

EXHIBIT 11

From: ECHEVARRIA Victor <veche@efg.com>
Sent: Tuesday, March 8, 2005 10:25 AM
To: CAMPANO, Sixto <SCampano@EFGCapitalMiami.COM>; DONNELL Michael <MDonnell@EFGCapitalMiami.COM>
Subject: FW: Missing due diligence

Amazing....and GIS wants to charge us for their non-existent "due diligence"!!!!!! The material in that drawer must be pretty stale by now!

Victor

-----Original Message-----

From: DONNELL Michael
Sent: Tuesday, March 08, 2005 10:11 AM
To: ECHEVARRIA Victor
Subject: FW: Missing due diligence

Per Romy

-----Original Message-----

From: Cabrera Romy (Geneva)
Sent: Monday, March 07, 2005 10:40 AM
To: DONNELL Michael
Subject: RE: Missing due diligence

Dear Michael,

Looking quickly at this, in the Miami office there is (or there was) a cabinet in the east wing in the hallway beside the file room where two drawers were dedicated to fund information. There you will find a pretty sizable file for Farifield Sentry where there is some extensive due diligence and visits to Bernie Madoff's office by Marcelo Alvarez. That will be better than anything I could provide you for Sentry.

On another note, where we had the outsourced due diligence we did not create a GIS due diligence. As a result of our recent audit, going forward we will be producing this for all funds.

I'll see about the FIX bios.

Regards,

RC

-----Original Message-----

From: DONNELL Michael
Sent: Monday, March 07, 2005 4:25 PM
To: Cabrera Romy (Geneva)

Confidential
EFG_Cap_E-0036286

Subject: RE: Missing due diligence

Dear Romy,

Attached is the spreadsheet listing what has been received to date. OGR=On Going Report. Please note, we only have initial due diligence for Laurus and VR; we only have performance expectations for those funds that we received an OGR report.

Also, I have been having a hard time getting bios on the principles of Edison (Bradford), Fairfax (RTR) and Quest (Quest). Do you have anything or a contact at Fix? I have been trying to get it from Olga but have not received a response.

Thanks for any help you can provide.

<< File: Miami Approved HFs.xls >>

-----Original Message-----

From: Cabrera Romy (Geneva)

Sent: Monday, March 07, 2005 10:04 AM

To: DONNELL Michael

Subject: RE: Missing due diligence

Dear Michael,

I know you have sent me the info but I am drowning in e-mails. Could you resend me the list as I should have this if it is on the recommended list and I know that Jerome has sent some over?

Thanks,

RC

-----Original Message-----

From: DONNELL Michael

Sent: Monday, March 07, 2005 4:00 PM

To: Cabrera Romy (Geneva)

Subject: RE: Missing due diligence

Dear Romy,

THANK YOU! Do you have this type of initial due diligence memos for any of the other Miami Approved Funds? Thanks.

-----Original Message-----

From: Cabrera Romy (Geneva)

Sent: Monday, March 07, 2005 5:38 AM

Confidential
EFG_Cap_E-0036287

To: DONNEL, Michael

Subject: Missing due diligence

Dear Michael,

Here is the due diligence for Laurus and VR. Please let me know what else is missing.

Thank you,

RC

<< File: Initial Due Diligence.doc >> << File: Initial Due Diligence.doc >> << File:
Ongoing.doc >>

Romy Cabrera

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EXHIBIT 12



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Tel +1 203.487.6180
www.greenwichai.com

FOR IMMEDIATE RELEASE

FUNDS MANAGED BY GREENWICH ALTERNATIVE INVESTMENTS HAVE NO MADOFF EXPOSURE

STAMFORD, CT, USA, December 16, 2008 -- Greenwich Alternative Investments, LLC (www.greenwichai.com) issued a statement today indicating that it has no direct or indirect investment with Bernard L. Madoff Investment Securities, LLC nor has the hedge fund asset management firm ever had exposure to investment pools managed by Madoff.

"We simply do not invest with any manager that does not allow us to conduct full due diligence. If we aren't comfortable with a manager's trading strategy and if the sources and viability of return are not verifiable, we will not invest," stated Thomas Whelan, Greenwich Alternative Investments CEO. "In light of the unprecedented scope and size of the alleged Madoff fraud, this could not illustrate any more clearly the requirement for initial and ongoing professional due diligence. A fund's large size or its manager's reputation should never be a substitute for thorough due diligence."

