence?
21 A. It depended upon the product
22 Q. Okay. So for Fairfield Sentry, what was
23 your -- who would you turn to if you had a due
24 diligence question?
25 A. All inquiries were fielded by Veronica

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1 phase is extremely labor intensive for both internal
2 FGG resources and the external consultants we may
3 retain to assist in a technical aspect of due
4 diligence."
5 Do you see that?
6 A. Uh-huh.
7 Q. Do you have any understanding who -- the
8 external consultants that Fairfield used relating to
9 due diligence?
10 A. No, I do not.
11 Q. The next sentence is -- the next sentence
12 says, "Typically, a manager may be investigated and
13 monitored for 6 to 12 months before that firm is
14 accepted onto the FGG platform."
15 Do you see that?
16 A. Yes.
17 Q. Do you have -- have any understanding of
18 how long Mr. Madoff was monitored before his fund or
19 his services as manager were employed by Fairfield?
20 A. No.
21 Q. If you go to page 8216, the very last
22 sentence on the page says, "FGG also utilizes a
23 number of sophisticated third-party and internal
24 quantitative measurement tools to monitor the
25 performance of its managers."

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1 Barco and then they were delegated to the
2 appropriate person. In most cases, Amit would be
3 responsible for responding to issues that we had
4 with reference to the fund.
5 Q. And Amit was the chief risk officer?
6 A. Amit Vijayvergiya --
7 Q. Just call him "Amit."
8 A. -- was a vice president and the risk
9 manager of the manager, as stated in the offering --
10 in the manager's due diligence.
11 Sorry.
12 MR. COATES: Off the record for a minute.
13 VIDEOGRAPHER: Off the record. Time is
14 2:51.
15 (Thereupon, a discussion was held off the
16 record, after which the following proceedings
17 were held:)
18 VIDEOGRAPHER: We're back on the record.
19 Time is 2:52.
20 A. I'm sorry. What page are we on?
21 BY MR. KELLOGG
22 Q. The same page, 8214.
23 It says -- in the same paragraph, the top
24 paragraph, about halfway through the paragraph is a
25 sentence that starts, "This detailed due diligence

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1 Do you see that?
2 A. Yes.
3 Q. Do you have any understanding of -- of
4 what those tools that Fairfield is referencing are?
5 A. One of the tools that was provided to us
6 by Fairfield Sentry Limited in our due diligence of
7 the fund was a risk report provided by a third-party
8 named RiskMetrics.
9 Q. Okay. And what is -- what kind of
10 information was it providing, provided in those
11 RiskMetrics reports?
12 A. RiskMetrics reports uses performance data
13 to provide a wide range of statistical analysis
14 about the performance of the fund, its attributions,
15 and other relevant statistics about the underlying
16 investment.
17 Q. Okay. So is it a measure -- fair to say,
18 broadly, that it's a measure of investment
19 performance?
20 A. It includes a measurement of investment
21 performance and other industry standard types of
22 statistics to look at risk as well as return.
23 Q. Are there any other third-party tools that
24 you know of?
25 A. No.

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Pages 69-72

00191

1 Q. If you go to page 8229 and tell me if you
2 agree. But this seems to be a page from the white
3 paper that starts 8226 on due diligence and risk
4 monitoring. Do you see that?
5 A. Yes, the document I'm looking at is due
6 diligence and risk monitoring.
7 Q. Do you know whether this document was part
8 of or included in the EFG due diligence file on
9 Fairfield?
10 A. I don't recall.
11 Q. Is this something -- the type of document
12 that you would typically see in the file?
13 A. Depending upon the guidelines for due
14 diligence, I may have included it in the file.
15 Q. If a fund put out a white paper on due
16 diligence, is that something you'd collect as part
17 of EFG's due diligence data collection?
18 A. It may be reviewed but not necessarily
19 collected in terms being part of the due diligence
20 file for the fund. Depends upon the particular
21 circumstances.
22 Q. If you look at page 8229, the second
23 paragraph that starts "while some" -- do you see
24 that?
25 A. Yeah. Can you just give me a -- a moment

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00193

1 Q. -- I'm going to ask you about the -- the
2 first paragraph, if you want to read it real quick.
3 A. Yes.
4 Q. So, in this paragraph, Fairfield's
5 describing an ongoing monitoring that it does
6 similar to the ongoing monitoring that EFG did on a
7 monthly basis of all of its different funds that it
8 was on its approved list, correct?
9 A. Yes.
10 MR. COATES: I was going to object to form
11 of the question.
12 You may answer.
13 BY MR. KELLOGG
14 Q. And the second sentence of that paragraph
15 says, "Simply stated, the purpose of this ongoing
16 activity is to ensure that the fund continues to
17 follow its investment methodology and constraints
18 and otherwise acts in accordance with the
19 operational and risk framework that was approved
20 during the due diligence phase."
21 Do you see that?
22 A. Yes, I do.
23 Q. And so, from having done due diligence
24 over the course of your career, do you agree that
25 this type of ongoing risk monitoring, for the

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1 to look at the context of this?
2 Q. Sure.
3 A. We've got a lot of different things going
4 on.
5 Thank you.
6 Q. And so the second paragraph, the last
7 sentence says, "At this stage, FGG begins
8 qualitative and quantitative reviews of a manager's
9 past performance obtained from independent sources
10 as well as a series of manager interviews and
11 reference calls."
12 Do you see that?
13 A. Yes.
14 Q. Do you have any understanding of what
15 qualitative or quantitative reviews Fairfield did of
16 Mr. Madoff?
17 A. At what time frame, please.
18 Q. At any point.
19 A. No.
20 Q. Did you ever ask Fairfield whether they
21 had conducted a due diligence review of Mr. Madoff?
22 A. No.
23 Q. If you go to the page 8233, which has the
24 headline "Ongoing Risk Monitoring and Oversight" --
25 A. Yes.

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00194

1 reasons stated here, is -- is an important part of
2 the due diligence function conducted of a hedge
3 fund?
4 A. Yes.
5 MR. COATES: Object to form.
6 A. Sorry. Yes.
7 BY MR. KELLOGG
8 Q. If there are any material changes in a
9 fund or any information learned during ongoing risk
10 monitoring and oversight, doing that monitoring
11 allows -- allows a company to take the hedge fund
12 off of its approved list?
13 MR. COATES: Object to form.
14 You may answer.
15 BY MR. KELLOGG
16 Q. Correct?
17 A. I'm sorry. I -- I don't understand the
18 question.
19 Q. You lost the question?
20 A. Yeah.
21 Q. Okay. There were a couple of long pauses
22 in there. See if I can rephrase it.
23 The question was: Doing the ongoing risk
24 monitoring and oversight is important for the reason
25 that, if the fund changes or if there's a material

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Pages 73-76

00195

1 adverse event, it allows you to take the fund off of
 2 the approved list, if it's already on the approved
 3 list?
 4 MR. COATES: Object to form.
 5 You may answer.
 6 BY MR. KELLOGG
 7 Q. Would you agree with that?
 8 A. I disagree.
 9 Q. Okay. What's the reason, in your mind,
 10 ongoing risk monitoring is important?
 11 A. Ongoing risk monitoring is important
 12 because it fulfills the obligation that EFG Capital
 13 has as it relates to Fairfield Sentry in
 14 recommending the fund to its customers. Any
 15 provision of risk monitoring, transparency, or other
 16 types of information to assist us in the process of
 17 evaluating the ongoing suitability of the product
 18 is -- is of high importance.
 19 Q. And you said it's important because it
 20 fulfills the obligation that you have to due -- to
 21 conduct due diligence.
 22 But what is the reason that obligation is
 23 implemented in the first place?
 24 A. Because we're obligated to perform product
 25 specific suitability on all of the investments that

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00197

1 offering memorandum which is its audited financial
 2 statement.
 3 Q. And the reason I ask that question is
 4 because the very last sentence on this page, which
 5 begins "while FGG has an ongoing" -- do you see
 6 that?
 7 A. Yes, I do.
 8 Q. It says, "The relationship involves
 9 frequent monitoring and continuing dialogues. A
 10 formal annual due diligence review is conducted."
 11 I guess what it's referring to is a due
 12 diligence review of the manager. So Fairfield
 13 conducts a review of the manager.
 14 A. Yes.
 15 Q. Is that your understanding?
 16 A. Yes.
 17 Q. Have you ever seen or did Fairfield ever
 18 provide EFG, as far as you know, a formal annual due
 19 diligence review of Mr. Madoff's firm?
 20 A. I don't know.
 21 Q. Do you -- did you ever ask for any -- any
 22 such review, from Fairfield?
 23 A. Are you -- are you referencing this as a
 24 document in existence?
 25 Q. Yes.

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1 we recommend to our customers.
 2 Q. And why?
 3 A. Because we're a member firm and that's
 4 part of our conduct rules.
 5 Q. Okay. And you say "member firm."
 6 What do you --
 7 A. I apologize. A FINRA-member firm.
 8 Q. And so FINRA requires an ongoing
 9 monitoring of the funds that are on your approved
 10 list, correct?
 11 MR. COATES: Object to the form.
 12 You may answer.
 13 A. No, I can't specifically state one rule
 14 that FINRA has that requires a member firm to have
 15 ongoing monitoring of hedge funds. Generally, our
 16 conduct and the practices of our firm is to monitor
 17 those investments for suitability if they're
 18 included on a list that our CROs may recommend to
 19 their clients.
 20 BY MR. KELLOGG
 21 Q. Did Fairfield provide EFG with any formal
 22 annual due diligence review?
 23 A. Fairfield Sentry Limited provided its
 24 investors with a quarterly investment report, in
 25 addition to its required report, based upon the

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00198

1 A. I don't know that this document existed.
 2 Q. Did you ask Fairfield whether a formal
 3 annual due diligence review was conducted at any
 4 time of Mr. Madoff's firm by Fairfield?
 5 A. No.
 6 Q. Do you know whether anyone at EFG Capital
 7 ever asked anybody at Fairfield whether such a
 8 review was performed by Fairfield?
 9 A. No.
 10 Q. I'll show you what we've marked as
 11 Plaintiff's Exhibit 24.
 12 MR. KELLOGG: And Joe, I'm providing this
 13 document in redacted format. I don't know if
 14 you still are holding a privilege objection to
 15 this. Or, actually, I forget where we even
 16 came out in the deposition a couple months ago
 17 of Mr. Echevarria. But I'm showing him the
 18 redacted version, so I'll only ask him
 19 questions about the redacted version.
 20 BY MR. KELLOGG
 21 Q. And so I'll ask you, Mr. Donnell, if you
 22 recognize this document?
 23 A. Yes, I do.
 24 Q. Okay. And what is this document?
 25 A. This document is correspondence to

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00199

1 Lawrence Howell, Marcelo Alvarez, Victor Echevarria,
2 Mark McCluskey from Dart Montgomery, and it is notes
3 of a meeting with Jeffrey Tucker of Fairfield
4 Greenwich Group on July 11 and 12, 2000.