All investments made by Greenwich Alternative Investments are made directly with the underlying manager and not made through complex intermediary or third party feeder funds.

About Greenwich Alternative Investments

Greenwich Alternative Investments manages one of the world's largest hedge fund databases and is among the oldest providers of hedge fund indices, asset management services and research to institutional investors worldwide. Further information is available at www.greenwichai.com.

Contact:

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EXHIBIT 13

00001
 1 IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF FLORIDA
 2
 3 CASE NO.: 10-20206-CIV-MARTINEZ
 4
 5 LORRENE DA SILVA FERREIRA and
 6 ARLETE DA SILVA FERREIRA,
 individually and on behalf of
 7 all others similarly situated,
 8 Plaintiffs,
 9 vs.
 10 EFG CAPITAL INTERNATIONAL CORP.
 and EFG BANK f/k/a EFG PRIVATE
 11 BANK, SA,
 12 Defendants.
 13
 14 _____ /
 15
 16 Wednesday, January 19, 2011
 17 201 South Biscayne Blvd.
 Miami, Florida
 9:46 a.m. - 4:58 p.m.

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1 APPEARANCES:

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 15
 16 ALSO PRESENT: Todd Cohen, Videographer

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1 Exhibit 126 E-mail String, Bates Nos.	84	
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2 E-0012619		
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 2 EFG Cap E-0057635 through
 E-0057638
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 Exhibit 140 Email string, Bates Nos. 148
 4 EFG Cap E-0057647 through
 E-0057649
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 Exhibit 141 Email string, Bates Nos. 156
 6 EFG Cap E-0006504 through
 E-0006506
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 Exhibit 142 E-mail string, Bates Nos. 160
 8 EFG Cap E-0007353 through
 E-0007357
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 Exhibit 143 E-mail, Bates No. EFG Cap 164
 10 E-0059047
 11 Exhibit 144 E-mail string, Bates Nos. 167
 EFG Cap E-0109021 through
 12 E-0109022
 13 Exhibit 145 EFG Cap E-0023694 through 171
 E-0023701
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 1 Thereupon:
 2 SIXTO CAMPANO
 3 having been first duly sworn, was examined and
 4 testified as follows:
 5 THE WITNESS: I do.
 6 DIRECT EXAMINATION (Continued)
 7 BY MR. KELLOGG:
 8 Q. Good morning, Mr. Campano. How are you?
 9 A. Good morning, Mr. Kellogg.
 10 Q. Last time we were as -- remind ourselves
 11 where we are. We're -- we're still in the corporate
 12 representative portion of this deposition where you're
 13 speaking on behalf of the -- of the company, EFG
 14 Capital International. Do you understand that?
 15 A. Yes, sir.
 16 Q. All right. Last time we were speaking about
 17 due diligence, and what I was trying to do was take it
 18 sort of chronologically. And I think I'd gotten
 19 through the year 2003. I hope I did.
 20 So I'd like to move to the year 2004 and ask
 21 you if you recall, as you sit here now, what, if any,
 22 due diligence was done in 2004 on -- on Fairfield
 23 Sentry fund or -- or Madoff.
 24 A. At that time we did continuous reviews of
 25 the performance of the fund to make sure that the

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 1 PROCEEDINGS
 2 - - -
 3 THE VIDEOGRAPHER: We are now on the video
 4 record. This is the start of Media Unit Number 1
 5 in the deposition of Sixto Campano. Today's date
 6 is Wednesday, the 19th day of January,
 7 2010 [sic], and the time on the video monitor is
 8 approximately 9:40 a.m.
 9 The case number is 10-20206-CIV-Martinez.
 10 The style of the case is Lorrene Da Silva
 11 Ferreira verse EFG Capital International Corp.,
 12 et al.
 13 The court reporter today is Jody Warren from
 14 Veritext Reporting; and the videographer is Todd
 15 Cohen, also with Veritext.
 16 Would counsel please state your appearances
 17 on our video record.
 18 MR. KELLOGG: Larry Kellogg and Amanda Star
 19 Frazer on behalf of the plaintiffs.
 20 MR. COATES: Joe Coates and Jon Jacobson on
 21 behalf of the defendant, EFG Capital.
 22 THE VIDEOGRAPHER: Thank you.
 23 If our court reporter would swear our
 24 witness, please
 25

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 1 results of the fund made sense with the strategy of
 2 the fund in comparison to the market and the market
 3 activity. We would have continual -- continuous --
 4 not continuous, I'm sorry. We had periodic
 5 conversations with the staff at Fairfield Greenwich
 6 Group, and we received weekly net asset value
 7 estimates and performance estimates. We received
 8 monthly performance estimates. Every once in a while
 9 there was a, you know, quarterly report of some sort,
 10 I believe, that we received, and that kind of thing.
 11 Q. So would you say that the due diligence
 12 performed in 2004 focused primarily on the performance
 13 of the fund?
 14 A. It focused primarily on the performance of
 15 the fund and how it related to the general market
 16 conditions and our sort of expectations of what the
 17 fund would do in the general market conditions. We
 18 would, from time to time, ask if anything had changed.
 19 I believe at one point, and I don't recall
 20 exactly the date, Fairfield Sentry added the feature
 21 that they were going to take, I believe, 5 percent of
 22 the fund's assets and divert it to funding new
 23 managers and new strategies.
 24 So at different -- around the time that that
 25 was, and I think it would coincide close to 2004, I

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1 don't know exactly, we would also inquire as to the
2 new managers. And, by the way, the people from
3 Fairfield also would periodically visit our office and
4 address the staff.

5 Q. Who was in charge of conducting the due
6 diligence in 2004?

7 A. Conducting the due diligence. Again, it was
8 an ongoing due diligence and different people had, you
9 know, participated. Myself. In terms of monitoring
10 the -- the performance and the things that I
11 described, myself and the contact, Victor Echevarria.
12 I believe Dart Montgomery was abreast of the activity
13 as well. But at that time, it was primarily us, the
14 names I described.

15 (The referred-to document was marked for
16 identification as Plaintiff's Exhibit 117.)

17 Q. (By Mr. Kellogg) Let me show you what
18 I've marked as Exhibit 117. This is Bates No.
19 EFG Capital E-2127. It is a -- an e-mail string
20 dated August 3, 2004, from Romy Cabrera to Zelaine
21 Rubio, Juan Massens, and -- which attaches another
22 e-mail from Marcelo Alvarez to her.

23 Take a minute and look at this. Have you
24 seen this e-mail before?

25 A. I believe I've seen it.

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1 A. Mm-hmm.

2 Q. Do you know why that happened?

3 A. No.

4 Q. Do you know what the request was for due
5 diligence materials on hedge funds in 2000?

6 A. I don't know specifically what the request
7 was surrounding this e-mail.

8 Q. Who was Zelaine Rubio?

9 A. Zelaine Rubio was a girl in charge of
10 compliance at EFG Capital for a couple years.

11 Q. Romy says to her and Juan Massens that: In
12 going through the folders for this project, I'm also
13 reorganizing all our due diligence on file. I notice
14 that we didn't have anything on Bernie Madoff (Sentry)
15 and I remember seeing one in the drawers outside of
16 the computer room. At your earliest convenience,
17 please send me a copy (preferably to -- through PDF).

18 Do you know whether that was ever done?

19 A. I don't know if it was ever done.

20 Q. All right. In 2004, do you recall having a
21 meeting in New York with Dan Lipton of Fairfield
22 Sentry?

23 A. I had a couple of meetings at Fairfield
24 Sentry with different people. I do not remember
25 specifically at this point that specific meeting with

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1 Q. By this point in time, had Romy Cabrera
2 moved to Geneva?

3 A. I believe so.

4 Q. And by this time, was she involved in the
5 due diligence process conducted out of Geneva?

6 A. She was involved in the hedge fund effort
7 out of Geneva. I do not know if she was specifically
8 involved with the due diligence out of Geneva.

9 Q. Okay. The first -- the lower e-mail on
10 this, the -- from August 2, 2004, from Marcelo
11 Alvarez -- again, who was Mr. Alvarez?

12 A. Marcelo Alvarez is a -- was and is a
13 nonexecutive director of EFG Capital. And from time
14 to time, he was asked to, you know, help out on
15 different endeavors.

16 Q. He refers to a productive conversation with
17 Bassam this AM on the subject of hedge funds -- the
18 subject is hedge funds - Miami requests. Do you know
19 what the conversation was about here --

20 A. No.

21 Q. -- in 2004?

22 A. No.

23 Q. It says that he and Bassam agreed that our
24 request for due diligence materials on hedge funds
25 would be put on hold until further notice.

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1 that specific person.