5 Q. Okay. And is this the initial due
6 diligence information that you -- you referenced
7 earlier that was contained in the Fairfield file
8 when you started at EFG?

9 A. Yes, this is one of the documents
10 contained in -- in that file.

11 Q. Was there another document that had
12 similar or additional information, like this, that
13 you used as part of your creation of the initial due
14 diligence memorandum?

15 A. There were other written narratives of the
16 manager meetings that were conducted by -- by
17 members of EFG Capital and its directors in
18 performing initial due diligence of Fairfield
19 Sentry.

20 Q. Okay. Do you remember any of them
21 specifically, what they look like or what
22 information they contained?

23 A. Just as I recognize this one, I do --
24 would recognize the other ones, perhaps.

25 Q. Prior to your deposition today, did you

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1 A. No.

2 Q. Have you ever met Mr. Montgomery?

3 A. Yes, I met him once.

4 Q. Okay. Do you remember the circumstances
5 of your meeting?

6 A. He was visiting EFG.

7 Q. Was that after he stopped working there?

8 A. When I was -- as a consultant employee of
9 EFG, Dart was not an employee when I was there. I
10 don't know what his terms of his employment were.

11 Q. But you didn't have a conversation with
12 him about Fairfield or Fairfield's due diligence; is
13 that correct?

14 A. Correct. Yes.

15 Q. Did you ever speak with Mark McCluskey
16 about Fairfield due diligence?

17 A. No.

18 Q. Have you ever met or spoken with
19 Mr. McCluskey?

20 A. No.

21 Q. What about Mr. Howell? Did you ever speak
22 with him about the EFG due diligence of Fairfield?

23 A. No.

24 Q. Have you ever had a conversation with
25 Mr. Howell?

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00200

1 have any -- without telling me what you talked
2 about, did you have any conversations or meetings
3 with your lawyers?

4 A. I met with the lawyers yesterday.

5 Q. Okay. For approximately how long?

6 A. Three to four hours.

7 Q. Did you review documents as part of that
8 meeting?

9 A. I was presented with between two and four
10 documents.

11 Q. Other than the documents that you were
12 presented with yesterday, did you do any independent
13 review of documents in preparation for your
14 deposition today?

15 A. No.

16 Q. Do you remember the last time you saw this
17 document?

18 A. Yes, under company counsel supervision in
19 the production of the information that I had with
20 regards to Fairfield Sentry.

21 Q. So this document was in your file when it
22 was produced?

23 A. I don't recall.

24 Q. Did you ever have a conversation with Dart
25 Montgomery about Fairfield Sentry?

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00202

1 A. Yes.

2 Q. Okay. Did it relate in any way to due
3 diligence either of other funds that EFG Capital
4 offers or Fairfield?

5 A. No.

6 MR. COATES: Jason, could we go off the
7 record quickly?

8 MR. KELLOGG: Unless we're going to talk
9 about attorney matters.

10 MR. COATES: Yeah, I want to -- well, is
11 there a question pending? I want to talk to
12 you, not -- not with him.

13 MR. KELLOGG: Okay. Can we --

14 MR. COATES: Let's go off the record.

15 MR. KELLOGG: Can we do it on the record?

16 MR. COATES: Sorry?

17 MR. KELLOGG: Can we do it on the record?

18 MR. COATES: No. I want to talk to you
19 off the record. I have a question.

20 MR. KELLOGG: Let's go off the record real
21 quick.

22 VIDEOGRAPHER: Off the record. Time is
23 3:11.

24

25

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Pages 81-84

00203

1 (Thereupon, a discussion was held off the
2 record, after which the following proceedings
3 were held.)
4 (Thereupon, the referred-to document was
5 marked by the court reporter for identification
6 as Plaintiff's Exhibit 49.)
7 VIDEOGRAPHER: We're now back on the
8 record. The time is 3:12.
9 BY MR. KELLOGG
10 Q. Okay. Show you what we've marked as
11 Plaintiff's Exhibit 49.
12 The question is whether you recognize this
13 e-mail dated April 4, 2006 from Veronica Barco to
14 you.
15 A. Yes, I do.
16 Q. Can you remember receiving this e-mail?
17 A. Yes.
18 Q. And it describes a due diligence
19 conference call with Amit and -- for April 6 --
20 April 6, 2006. Do you see that?
21 A. Yes, it confirms a conference call for
22 that date.
23 Q. Okay. And do you remember having a
24 conference call with Amit on or around April 6,
25 2006?

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1 A. No.
2 Q. Do you remember having a conference call
3 with Amit regarding due diligence of Fairfield
4 Sentry?
5 A. Yes.
6 Q. Okay. And do -- what did you discuss with
7 Amit about Fairfield's due diligence?
8 A. I don't recall the specific contents of
9 his call on April 4, 2006.
10 Q. But, in general, you remember having
11 conversations with him about due diligence?
12 A. Yes.
13 Q. And so the question is: What -- what did
14 you talk about in the context of due diligence with
15 Amit?
16 A. Generally speaking, a call with a -- a
17 risk manager, a portfolio manager would be for me to
18 receive an update on the information required by --
19 by our written procedures for an ongoing review of
20 hedge funds.
21 Q. Do you ever -- do you recall ever calling
22 a meeting with Amit or anyone at Fairfield about due
23 diligence that didn't involve you asking for
24 information to update the information required by
25 EFG's written procedures?

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00205

1 A. Well, EFG's written procedures were the
2 guidelines for which I conducted my activities, so
3 those calls would always be within the context of
4 that.
5 Q. So -- so periodically -- so -- but
6 periodically you would call -- strike that.
7 Did the procedures ask or require you to
8 periodically review or obtain information from
9 Fairfield, with regard to --
10 A. Yes. Yes.
11 Q. And so you would contact Fairfield
12 periodically, correct?
13 A. Yes.
14 Q. Was there any time that you contacted them
15 that wasn't part of that periodic request for
16 information to update your written procedures --
17 update your due diligence file?
18 A. I had numerous different points of contact
19 and reasons for contacting Fairfield Greenwich
20 Group, the organization, throughout my time with the
21 firm. It included due diligence calls like the one
22 referenced in -- or conference calls like the one
23 referenced in this document. However, there was a
24 number of different purposes for which I -- I
25 communicated with members of Fairfield.

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00206

1 Q. What do these written procedures, what do
2 they look like, what is their format?
3 A. The written procedures, I believe the
4 title of the document is "EFG Capital Hedge Fund
5 Procedures."
6 MR. KELLOGG: Just so I'm not fumbling
7 around -- maybe we need Jon here -- but was
8 there a document produced that had that title?
9 MR. COATES: I'll check with John. He's
10 been in charge of all the discovery production.
11 I don't know whether you asked for it or not,
12 for starters, but we'll check with John when he
13 comes back in.
14 BY MR. KELLOGG
15 Q. And were -- was this document, the "EFG
16 Capital Hedge Fund Procedures," was that specific to
17 ongoing -- ongoing monitoring or did it involve due
18 diligence procedures from soup to nuts?
19 A. It covered all aspects of the firm's
20 activities related to hedge funds.
21 Q. Lourdes Barreneche, she's CC'd on this
22 e-mail?
23 A. Yes.
24 Q. Do -- do you know why she was CC'd or was
25 she typically CC'd on the communications you had

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00207

1 with Ms. Barco?

2 A. Yes, investment services represented by
3 Ms. Barco regularly would copy the marketing partner
4 or person involved with a client.

5 Q. And the other CC is LB team.
6 Do you see that?

7 Do you know what that is?

8 A. I assume it's Lourdes Barreneche team.

9 Q. Okay. Do you have any idea of who
10 comprised the Lourdes Barreneche team?

11 A. I know that Lourdes Barreneche supervised
12 Veronica Barco and another investment services
13 person.

14 Q. I'll show you what we'll mark as
15 Exhibit -- Plaintiff's Exhibit 50.

16 (Thereupon, the referred-to document was
17 marked by the court reporter for identification
18 as Plaintiff's Exhibit 50.)

19 BY MR. KELLOGG

20 Q. Okay. So the question is whether you
21 recognize this e-mail from Veronica Barco to you
22 dated April 17, '06.

23 A. Yes, I recognize this.

24 Q. Okay. And this is an e-mail that was sent
25 approximately two weeks after the -- the e-mail we

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00209

1 you can meet with Dan Lipton or schedule a call with
2 Amit to discuss the trade tickets of the fund."

3 Do you see that?

4 A. Yes.

5 Q. Okay. What prompted an in-person meeting
6 to discuss the sample risk reports of Fairfield?

7 A. What prompted it?

8 Q. In other words, she's attempting to set up
9 that meeting, right?

10 A. Yes. She has extended an offer for me to
11 follow up on the question that I had asked as part
12 of our due diligence of Fairfield Sentry which was
13 an operational question of whether or not the trade
14 tickets or confirmations were still available to EFG
15 Capital. Those tickets were made available in
16 person by visiting the offices of Fairfield.

17 Q. And did you go back to New York at any
18 point and meet with Dan Lipton or Amit to discuss
19 the trade tickets of the fund?

20 A. No.

21 Q. And why not?

22 A. The requirements of my due diligence at
23 Fairfield Sentry regarding the operational
24 availability of trade tickets or confirmations was
25 satisfied.

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00208

1 just looked at, right?

2 A. Yes.

3 Q. And it references a meeting that you had
4 at Fairfield's offices. Do you see that?

5 A. Yes.

6 Q. Do you recall that meeting?

7 A. Yes, I do.

8 Q. Okay. What was that meeting about?

9 A. That meeting was in reference to new
10 offerings that Fairfield was sponsoring.

11 Q. Okay. And then, about halfway through the
12 e-mail, it says, "As a follow-up to the meeting held
13 last Monday, please let us know your availability to
14 schedule a conference call with Amit to go" after
15 the -- "to go over the sample risk reports of
16 Fairfield Sentry."

17 Do you see that?

18 A. Yes, I do.

19 Q. Do you know what prompted -- I didn't
20 finish. "Fairfield Sentry." Sorry.

21 It says, "Please let us know your
22 availability to schedule a conference call with
23 Amit" to go -- "to go over the sample risk reports
24 of Fairfield Limited. Please let us know once you
25 are back in New York, so that we can make sure that

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00210

1 Q. By what? What satisfied it?

2 A. That they answered that they continued to
3 be available to EFG.

4 Q. Okay. And did they tell you that on a --
5 on a phone call?

6 A. I believe we discussed it in a previous
7 face-to-face meeting referenced here last Monday.

8 Q. If that had met your requirements and you
9 were satisfied by what they told you at that
10 meeting, why was Fairfield offering to set up

11 another meeting between you and Dan Lipton or Amit
12 to discuss the trading tickets?

13 A. Because the way that I posed the question
14 to Fairfield was not one of satisfy my operational
15 due diligence requirements. I asked them, "I would
16 like to see the tickets. May I?" I felt that was a
17 more effective way of getting an accurate response.

18 Q. Okay.

19 A. And their response was, of course, "We'll
20 schedule a meeting." I did not follow up not
21 because I was deficient, but the answer to the
22 question satisfied our due diligence requirements.

23 Q. So after they offered to show you the
24 trading tickets, or set up a meeting to show you the
25 trading tickets, you didn't follow up and actually

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00211

1 go and see the trading tickets?

2 A. Yes.

3 Q. And that -- that's because, under the
4 written procedures outlined by EFG for hedge fund
5 due diligence, all you needed to confirm was that
6 those tickets would be made available to you,
7 correct?

8 A. No. It wasn't under the -- the specific
9 question or specific factors that we evaluated on a
10 specific fund like Fairfield Sentry Limited were
11 guided by our hedge fund procedures. But the
12 procedures did not say check to see if Fairfield
13 Sentry Limited has trading tickets. What the
14 procedures did have and what, under the supervision
15 of Sixto Campano, was various questions or various
16 elements of a fund that we wanted to focus on during
17 our conversations during our manager visits.

18 Q. And you know now that there were -- there
19 were no trades executed by Mr. Madoff, right?

20 A. I do know now that -- based upon public
21 information, that the trades were not executed by
22 Bernard Madoff. And we did rely on the FINRA audits
23 and the SEC audits of the investment manager under
24 the broker/dealer at the time prior to that public
25 information becoming available.

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00213

1 (Thereupon, the referred-to document was
2 marked by the court reporter for Identification
3 as Plaintiff's Exhibit 51.)
4 VIDEOGRAPHER: Back on the record. Time
5 is 3:44.

6 BY MR. KELLOGG

7 Q. Mr. Donnell, I'll show you what we marked
8 as Plaintiff's -- Plaintiff's Exhibit 51. I'll ask
9 you whether you recognize this document.

10 A. Yes, I do.

11 Q. Okay. Did you receive this e-mail from
12 Veronica Barco on or about April 24, '06?

13 A. Yes.

14 Q. Okay. And this is about a week after the
15 e-mail that was sent to you that I've shown you as
16 Plaintiff's Exhibit 50, right?

17 A. Yes.

18 Q. And this is an e-mail sent to you on a
19 Monday and it references a conference call you had
20 with Amit last Friday.

21 Do you recall that conference call?

22 A. Yes.

23 Q. Do you remember what was discussed during
24 that conference call?

25 A. No.

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00212

1 Q. And what was your understanding of -- of
2 the nature of those audits?

3 A. That the -- both -- that the broker/dealer
4 did not have any sanctions or fines or activities
5 against it.

6 Q. And what -- what types of things did the
7 auditors look at when they're examining a
8 broker/dealer like Mr. Madoff's firm?

9 A. Specifically, I don't know what the
10 examiners looked at in his broker/dealer
11 examination. However, I do know that there was no
12 negative outcome of those examinations.

13 Q. But you don't know what they were looking
14 at?

15 A. No, I don't.

16 Q. And you didn't know at the time what they
17 were looking at?

18 A. No, I do not.

19 MR. KELLOGG: Let's go off the record real
20 quick.

21 VIDEOGRAPHER: Going off the record. Time
22 is 3:25.

23 (Thereupon, a discussion was held off the
24 record, after which the following proceedings
25 were held:)

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00214

1 Q. Do you recall whether it had to do with
2 the trading tickets as we were talking about in
3 reference to Exhibit 50?

4 A. It's my recollection that, this period of
5 time, we were reviewing the different FGG risk tools
6 in existence.

7 Q. Okay. And what -- what does that mean,
8 the risk tools?

9 You told me earlier about RiskMetrics.

10 A. Yes.

11 Q. Is that what you're talking about?

12 A. Yes.

13 Q. And so he sends you -- or she sends you
14 two things, an historical stress test definition and
15 a -- and some sample risk reports?

16 A. Yes.

17 Q. And are those what is attached to this
18 e-mail?

19 A. Yes.

20 Q. And I guess the stress test definition is
21 the first page, page 273?

22 A. Yes.

23 Q. And what does this document tell you?

24 A. What this document tells us and the reason
25 it was requested is that, in the analysis of

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Pages 93-96

00215

1 investments, one of the tools that is used is to
2 look at a portfolio and how it reacted to major
3 historical events which are known as stress tests.
4 So the question put forth was: In the analysis of
5 the portfolio as we look backward, which -- what
6 historical scenarios have you defined within your
7 stress test? And this then gives you the dates and
8 description of the scenarios that they've used.

9 Q. And then the second attachments, which is
10 the remaining pages, is that RiskMetrics report that
11 you referenced earlier?

12 A. Yes.

13 Q. Okay. And what does -- what does this
14 tell you?

15 A. This report is a report which provides
16 information about the exposure of the portfolio, the
17 sensitivity of the portfolio to various factors, as
18 well as includes other things like predictive stress
19 tests as well as a value at risk model. And the
20 purpose of obtaining and discussing the document was
21 to review the investment manager's analysis of the
22 portfolio and the tools that they use for the
23 portfolio.

24 Q. And what did you do with this information
25 once you received it?

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00217

1 information contained in these reports?

2 A. I reviewed this information with Sixto
3 Campano.

4 Q. Do you understand the information that's
5 contained in these reports? I'm talking about the
6 RiskMetrics reports now.

7 A. I understand the purpose of the reports
8 and understand generally, based upon explanations
9 provided to me by Amit, the risk manager, the ways
10 in which the reports were used and the intention of
11 the -- of the report.

12 Q. But is this a document -- a document that
13 contains technical information that may be beyond
14 the scope of your understanding?

15 A. I have a general understanding of the
16 different statistics and analysis used in the
17 report. I'm not an expert at interpreting this
18 report but it satisfied our due diligence
19 requirement.

20 Q. And if you notice, in the top of
21 RiskMetrics report, it describes the fund Fairfield
22 Sentry. But it's -- this is analyzing investments
23 that were made by -- or at least reported by BMIS,
24 correct?

25 A. No.

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00216

1 A. Once -- once we received the information,
2 it satisfied the -- the question of that time frame
3 in terms of getting a better understanding of the
4 FGG risk tools that were used by the investment
5 manager.

6 Q. So was it you just kind of confirming that
7 they had risk tools that they were implementing --

8 A. It was not only to confirm them but to
9 have a conversation with the head of risk to
10 understand the manner in which the reports were
11 used, as well as to see that they had employed a
12 third party, RiskMetrics, an industry standard in
13 reporting, to provide that service.

14 Q. Okay. And did you have a conference -- or
15 a call with the risk person -- I guess it would be
16 Amit -- about --

17 A. Uh-huh.

18 Q. -- about this?

19 A. Yes.

20 Q. Okay. And did that occur after the sample
21 risk reports were sent to you on April 24?

22 A. I don't have my calendar, so I don't know
23 the exact dates, but the sequence was a series of
24 calls related to the FGG risk tools.

25 Q. And did anyone at EFG analyze the

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00218

1 Q. What's incorrect about that?

2 A. This report is a analysis of the
3 securities held by the fund Fairfield Sentry Limited
4 and is provided by its investment manager, Fairfield
5 Greenwich (Bermuda).

6 Q. Do you know who reported to RiskMetrics
7 the information that was contained in this report?

8 A. I don't recall.

9 Q. Did you -- do you recall asking Fairfield?

10 A. Yes.

11 Q. You just don't recall what they said?

12 A. Yes.

13 Q. Do you have any understanding why the fund
14 company here is listed as Fairfield Greenwich
15 (Bermuda)?

16 A. The investment manager to the fund
17 Fairfield Sentry Limited is Fairfield Greenwich
18 (Bermuda).

19 Q. Okay. So my -- my question before was
20 off. I agree.

21 Was -- do you have any understanding
22 whether the information provided to RiskMetrics that
23 was used in this report was provided by Fairfield
24 Greenwich (Bermuda) or by BMIS?

25 A. I don't know.

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Pages 97-100

00219

1 Q. Back to the cover page, cover e-mail, the
2 last paragraph describes sending you an NDA.
3 Do you know what that is?
4 A. An NDA is an abbreviation for a
5 nondisclosure agreement.
6 Q. I'll show you what's already been marked
7 as Plaintiff's Exhibit 18.
8 I'll ask you if you recognize this
9 document.
10 A. I don't recognize this document.
11 Q. Okay. Do you know whether this is a
12 document that was contained in your -- your due
13 diligence file at Fairfield?
14 A. I don't recall.
15 Q. If you turn to page 327, the -- there's a
16 paragraph called "Investment Team"?
17 A. Yes.
18 Q. And it says, "The investment team is
19 headed by Harold Greisman," G-R-E-I-S-M-A-N, "chief
20 investment officer."
21 Do you see that?
22 A. Yes.
23 Q. Did you ever talk to Mr. Greisman?
24 A. No.
25 Q. Do you know if anyone of -- at EFG Capital

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00221

1 A. I do not.
2 Q. Do you know what the purpose of this
3 document is?
4 A. The purpose of this document is for
5 Greenwich Alternative Investments to have a
6 quarterly call with the manager or its designate to
7 get information about the fund and the firm as well
8 as a portfolio commentary.
9 Q. Do you know whether -- strike that.
10 What did -- was this document provided to
11 EFG after it was created by GAI?
12 A. Yeah, in accordance with our procedures,
13 the document was sent to EFG electronically.
14 Q. Okay. And who would -- who received it
15 at -- at EFG?
16 A. At EFG Capital, I received it. And as
17 part of the report that I prepared to be given to
18 the hedge fund risk committee, this was included in
19 that.
20 Q. Okay. What was the report that you
21 gave --
22 A. I'm sorry. Let me finish the last answer.
23 It was also accessible to all board
24 members through a password-protected web site so
25 that they could obtain the information independently

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00220

1 who ever spoke to Mr. Greisman?
2 A. No, I don't know.
3 Q. I'll show you what we'll mark as
4 Plaintiff's Exhibit 52.
5 (Thereupon, the referred-to document was
6 marked by the court reporter for identification
7 as Plaintiff's Exhibit 52.)
8 BY MR. KELLOGG
9 Q. And I'll ask you if you recognize this
10 document.
11 A. Yes.
12 Q. Okay. And what is this?
13 A. These are portfolio characteristics
14 provided by Greenwich Alternative Investments/EFG
15 Capital under its outsource agreement.
16 Q. Okay. And what is an outsource agreement?
17 Okay. It's GAI?
18 A. Yes. Greenwich Alternative Investments.
19 Q. So is it GAI who drafted this?
20 A. This is GAI's work product, yes.
21 Q. So it would have been GAI who had a
22 conversation with Veronica and Deesha?
23 A. Yes, per our -- per their outsource
24 agreement.
25 Q. Do you know who Deesha is?

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00222

1 of me.
2 Q. Okay. And that was my next question:
3 What did --
4 A. Sorry.
5 Q. What did you do with it?
6 And it sounds like you made it available
7 to others to -- to view, right?
8 A. This information was available to be
9 viewed by board members or members of the hedge fund
10 risk management committee, and it was also included
11 in the -- in the presentation that was made to that
12 committee.
13 Q. And what was the presentation that was
14 made to the committee?
15 A. The presentation that was made to the
16 committee consisted of three sections.
17 Q. And what were those sections?
18 A. The first section was a overview of hedge
19 fund performance by strategy basis, the second
20 section was a review of each of the funds within the
21 EFG platform that were being recommended, and the
22 third section addressed any types of watch list
23 issues or concerns that needed to be raised to the
24 participants of the committee.
25 Q. And was this part of your responsibility,

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00223

1 to gather information and make -- on due diligence
2 and make a presentation to the committee?
3 A. Yes.
4 Q. And did you ever make a presentation to
5 the committee about -- about the Fairfield fund?
6 A. Fairfield Sentry Limited as a -- as a fund
7 included on approved list was reviewed within
8 this -- within this documentation process.
9 Q. And as part of the presentation, was
10 any -- was any written analysis provided to the
11 board -- to the committee?
12 A. The analysis that was included with the
13 portfolio characteristics referenced in this
14 Exhibit 52, on a quarterly basis. On a -- on a
15 monthly basis, Fairfield Sentry Limited was not
16 included in the -- in the documentation as a
17 specific reference in the third section of a watch
18 list item or a fund needing special consideration
19 because it never warranted it. Its performance was,
20 however, included in the -- the portfolio grid and
21 performance table as well as in the dashboard that I
22 mentioned earlier today, which was independently
23 provided to members by Fairfield -- excuse me --
24 Greenwich Alternative Investments.
25 Q. And so that work product was provided to

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00225

1 Q. And it says, "The fund has established
2 nondiscretionary brokerage accounts at BLM."
3 A. Yes.
4 Q. What does that mean?
5 A. It means that the fund has a brokerage
6 account at BLM but that BLM does not have discretion
7 over the investment of the assets or money held at
8 BLM.
9 Q. So the assets in those brokerage accounts
10 are unrelated to the investments that are made in
11 Fairfield Sentry? Is that your understanding?
12 A. No.
13 Q. What is your understanding?
14 A. That the fund has an account, a brokerage
15 account at BLM, but that BLM does not have
16 discretion over those assets.
17 Q. I'll show you what we marked previously as
18 Plaintiff's Exhibit 27. And I'll ask you whether
19 you recognize this.
20 A. Yes.
21 Q. Okay. And what is this?
22 A. This is a checklist which was used as part
23 of EFG Capital's due diligence and hedge fund review
24 process.
25 Q. And what specifically -- how specifically

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00224

1 the committee on a monthly basis or whenever you had
2 the -- these presentations?
3 A. The -- the committee met monthly. Its
4 intention was to meet monthly and as close to it as
5 possible.
6 Q. And does EFG Capital still have copies of
7 to documentation that was used during those
8 presentations?
9 A. Yes.
10 (Thereupon, the referred-to document was
11 marked by the court reporter for identification
12 as Plaintiff's Exhibit 53.)
13 BY MR. KELLOGG
14 Q. I'm going to show you what we've marked as
15 Plaintiff's Exhibit 53. Tell me if you recognize
16 this document.
17 A. The document -- the document's not dated.
18 I don't -- I don't recognize it.
19 Q. Do you know whether this was a document
20 that was contained in the EFG due diligence file?
21 A. I don't know.
22 Q. If you turn to page 355, the page called
23 "Unique Fund Structure," and at the bottom, there's
24 an oval that says "Sentry." Do you see that?
25 A. Yes.

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00226

1 did EFG use this information?
2 A. This document was used in preparation of
3 the package that was presented to the product
4 approval committee for the review and approval of a
5 hedge fund to be added to the recommended list.
6 Q. Okay. And is this document simply telling
7 the product approval committee that these specific
8 types of documents have been received and reviewed?
9 A. Yes. At the time, the requirement for
10 submission was that the documents listed below had
11 been received and reviewed.
12 Q. Okay. And who would they have been
13 reviewed by?
14 A. As part of the overall due diligence
15 process, the review would be by myself or by Sixto
16 Campano. This was all part of the overall process
17 of creating the -- the due diligence memorandum.
18 Q. And what was the level of the review
19 that -- that either you or Mr. Campano conducted of
20 these documents?
21 A. The -- the review of those documents are
22 incorporated into the due diligence memorandum based
23 upon the required fields of information.
24 Q. There's a bar beneath it. It says, "HFN
25 notes." Do you see that?

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Pages 105-108

00227

1 A. Yes, I do.
2 Q. What's HFN?
3 A. HFN is an abbreviation for hedge fund
4 navigator.
5 Q. Okay. And what is that?
6 A. HFN navigator was a terminology used when
7 I joined the firm in 2005 around the approved list.
8 Q. Okay. So the approved list was on
9 something called "hedge fund navigator"? Was that
10 the place --
11 A. It had -- well, no, it -- it would -- no.
12 It simply is a description of our hedge fund review
13 activities prior to my time at the firm.
14 Q. Okay.
15 A. So I -- I adopted the HFN internal
16 branding, if you will, of the -- our -- of our hedge
17 fund due diligence activities.
18 Q. Due diligence was characterized as hedge
19 fund navigator before you came?
20 A. No, the -- again, the use of HFN or
21 navigator was typically used around the overall
22 hedge fund offering. It's not terribly relevant and
23 I don't necessarily recall why I used it when
24 creating this template.
25 Q. Were there any other checklists like this

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00229

1 A. The development of the program in 2005
2 reflected the different standards in the industry of
3 what was considered to be a complete due diligence
4 at that time and based upon the specific
5 availability, however.
6 Q. So the standard in the industry at the
7 time was to obtain subcustodial agreements between
8 custodians and their subcustodians?
9 A. The -- in terms of the documentation
10 associated with a provider to a fund, the -- the
11 best practice is to obtain the most amount of
12 information you can that's available to you and
13 exhaust that within the due diligence process.
14 Q. And -- and why is that? Why is it
15 important to exhaust the amount of information you
16 receive?
17 A. Well, it's -- it's important within the
18 due diligence process, in my opinion, to be able to
19 review all the relevant documents to all parties who
20 are listed in the directory of their fund as being
21 service providers.
22 Q. Is it also important to communicate with
23 those service providers to confirm that the
24 relationship -- the relationships reflected in those
25 agreements exist?

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00228

1 that EFG used as part of their due diligence review?
2 A. Yes.
3 Q. Okay. And what -- what checklists were
4 used?
5 A. As EFG Capital's due diligence and hedge
6 fund review procedures evolved over time, additional
7 fields of information and templates in terms of
8 checklists were added, and those are in the EFG
9 Capital hedge fund procedures.
10 Q. As part of the due diligence review of
11 Fairfield Sentry, did EFG Capital ask Citco for its
12 subcustodial agreement with BMIS?
13 A. In performing due diligence, I did not
14 make that request of Citco.
15 Q. Do you know whether EFG Capital -- anyone
16 at EFG Capital did?
17 A. I do not know.
18 Q. Is that not something that would be part
19 of the overall documentation that EFG collects from
20 head fund -- hedge funds?
21 A. Beginning in 2005, for initial due
22 diligence, it was something that would have been
23 included in our due diligence process.
24 Q. And why is that? What was it -- why was
25 it included after 2005?

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00230

1 A. Well, certainly. It -- it depends,
2 however, on the facts and circumstances. And under
3 certain circumstances, there -- it may not be the
4 availability or access to that information.
5 Q. I'll show you what we've previously marked
6 as Exhibit 20. And I think this was Defendant's
7 Exhibit 20. And I'll just quickly turn your -- your
8 attention to page 951.
9 A. May I have a moment just to look at the
10 cover page?
11 Q. Sure.
12 A. Thank you.
13 Thank you.
14 Q. The second to last paragraph that's --
15 A. I'm sorry. The page?
16 Q. 951?
17 A. Got it.
18 Q. Starts, "You and your investment
19 representatives are invited to ask questions of and
20 to obtain additional information from the
21 administrator or investment manager concerning the
22 fund, including additional information to verify the
23 completeness or accuracy of the information in this
24 memo."
25 So, at least with regard to the

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Pages 109-112

00231

1 administrator, information would have been made
2 available to you, to EFG, or to any investor who
3 asked for it?

4 A. Yes.

5 Q. And information would have been available
6 from the investment manager Fairfield Greenwich
7 (Bermuda), if asked?

8 A. Yes.

9 Q. Are you aware of whether -- of whether
10 additional information was available from Citco as
11 custodian?

12 I guess the -- the other way to ask the
13 question is: Do you know of any -- any impediment
14 to asking for information from Citco as custodian
15 relating to the Fairfield fund?

16 A. No, I don't.

17 Q. Okay. Do you know of any impediment to
18 receiving information between BMIS and Fairfield
19 relating to the Fairfield fund?

20 A. No.

21 Q. Do you know of any impediment to obtaining
22 information from PWC as auditor of the Fairfield
23 fund?

24 A. No.

25 Q. Okay. I'll show you what had previously

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00233

1 A. The Barron's article, I obtained
2 independently, and the MARHedge article, I received
3 from counsel.

4 Q. You say you received the Barron's article
5 independently. Independently from whom?

6 A. I went online.

7 Q. So you didn't see it in this format; you
8 saw it on an online format?

9 A. Yes.

10 Q. Was it sent to you in an e-mail?

11 A. No.

12 Q. You -- how did you access the article?

13 A. There were excerpts of it on several sites
14 when you Google it, and the Barron's article is a
15 very popular discussion point when the gentleman was
16 having his testimony to -- I believe to Congress.

17 Q. The writer?

18 A. Markopolos.

19 Q. Okay. Were these articles in the EFG due
20 diligence file of Fairfield when you started in
21 2005?

22 A. No. Excuse me. No.

23 Q. Are these the types of things that you
24 would expect to see in a -- in a due diligence file?

25 A. No.

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00232

1 been marked as Exhibits -- Plaintiff's Exhibits 4
2 and 5, and I'll ask you whether you've seen these
3 articles.

4 A. Yes.

5 Q. Okay. And where did -- where have you
6 seen these articles?

7 A. Following the arrest of Madoff, I became
8 aware of these articles.

9 Q. Who made you aware of them?

10 A. They were popular -- they're referenced in
11 the public media on a regular basis.

12 Q. Okay. Did you receive --

13 A. The Barron's article.

14 Q. Okay. You're talking specifically about
15 the --

16 A. Yeah, about the Barron's article.

17 The MARHedge, I don't subscribe to
18 MARHedge, so I didn't have access to it.

19 Q. But did you see the MARHedge article after
20 the Madoff scandal broke?

21 A. Yes.

22 Q. Did you see the Barron's article before
23 the Madoff scandal broke?

24 A. No.

25 Q. Who did you receive these articles from?

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00234

1 Q. If you were conducting due diligence of a
2 fund and you received articles like these, are these
3 something that you would put in the due diligence
4 file?

5 A. I would use them as a basis for additional
6 questions in due diligence, and if it was relevant
7 for -- for me to record the basis for which I
8 started that process, I may include them, depending
9 upon the particular circumstance.

10 Q. Okay. Well, in this particular
11 circumstance -- and I'm asking you a hypothetical
12 question.

13 A. Yes.

14 Q. But if these articles had come out after
15 you started at -- at EFG, would you -- would these
16 have been the basis of questions that you would have
17 asked of Fairfield?

18 MR. COATES: Object to form.

19 You may answer.

20 A. I think that, anytime one receives
21 information related to an investment or something
22 that they have a responsibility to monitor and
23 review, I would read the article, consider its
24 source, be sure that I satisfied any questions or
25 concerns that I may have had, and move on.

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Pages 113-116

00235

1 BY MR. KELLOGG

2 Q. Okay. Would you make any -- and, again,
3 hypothetically, if you had received these in 2005
4 after you started at EFG and as part of your due
5 diligence review of Fairfield, would you have
6 recorded the fact that you received these -- this
7 information in the due diligence file of Fairfield?

8 MR. COATES: Object to form.

9 You may answer.

10 A. Again, it's difficult to answer
11 hypothetical questions. As I said, I would review
12 the content, the source, especially today, and if
13 there's any information that I thought required
14 additional diligence or that needed to be brought to
15 the attention of my supervisor or whatever governing
16 committee, I would do so.

17 BY MR. KELLOGG

18 Q. If you received an article, a Barron's
19 article --

20 A. Uh-huh.

21 Q. -- about a fund that you were conducting
22 due diligence of that reflected the fact that there
23 were concerns that someone involved in the fund that
24 you were reviewing was involved in front running,
25 would that have been something that you would have

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00237

1 Arbitrage Fund.

2 Q. Okay. Were there any others?

3 A. The second was Pirate Capital.

4 Q. And the allegations that were leveled
5 against the principal of Argent, what did they
6 involve?

7 A. His marriage to his daughter.

8 Q. Okay. And what did you do with that

9 nugget of information?

10 A. We reviewed it to see if it was relevant,
11 to see what stress or impact being in the press may
12 have on the investment manager, if they're pulling
13 the trigger on a day-to-day basis, and assessed if
14 there would be an adverse impact on the investment.

15 Q. And was -- did you make a written
16 assessment?

17 A. I don't recall.

18 Q. Did you -- did you -- during your review
19 of Argent and its principal, did you make any
20 notation that you had at least-looked into the fact
21 that this allegation was out there?

22 A. While there was no requirement to document
23 our ongoing risk monitoring, I may have completed a
24 risk report.

25 Q. And -- and you may have put it into the --

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00236

1 included or recorded in the due diligence file?

2 MR. COATES: Object to form.

3 A. Again, anytime that there is any type of
4 information which requires additional due diligence,
5 hypothetically, what I would do is to look at the
6 content of the allegation, the source of the
7 allegation, and be sure that we satisfy ourselves
8 that, in fact, there's no adverse effect on the
9 investment.

10 BY MR. KELLOGG

11 Q. Have you ever conducted due diligence of a
12 fund that you had heard or that there -- you heard
13 of allegations of either fraud or misconduct or
14 anything like that?

15 MR. COATES: Object to form.

16 You may answer.

17 A. Within my tenure at EFG, there were funds
18 where principal members of the firm may have had
19 some type of allegations with regard to their
20 background or some of the things you described. And
21 so we do have experience in -- in reviewing those,
22 yes.

23 BY MR. KELLOGG

24 Q. Okay. What were those funds?

25 A. One of those funds was Argent Convertible

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00238

1 to the due diligence file?

2 A. Yes.

3 Q. And what was the circumstance with Pirate
4 Capital?

5 A. It was alleged that the portfolio manager,
6 I believe, had assaulted his wife or was fired from
7 his previous employer for sexual assault resulting
8 from improper promotion.

9 Q. And did you investigate or do due
10 diligence on that matter?

11 A. Yes, we did. It was a character issue, is
12 what we brought it down to, and we wanted to be sure
13 that, as portfolio manager, the allegations or the
14 character of the -- the manager was consistent with
15 what we felt was reasonable in the marketplace.

16 Q. And do you recall whether a recording of
17 that investigation was made by you or anyone else at
18 EFG?

19 A. I do not recall.

20 Q. Do you know whether any notation was made
21 to the due diligence file that that inquiry had
22 occurred?

23 A. I don't recall if there was specific
24 references to it. The due diligence template,
25 though, does not include opinions or summaries of

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Pages 117-120

00239

1 other than just fact-based information, so I would
2 have to look at the -- the memorandum and materials
3 for that particular fund.

4 Q. So fact-based information, would that
5 include -- for example, there must have been some
6 press that came out regarding either or both of
7 these allegations. Would that include factual
8 information like the press accounts of what was --

9 A. Generally --

10 MR. COATES: I'm going to object to form
11 of the question, assuming that the press
12 reports facts.

13 THE WITNESS: Right.

14 But I'll let you give a response.

15 A. Again, generally, the catalyst for -- in
16 this instance, for -- for an -- for triggering an
17 exceptional review of a fund is the catalyst. In
18 terms of the completeness or the -- the referencing
19 of it, we're not as formal as that. Once the risk
20 committee or the business manager is satisfied that
21 we've -- we've done a reasonable investigation, then
22 we move forward or we take some other type of
23 action.

24 BY MR. KELLOGG

25 Q. Okay. Do you report to the -- to the risk

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00241

1 A. Yes.

2 Q. And where have you seen this?

3 A. In the due diligence files maintained
4 prior to my employment or consultancy with EFG
5 Capital.

6 Q. Was any of the information, as far as you
7 recall, contained in these -- in this exhibit,
8 incorporated into the due diligence memorandum that
9 you prepared?

10 A. No.

11 Q. Is that one single exhibit or do you know?

12 Is that a composite of different documents or does
13 that all belong together?

14 A. I don't specifically know the answer, but
15 it looks like it's one presentation. But I don't
16 know, because I don't recall the document other than
17 being able to identify it as something I've seen
18 before.

19 Q. Show you what we've marked as
20 Plaintiff's 36.

21 A. Unlikely, because it's in two languages.

22 Q. So it could be a composite?

23 A. Perhaps. I don't know.

24 Q. I believe this is a -- is a composite, but
25 I will direct you to the cover page and ask you

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00240

1 manager the --

2 A. I'm sorry. The hedge fund risk management
3 committee or its -- the business head for hedge
4 funds, which is Sixto Campano.

5 Q. Right. And to -- in both of these
6 instances, did you report to him like at a meeting?

7 A. I don't recall. But I recall there was
8 communications on both of those matters that I use
9 as an example of other instances where there's been
10 press that's resulted in exceptional review of the
11 fund.

12 Q. Did you talk about either of these two
13 articles with anyone at EFG once you saw them?

14 A. I hadn't seen the MAR article. I knew of
15 its existence. I had read the Barron's article.

16 Q. Did you speak to anyone at EFG about it?

17 A. No.

18 Q. Okay. I'll show you what we'll mark as
19 Plaintiff's Exhibit 54.

20 (Thereupon, the referred-to document was
21 marked by the court reporter for identification
22 as Plaintiff's Exhibit 54.)

23 BY MR. KELLOGG

24 Q. And I'll ask you whether you've seen this
25 document.

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1 whether you have ever seen this letter dated
2 February 28, 2003?

3 A. No.

4 Q. Okay. Do you recall whether this was in
5 the EFG due diligence file?

6 A. No.

7 Q. If EFG -- when EFG makes a recommendation
8 to its clients to alter its investment portfolio, is
9 that something that would typically be included in
10 the due diligence file or included as part of the
11 due diligence information?

12 A. No.

13 Q. Is it possible that the decision to notify
14 clients or to advise them to change the structure of
15 their portfolio emanates from information that EFG
16 receives through its due diligence?

17 A. I can't --

18 MR. COATES: Object to form.

19 You can answer.

20 A. I can't speculate as to what the basis was
21 for this 2003 letter written to clients.

22 BY MR. KELLOGG

23 Q. Sure. I'm asking you in general, though.

24 If -- if EFG Capital finds out something
25 in its due diligence -- well, strike that.

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Pages 121-124

00243

1 Has it -- in your experience, has -- do
2 you know of any instances where EFG, through what
3 it's discovered, the information it gets through the
4 due diligence process, has made a recommendation to
5 clients about what amount or percentage of a certain
6 investment they should make?

7 MR. COATES: Object to form.

8 A. I don't know.

9 BY MR. KELLOGG

10 Q. You don't recall an instance like that?

11 A. Do I recall an instance like that?

12 Can you -- will you repeat the question or
13 ask a new question?

14 Q. Do you recall any instances where, based
15 on information that EFG obtained as part of the due
16 diligence process, it then took that information and
17 made a recommendation to its clients to alter either
18 percentage or the amount of the clients investment
19 in a certain product?

20 A. Yes.

21 Q. Okay. And give me some examples or the
22 example that you're thinking about.

23 A. The example I'm thinking about is the
24 Edison fund and Fairfax fund.

25 Q. Okay. And what were the circumstances of

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00245

1 Q. Okay. So that -- that would have been
2 around the same time?

3 A. Yeah, they were leveraged fund to funds.

4 Q. And it was the same circumstance for
5 Fairfax as -- as Edison?

6 A. Yes.

7 Q. I'll show you what we've marked as
8 Plaintiff's Exhibit 35 and ask you whether this was
9 a document contained in the EFG due diligence file?

10 A. You're asking about the exhibit or a
11 document? I'm sorry. I didn't hear you.

12 Q. I'm sorry. Any of the documents in this
13 exhibit. This is a composite exhibit as well.

14 Were any of these types of documents,
15 these notices to client contained in the EFG due
16 diligence file when you started?

17 A. Yes.

18 Q. Okay. And was any of the information
19 contained in this notice to client incorporated into
20 the due diligence memorandum?

21 A. Yes.

22 Q. Okay. And I think -- I think we were
23 talking about that specifically earlier and that
24 specific portion of the due diligence memorandum. I
25 don't know if you want to look back at that, but --

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00244

1 those two funds being recommended for a change in
2 investment percentage?

3 A. The basis for the recommendation was that
4 the manager and the funds reporting to EFG Capital
5 was significantly reduced during a period of time,
6 which caused concern for the firm.

7 Q. I don't think I understand that, the --
8 the manager and the funds reporting to EFG Capital
9 was reduced. What does that mean?

10 A. It means that the regular reporting, which
11 we had been receiving during the years that the fund
12 was on our approved list, the timing and
13 availability and manner of reporting had changed,
14 which was the catalyst for exceptional due
15 diligence. Upon review of the portfolio and upon
16 review of the amount of leverage in the portfolio,
17 we determined that it was justified for us to
18 recommend to clients that they sell a hundred
19 percent of the position.

20 Q. And when did that occur? Do you recall?

21 A. That was in 2008.

22 Q. And what was the other investment that you
23 had mentioned?

24 A. They were sister funds. It was -- one was
25 Edison and one was Fairfax. They were --

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00246

1 A. Yeah, it's Bates 946, which references the
2 amount of assets as well as describes, I believe,
3 what the risks are.

4 Q. Okay. And so you took that information
5 from this notice to clients and you put it in the
6 due diligence memorandum?

7 A. Based upon my review, I copied and pasted
8 it, yes.

9 Q. Were there instances when EFG obtained new
10 clients who already had an existing portfolio of
11 investments who wanted to transfer their money over
12 to EFG but maybe retain the investments they had
13 with their previous broker? Do you know of any
14 instances like that?

15 A. Yes.

16 Q. Okay. And in instances -- were there
17 instances when customers who were transferring
18 investments over were transferring investments in
19 products that were not on EFG Capital's approved
20 list?

21 A. Uh-huh.

22 Q. You have to say "yes."

23 A. Yes.

24 Q. You've done great all day.

25 A. I didn't hear the question. Yes.

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Pages 125-128

00247

1 Q. And so would any due diligence be done of
2 those -- we'll call them "transfer investments"?
3 A. No. We refer to them as free receives.
4 Q. Free receives?
5 A. Yes.
6 And there's not due diligence done because
7 our due diligence program was solely for
8 investments, in this case, hedge funds, that we
9 recommended to our clients.
10 Q. Okay. And would you notify the clients
11 that you wouldn't be doing any due diligence on
12 these free receives?
13 A. No.
14 Q. Was it explained to the clients that there
15 would be no due diligence done by EFG on the free
16 receives?
17 A. No. I don't -- pardon me. I don't know.
18 I can't speak for all of the CROs.
19 MR. KELLOGG: You want to take just a
20 quick break and I'll do some review. I think
21 we're pretty close if not done.
22 MR. COATES: Okay. And John --
23 VIDEOGRAPHER: Let me go off the record.
24 MR. COATES: Let's go off the record.
25 VIDEOGRAPHER: The time is 4:36.

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00249

1 In other words, sometimes when people
2 start a new job, they get a packet of information.
3 Is this something that's included in that?
4 A. We don't -- it's not -- I don't know if
5 it's included in that. It's not part of a formal
6 orientation, but it's made available to all
7 employees via the Internet.
8 Q. Okay. And how is this used?
9 A. This is used as a written record of our
10 standardized procedures with regards to the
11 different elements of a hedge fund platform offered
12 by a broker/dealer.
13 Q. Okay. And when was this created?
14 A. This -- the date of this specific document
15 I believe was the end of 2008.
16 Q. Is this a document that is updated, from
17 time to time?
18 A. Yes.
19 Q. Okay. Do you know whether EFG has
20 previous versions of this document?
21 A. Yes.
22 Q. And where -- where would -- where could
23 that be found?
24 A. In our public drives.
25 COURT REPORTER: In your public?

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1 (Thereupon, a discussion was held off the
2 record, after which the following proceedings
3 were held.)
4 (Thereupon, the referred-to document was
5 marked by the court reporter for identification
6 as Plaintiff's Exhibit 55.)
7 VIDEOGRAPHER: We are now back on the
8 record. The time is 4:57.
9 BY MR. KELLOGG
10 Q. Mr. Donnell, I'll hand you what we've
11 marked as Plaintiff's Exhibit 55 and I'll ask you
12 whether you've seen this before.
13 A. Yes, I have.
14 Q. Okay. And what is this?
15 A. This is the EFG Capital International
16 hedge funds procedures.
17 Q. Okay. And who devised these procedures?
18 Who -- who drafted this?
19 A. I did.
20 Q. And who was this -- who are these
21 procedures given to?
22 A. These procedures are made available to all
23 members of EFG Capital.
24 Q. Okay. You said they're made available.
25 But are they provided to anybody?

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00250

1 THE WITNESS: Public drive.
2 COURT REPORTER: Thank you.
3 BY MR. KELLOGG
4 Q. If you go to page 8486 --
5 A. Yes.
6 Q. -- it says, "Hedge funds included in the
7 Miami Approved List are" -- second paragraph.
8 "Hedge funds included in the Miami
9 Approved List are generally derived from a universe
10 of funds known as hedge fund advisory list
11 maintained by the alternative investments team of
12 EFG Bank's asset management group in London,
13 EFG AM."
14 Do you see that?
15 A. Yes.
16 Q. Is it the case that all of the funds on
17 the Miami Approved List are -- come from funds that
18 are on the hedge fund advisory list maintained by
19 EFG AM?
20 A. No.
21 Q. Okay. Are there funds that the Miami
22 group -- we'll call them --
23 A. EFG Capital.
24 Q. -- EFG Capital --
25 A. Sorry.

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Pages 129-132

00251

1 Q. -- looks at and does due diligence of and
2 adds to its list independent of any of the funds
3 that are on the EFG AM list?
4 A. Yes, EFG Capital performs due diligence on
5 all of the funds on its approved list separate and
6 distinctly from EFG or any of its -- EFG Asset
7 Management or any other affiliate.
8 Q. Okay. So, then, what does this mean, that
9 the -- the funds are derived from a universe of
10 funds on the EFG AM list?
11 A. There's a qualifier generally derived,
12 because it's the intention of EFG Capital to use the
13 hedge fund advisory list as a basis, generally, for
14 the funds that we include in the Miami Approved
15 List.
16 Q. Okay. And there's listings of people on
17 the EFG AM alternative investments team.
18 You see that --
19 A. Yes.
20 Q. -- about five individuals?
21 And I think you had mentioned you talked
22 to -- you mentioned some of them earlier Gyongyi
23 King, for example.
24 A. Yes.
25 Q. And how often do you talk to these folks

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00253

1 specific circumstance, EFG Capital, in its own due
2 diligence, may utilize work product made available
3 to it from EFG Asset Management. However, the firm
4 recognizes that it has its own obligation to perform
5 due diligence in accordance with these procedures.
6 Q. Did -- as far as you know, did EFG AM
7 conduct any due diligence of Fairfield Sentry?
8 A. As noted in one of the footnotes, prior to
9 EFG Asset Management, this function for the firm or
10 the bank was provided by a group named EFG GIS.
11 Q. Okay.
12 A. And it is my understanding that that team,
13 for its own purposes, conducted due diligence on
14 Fairfield Sentry or other Madoff-related funds.
15 Q. Okay. And was that due diligence shared
16 with EFG Capital?
17 A. The due diligence information that I
18 received in 2005 as part of the program to
19 standardize our written due diligence, I did have
20 discussions with members of, at the time, EFG GIS
21 with regards to their ongoing due diligence process
22 of Madoff.
23 Q. Okay.
24 A. Excuse me. Of Fairfield Sentry.
25 Q. And other than those -- the information

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00252

1 about due-diligence-related issues?
2 A. As I testified earlier today, we had
3 periodic conversations with these professionals at
4 this particular EFG group, as well as other EFG
5 professional worldwide, about various funds on the
6 advisory list.
7 Q. Okay. And on page 8487, Section 2, it
8 says -- first sentence says, "EFG Capital utilizes
9 the services of EFG AM in conducting its due
10 diligence in selecting hedge funds."
11 Do you see that?
12 A. Yes.
13 Q. In -- in what way does EFG Capital utilize
14 EFG AM?
15 A. EFG AM provides us with a base list,
16 referred to as a hedge fund advisory list, of funds
17 that they have performed due diligence on. And
18 then, from that universe, generally we will perform
19 initial due diligence of our own for those funds
20 that we choose to include in the Miami Approved
21 List.
22 Q. Does EFG AM provide EFG Capital with any
23 of the underlying due diligence that EFG AM
24 conducted of the funds on its list?
25 A. Depending upon the -- depending upon the

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00254

1 they provided in those conversations, did they
2 provide you any other written information, due
3 diligence information about Fairfield?
4 A. No, our -- at the -- in 2005, when I began
5 the -- the program, the due diligence at EFG Capital
6 had completed was satisfactory in providing me with
7 the information that I needed in completion of our
8 due diligence memorandum. The discussions that we
9 had were a supplement and as part of the due
10 diligence process of sharing information with
11 another --
12 Q. Okay.
13 A. -- group.
14 Q. And other than information that was shared
15 in your conversations with EFG GIS, you're telling
16 me there was no other written or electronic
17 information that was shared from EFG GIS to EFG
18 Capital?
19 A. No. There was a request for documentation
20 for this fund and for all of the funds in 2005, when
21 I began the program of standardizing our information
22 about the funds in due diligence files. At that
23 time, they may have sent us information that they
24 had in their possession that relates to the fund,
25 but it was not a -- it was not necessarily used to

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Pages 133-136

00255

1 satisfy our due diligence requirements.
2 Q. Do you recall specifically any -- any
3 documentation that was provided by EFG GIS?
4 A. No.
5 Q. Would EFG Capital have kept that
6 information and included it as part of its due
7 diligence file?
8 A. As I said, I don't recall, but had there
9 been information that was material or in some way
10 added to our due diligence process, it would have
11 been likely that I would have kept it.
12 Q. Do you recall who at EFG GIS you spoke
13 with, about due diligence?
14 A. In general?
15 Q. Uh-huh.
16 A. The conversations that I had about due
17 diligence in general with representatives of GIS
18 included Jerome Schonbachter and Romy Cabrera.
19 Q. It was the individuals you mentioned
20 earlier?
21 A. Yes.
22 Q. Okay. If you go to page 8488, at the
23 bottom, it describes an EFG AM risk scoring sheet.
24 Do you see that?
25 A. Yes.

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1 Q. What is the risk scoring sheet?
2 A. The risk scoring sheet is a report that
3 Asset Management developed in its initial due
4 diligence process which have certain -- certain
5 requirements or certain acceptable bands for funds
6 that they are performing due diligence on, and it's
7 a proprietary report to Asset Management.
8 Q. So does EFG Capital have anything like the
9 EFG AM risk scoring sheet?
10 A. We do not have a risk scoring sheet, no.
11 Q. Do you know whether EFG Capital received
12 from EFG AM a risk scoring sheet relating to
13 Fairfield Sentry?
14 A. No.
15 Q. No, it did not, or you don't know?
16 A. It did not.
17 Q. Was -- did you ask or did anyone at EFG
18 Capital, as far as you know, ask EFG AM for such a
19 scoring sheet?
20 A. No, it would have been unlikely to have an
21 Asset Management scoring sheet, which is a report
22 developed sometime in 2007, for a fund that had been
23 on a platform since 1998 and that we had originally
24 diligenced as EFG Capital in 1998.
25 Q. So the risk scoring sheet was something

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1 that was developed in '07?
2 A. The risk scoring sheet was most likely
3 developed in '07. And as it states here, it's the
4 culmination of the initial due diligence process, is
5 it's completion of that. It's kind of the wrap-up
6 or the overall scoring of a fund identifying that it
7 has met the requirements to be put on the platform
8 or, in this case, the hedge fund advisory list.
9 Q. Does EFG Capital do anything like that
10 now, which is a wrap-up or an analysis of an initial
11 due diligence?
12 A. Yes, the hedge fund procedures do include
13 a checklist of satisfactory or deficient elements of
14 the due diligence process.
15 Q. And when was that implemented by EFG
16 Capital?
17 A. That was implemented by EFG Capital in
18 2006-ish.
19 Q. Was it something that you implemented?
20 A. Yes.
21 Q. Okay. And why did you -- why did you
22 implement that procedure?
23 A. That procedure was implemented as we
24 continued the development evolution of your due
25 diligence process. This was the second version of a

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1 document that we reviewed earlier today, which
2 was --
3 Q. The one-pager?
4 A. Yes. I apologize for not -- yes. So that
5 was Exhibit 27. And that's included in this -- in
6 this document we're reviewing now.
7 Q. Okay. And does the updated version
8 include any kind of scoring system other than the
9 deficient -- I mean whatever the terms you used --
10 satisfactory --
11 A. There's not a numeric scoring system.
12 There is a -- it is a check box for each of the
13 elements that we've identified to be pertinent to
14 the checklist. If an element of the checklist has
15 deficiency, there is a -- then, a deficiency
16 reporting requirement to say why this is exceptional
17 and why it should still be given to committee and
18 committee consider for approval.
19 Q. Is there a reason you wouldn't perform
20 that kind of an analysis on a fund that's already on
21 your approved list?
22 A. No.
23 Q. Then why didn't EFG Capital perform that
24 type of analysis on funds that it was -- that
25 already on its approved list?

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00259

1 MR. COATES: Object to form.
2 A. EFG Capital made the determination that
3 they would apply a certain set of standards for the
4 ongoing review of hedge funds that had been on the
5 platform prior to 2005 and that it would implement
6 a -- a second process for initial due diligence of
7 hedge funds being added to the platform in sometime
8 around 2006.
9 BY MR. KELLOGG
10 Q. So it didn't -- it decided not to use the
11 process it developed in 2006 to analyze funds that
12 had been put on the approved list prior to 2006?
13 A. Yes.
14 Q. Okay. And why? Why did it decide --
15 MR. COATES: Object to form.
16 BY MR. KELLOGG
17 Q. -- not to apply the post-2006 standard to
18 pre-2006 funds?
19 MR. COATES: Same objection.
20 You may answer, sir.
21 A. Like any business, our practices are
22 evolutionary, and when we establish -- when EFG
23 Capital established a program in 2005, the purpose
24 of the program was to standardize the written
25 reports of our due diligence and to develop a

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1 review of a fund or if the GIA portfolio
2 characteristics report had information in it, you
3 may then rediligence it, which is a word that we
4 make up to say we're going to rediligence the fund,
5 we're going to start over.
6 If you look at when these procedures were
7 developed and if you look at what happened in the
8 marketplace in terms of hedge funds, there wasn't a
9 lot of time for that to play out. So certainly we
10 may have done that -- we may use that in the future.
11 BY MR. KELLOGG
12 Q. How many funds were on the approved list
13 in 2006-ish when you implemented the new procedure?
14 A. As I testified this morning, between 27
15 and 30 funds.
16 Q. Give me -- give me a little bit more of
17 description on what the risk dashboard is, just so I
18 understand it.
19 A. The risk dashboard is a risk monitoring
20 tool that EFG Capital includes in its due diligence
21 process. Specifically it is designed for and used
22 by members of the hedge fund risk management
23 committee.
24 Q. And on page 8490 of this exhibit, it says
25 it's a "consolidated view of the various metrics on

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1 program to ensure our compliance with the regulatory
2 requirements that -- that were subject to.
3 In the development of the program over
4 time, we also considered how we could improve our
5 process. We did not believe that the initial due --
6 the initial due diligence process was necessarily
7 needed to be applied to a current fund that we were
8 monitoring. We do not think that the ongoing
9 process is any better or worse than the initial due
10 diligence process. They're simply different. And
11 the factors that we have in place would be a -- a
12 catalyst for us in the ongoing process to then
13 initiate some of the questions or considerations
14 that we may have that are included in the initial
15 due diligence process.
16 BY MR. KELLOGG
17 Q. If the new procedure is different but not
18 better than the old procedure, then why was the new
19 procedure implemented at all?
20 MR. COATES: Object to form.
21 A. It's not -- it's not different and/or --
22 better. They're two different activities. And the
23 opportunity to be diligence of fund certainly
24 exists. And in that case, if you had a situation
25 where if there was a catalyst for an exceptional

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1 all funds in the Miami Approved List."
2 Do you see that?
3 A. Yes.
4 Q. Okay. So it's basically an incorporation
5 of different sources of information?
6 A. Yes. What it provides for is, for each of
7 the funds in the Miami Approved List, information in
8 terms of the funds' performance relative to
9 benchmarks established across various matrixes or
10 ratios.
11 Q. And do you see where I'm looking at on
12 8490 where it says "reports and documentation"?
13 There's a list of bullet points?
14 A. Yes.
15 Q. What are all those things?
16 A. Those are reports and documentation that
17 are part of the EFG Capital's ongoing risk monitors.
18 Q. So these are the documents that you ask
19 for from the funds?
20 A. No, these -- these are documents that are
21 created by EFG Capital.
22 Q. And all of these -- this type ongoing risk
23 monitoring reporting would have been done for EFG
24 Capital, correct?
25 A. Yes. What is described here are EFG

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1 Capital ongoing hedge fund review.

2 Q. I'm sorry. I said "EFG Capital." I meant
3 Fairfield.

4 All of this type of ongoing risk
5 monitoring reporting would have been done for
6 Fairfield? In other words, you would have created
7 reports and documentation like this relating to
8 Fairfield?

9 A. That is correct, beginning, specifically
10 related to the production of these reports and
11 documentations, the availability of that began in
12 December 2007 following the platform agreement we
13 entered into on August 24 with Greenwich Alternative
14 Investments.

15 Q. Okay. So the risk dashboard starts in
16 December 2007.

17 But what about the reports -- or the
18 peer-reviewed report, for example?

19 A. The review -- the peer-review reports,
20 it's my recollection that they began publishing
21 September 30 NAV. So it was within about a month
22 after the agreement was signed.

23 Q. The agreement with whom?

24 A. With Greenwich Alternative Investments.

25 Q. Was Fairfield ever put on the EFG Capital

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1 program when we developed the standardization of
2 reporting in 2005.

3 Q. And then the next page is an EFG Capital
4 hedge fund due diligence memorandum. Do you see
5 that?

6 A. Yes.

7 Q. What's the difference between the hedge
8 fund due diligence memo and the fund of fund due
9 diligence memo.

10 A. The hedge fund due diligence memorandum is
11 for a single strategy fund while the former is for
12 the a fund of funds. And it's standard within the
13 industry to have different type of template for the
14 two different type of strategies and that was a
15 further evolution or refinement of our process since
16 2005.

17 Q. And what about the two types of memos is
18 different?

19 A. Basically the difference is the
20 information with regards to the investment approach
21 as well as the strategy, the subsector, the
22 investment objective. A number of the areas in the
23 product information section are different.

24 I haven't compared them side by side in a
25 year or two, so I apologize.

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1 watch list?

2 A. No, it was not.

3 Q. If you turn to page 8496 --

4 A. Yes.

5 Q. -- there's an example template of the due
6 diligence memorandum. You see that?

7 A. Yes, this is an EFG Capital fund of funds
8 due diligence memo.

9 Q. Okay. So it seems to evolved -- have
10 evolved since the one that you drafted for -- for
11 Fairfield?

12 A. Yes.

13 Q. And are you the person who made the
14 changes?

15 A. Yes.

16 Q. On page 8499, there's a document called
17 "Ongoing Due Diligence Report, EFG GIS."

18 Do you see that?

19 A. Uh-huh.

20 Q. What is this?

21 A. This is a document that was incorrectly
22 attached to the due diligence memorandum, perhaps as
23 a result of editing. What that document is was a
24 template that GIS used for ongoing due diligence
25 reporting, which we incorporated into our own

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00266

1 Q. Page 8503 --

2 A. Yes.

3 Q. -- that's an example of the checklist you
4 were describing earlier?

5 A. Yes.

6 Q. Page 8505 --

7 A. Yes.

8 Q. -- is a document that says "Product
9 Approval Committee Presentation."

10 Do you see that?

11 A. Yes.

12 Q. And I thought you testified earlier that
13 there was no actual presentation made to the product
14 approval committee relating to due diligence; is
15 that correct?

16 A. No.

17 Q. It's not correct.

18 Okay. There was a presentation made?

19 A. No, I testified that a package was put
20 together for the members of the new product approval
21 committee and that the approval was evidenced by a
22 new product approval form with the signatures of the
23 committee members.

24 Q. Okay.

25 A. So what this refers to is the cover page

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1 for that package.

2 Q. Okay. This is the packet that you
3 presented to the committee members?

4 A. Right.

5 Q. Right. But you didn't actually conduct
6 the presentation where you explain what was in the
7 packet?

8 A. Yes.

9 Q. That's correct?

10 A. Correct. I'm sorry.

11 Q. Page 8506 appears to be a tear sheet.

12 And -- and why is this in here?

13 A. I'm sorry?

14 Q. Why is this in here?

15 A. The -- part of the submission process, as
16 you can see on 8505 in Section I, is the approved
17 EFG sales literature, as part of the committee
18 review compliance does sign off on the sales
19 literature in template form for that fund, and this
20 is the presentation of that information to the
21 committee.

22 Q. Okay. Was it -- was this form created by
23 you?

24 A. This form is actually the production of
25 Greenwich Alternative Investments and is an

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1 Q. I'll show you what we'll mark as

2 Plaintiff's Exhibit 56 and I'll ask you whether you
3 recognize this order.

4 (Thereupon, the referred-to document was
5 marked by the court reporter for Identification
6 as Plaintiff's Exhibit 56.)

7 BY MR. KELLOGG

8 Q. My question is: Is this the order you
9 were referring to earlier in the deposition?

10 A. Yes.

11 Q. If you turn to page 3, the top paragraph,
12 No. 3, it says "Mercantile Bank enters hedge fund
13 business." It says, "In March '02, Mercantile
14 advisors hired Donnell as manager and director with
15 the title vice president alternative investments
16 distribution."

17 And that's correct?

18 A. Yes.

19 Q. Okay. "And in this capacity, Donnell's
20 chief responsibility was to organize the creation of
21 three fund of hedge funds investment companies and
22 market the new product line to Mercantile Bank's
23 customers."

24 Do you see that?

25 A. Yes.

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1 abbreviated version of the actual report.

2 Q. Is the actual report what follows?

3 A. No. The next report is a risk report.

4 Q. And when did EFG Capital begin doing risk
5 reports for its --

6 A. Risk reports --

7 Q. -- funds?

8 A. -- production began in September following
9 the signing of the platform agreement with Greenwich
10 Alternative Investments. The first report was
11 printed using the September 30 NAV.

12 Q. If you turn to page 8514, you see a hedge
13 fund customer consent form. Do you see that?

14 A. Yes.

15 Q. Who developed this form?

16 A. I did.

17 Q. Okay. Do you remember when you developed
18 it?

19 A. In 2005.

20 Q. And the last page, page 8515, says it's an
21 alternative investment trade ticket.

22 What is that?

23 A. The alternative investment trade ticket is
24 used by the CRO at the time that they enter a buy
25 order for a hedge fund or structured product.

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1 Q. And is that true, you created -- you

2 organized the creation of three fund of funds?

3 A. I entered into this order with the SEC, so
4 the order should speak for itself.

5 Q. Okay. You have experience creating funds
6 of funds, right?

7 A. Yes.

8 Q. Okay. And if you turn to the next page,
9 page 4, paragraph 8, the second sentence says,
10 "Pursuant to the advisory agreement, Mercantile
11 advisors agreed to pay the subadvisor 50 percent of
12 the management fee that it received from the
13 Mercantile fund."

14 Do you see that?

15 A. Yes.

16 Q. Okay. Is that, in your experience as
17 someone who has created or helped organize the
18 creation of funds -- fund of funds, a normal fee
19 that would be paid to a subadvisor?

20 MR. COATES: I'm going to object to the --
21 to -- to this question, and if you can tie it
22 to this case, then great. But otherwise, he
23 testified about this, this morning. And, you
24 know, it's 5:30, and Mr. Donnell is not here to
25 testify about this SEC release that related to

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1 activities at a prior employment having nothing
 2 to do with EFG or their case.
 3 MR. KELLOGG: Okay. My next question I --
 4 will tie it to this case.
 5 BY MR. KELLOGG
 6 Q. But my question to you now is whether
 7 50 percent of the management fee to you was a normal
 8 fee, management fee to be paid to a subadvisor of a
 9 hedge fund of funds?
 10 MR. COATES: I'm going to object and
 11 instruct him not to answer the question.
 12 MR. KELLOGG: What -- what's the basis for
 13 not answering the question?
 14 MR. COATES: It's -- it's completely
 15 irrelevant.
 16 MR. KELLOGG: It's not irrelevant and
 17 that's not your call to make. That's the
 18 judge's call to make.
 19 MR. COATES: I'm instructing him not to
 20 answer, unless you can put on the record how
 21 it's relevant to this case.
 22 MR. KELLOGG: Okay. Because my next
 23 question is -- well, why don't I do the first
 24 question -- the second question first.
 25

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1 about the fact that Mr. Madoff was not receiving a
 2 fee for his services to Fairfield?
 3 A. No.
 4 Q. And what's the reason you didn't talk to
 5 anybody about that?
 6 Or did it ever cross your mind to talk to
 7 somebody about that --
 8 MR. COATES: Object to form.
 9 BY MR. KELLOGG
 10 Q. -- at EFG?
 11 A. Did it?
 12 Q. Did it cross your mind? Did you think --
 13 A. No.
 14 Q. -- after reading that, that it might be,
 15 you know, worth talking to somebody at EFG Capital
 16 about?
 17 A. No.
 18 Q. Or discussing why this was the case that
 19 he wasn't receiving a fee?
 20 A. No.
 21 Q. Did you talk to anyone at Fairfield about
 22 that?
 23 A. No.
 24 Q. Okay. And the \$50,000 fee that was
 25 ordered by the SEC to be paid, was -- did you

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00272

1 BY MR. KELLOGG
 2 Q. What is your understanding of the amount
 3 of management fees that Bernard Madoff, as a
 4 subadvisor of Fairfield, made on the investments
 5 that he did for them?
 6 A. I don't know.
 7 Q. You don't -- you're not aware that
 8 Mr. Madoff didn't receive any fee as a subadvisor
 9 for Fairfield?
 10 A. In the disclosure, it stated that he does
 11 not receive compensation directly from the fund.
 12 Q. Okay. And is that normal to you, as
 13 someone who's been involved in the creation of a
 14 fund where the subadvisor received 50 percent piece
 15 of the -- a 50 percent fee for management of the
 16 fund?
 17 A. The arrangement which -- from Bernard
 18 Madoff secur -- BMLI securities had with the
 19 Fairfield Sentry fund was unique in that it did not
 20 conform with the unusual appointment of a manager
 21 through an investment advisor agreement or -- or
 22 some other type of contractual agreement. However,
 23 this was disclosed in the documentation when
 24 offering the fund.
 25 Q. Did you talk to anyone at EFG Capital

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1 actually pay that?
 2 A. Yes, I did.
 3 MR. KELLOGG: All right. That's all I
 4 have. Thanks for your time, Mr. Donnell.
 5 THE WITNESS: You're welcome.
 6 MR. KELLOGG: Nice to meet you.
 7 MR. COATES: And we will read. Okay.
 8 VIDEOGRAPHER: Let me go off the record.
 9 The time is 5:34.
 10 (Thereupon, the taking of the deposition
 11 was concluded at 5:34 p.m.)
 12
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Pages 153-156

00275
 1 AFFIDAVIT
 2
 3 STATE OF FLORIDA)
 3 COUNTY OF _____)
 4
 5 I, _____, being
 5 first duly sworn, do hereby acknowledge that I
 did read a true and certified copy of my
 6 deposition which was taken in the case of
 FERREIRA VS. EFG, taken on the 2 day of
 7 December, 2010, and the corrections I desire to
 make are as indicated on the attached Errata
 8 Sheet.

9 _____
 (Deponent)
 10 ++++++

11 CERTIFICATE
 12
 13 STATE OF FLORIDA)
 COUNTY OF _____)
 14
 15
 16 Before me personally appeared

 to me well known / known to me to be the person

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 1
 2 CERTIFICATE OF OATH
 3
 4 STATE OF FLORIDA)
 5 COUNTY OF BROWARD)
 6
 7 I, the undersigned authority, certify
 8 that MICHAEL DONNELL personally appeared before
 9 me and was duly sworn.
 10 WITNESS my hand and official seal this
 11 8th day of December, 2010.
 12
 13
 14 _____
 15 KIMBERLY A. FONTALVO, RPR
 Notary Public, State of Florida
 16 My Commission No. DD0661766
 Expires: 7/12/2011
 17
 18
 19
 20
 21
 22
 23

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00276
 1 ERRATA SHEET
 2 FERREIRA VS. EFG
 Deponent: MICHAEL DONNELL
 3 Date of : December 2, 2010
 4

5 PAGE	6 LINE	7 REMARKS
8	_____	_____
9	_____	_____
10	_____	_____
11	_____	_____
12	_____	_____
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14	_____	_____
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20	_____	_____
21	_____	_____
22	_____	_____
23	_____	_____

22 _____
 Signature of Witness

23 _____
 (Notary Public)

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 1
 2 CERTIFICATE
 3
 4 STATE OF FLORIDA)
 5 COUNTY OF BROWARD)
 6
 7 I, KIMBERLY A. FONTALVO, RPR, do hereby
 8 certify that I was authorized to and did
 9 stenographically report the foregoing deposition
 10 of MICHAEL DONNELL; that a review of the
 11 transcript was requested; and that the transcript
 12 is a true record of my stenographic notes.
 13 I FURTHER CERTIFY that I am not a
 14 relative, employee, attorney, or counsel of any
 15 of the parties, nor am I a relative or employee
 16 of any of the parties' attorney or counsel
 17 connected with the action, nor am I financially
 18 interested in the action.
 19 Dated this 8th day of December, 2010.
 20
 21 _____
 22 KIMBERLY A. FONTALVO, RPR
 My Commission No. DD0661766
 Expires: 7/12/2011

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