2 Q. Okay. How many meetings do you recall
3 having in New York Fairfield, and who did you meet
4 with?

5 A. At different times, I met with Jeffrey
6 Tucker, with Lourdes Barreneche -- if you need any
7 spelling, let me know -- with this gentleman called
8 Amit -- it's an Indian last name, which you have in
9 some of your other --

10 Q. I've seen it.

11 A. You've seen it in some other of your
12 depositions.

13 Veronica Barco. Dan Lipton. There was
14 also, I don't remember the name, a guy whose primary
15 responsibility was for running the Fairfield Irongate
16 fund and I -- right now at this moment, I don't recall
17 his name. Andrew, I believe, and I think you also
18 have it from Mike Donnell's deposition.

19 And that was most of the people that I would
20 see, and I'm sure at some point there might have been
21 somebody else that was introduced to me.

22 Q. How many times do you think you went to New
23 York over the years to meet with any of these people?

24 A. Probably three, maybe four. Three, I think,
25 around that time.

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1 Q. Did you ever meet with Mr. Madoff?
2 A. No.
3 Q. Did you ever visit his facilities?
4 A. No.
5 Q. Did you ever see any trade confirmations
6 from the Madoff com -- from the Madoff trades?
7 A. No.
8 Q. Did you ever meet with -- with any of
9 Mr. Madoff's accountants?
10 A. With any of Mr. Madoff's --
11 Q. Yes.
12 A. -- what?
13 Q. Accountants.
14 A. No.
15 Q. Did you ever meet with anyone from Citco on
16 the Fairfield Sentry fund?
17 A. Not personally, no.
18 Q. And when you say "not personally" --
19 A. No. I'm sorry. No.
20 Q. -- in any way.
21 A. The answer is no.
22 Q. Okay.
23 A. No.
24 Q. Do you remember any of the topics that you
25 discussed with Fairfield Sentry on any of your visits

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1 to New York?
2 A. Performance, whether the fund was open or
3 closed to new investors, strategy itself, whether it
4 was invested at any particular degree, at any
5 particular time, how it was invested. We discussed
6 some of these other smaller managers. We discussed
7 the other Fairfield funds many times and different
8 aspects about those funds.
9 Q. Did you ever personally negotiate the
10 retrocessions paid by the Fairfield Sentry investors
11 or Fairfield Sentry manager?
12 A. During a visit?
13 Q. Yes. Was that ever a topic of what your
14 visit was about, retrocessions?
15 A. No. I believe that was done over the phone.
16 Although, I'm sorry, maybe in some of the funds. I
17 mean, we -- there were maybe eight, seven or eight, or
18 six or seven or eight funds different, and we might
19 have broached the subject on one of the funds. But I
20 don't recall exactly or specifically which one.
21 Q. Do you recall in 2004 there being a concern
22 of EFG Capital about the transparency that Fairfield
23 Sentry had with Madoff Securities?
24 A. That EFG Capital had?
25 Q. Did EFG Capital have a concern about the

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1 level of transparency, that is, the ability for
2 Fairfield Sentry to see and understand what Madoff was
3 doing on an ongoing basis?
4 A. I wouldn't call it a concern. I believe it
5 was a topic that was discussed by different people of
6 EFG Capital at different times, and I recall that we
7 wanted to make sure throughout the times that we were
8 invested, that our clients were invested in Fairfield
9 Sentry, that the transparency was maintained; and we
10 asked different people at different times for -- if --
11 what level and -- of -- of information in terms of
12 post-trade activity Fairfield Greenwich had and what
13 they were doing with that information.
14 Q. Why was that important to know?
15 A. Because Fairfield Greenwich Group was the
16 investment manager in the fund, and we thought it was
17 important for them to monitor the activity of the
18 fund. And also, Fairfield Greenwich was supposed to
19 monitor the different, you know, risk parameters of
20 the fund and the different limits that the fund had as
21 stated in the offering memorandum.
22 Q. You said various persons at EFG Capital had
23 conversations about the topic of transparency of
24 Fairfield Sentry. Do you know who and when?
25 A. I believe that it started with Mark

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1 McCluskey. I'm sure Victor Echevarria at some point
2 in the early years, in particular, asked the question.
3 I know Dart Montgomery, Marcelo Alvarez, myself, Mike
4 Donnell.
5 Q. What is your basis for saying that
6 Mr. McCluskey had those conversations?
7 A. That is from information that Mr. Echevarria
8 and Mr. Alvarez have given me.
9 Q. What did they tell you?
10 A. That Mark went -- originally, at the
11 beginning of the time that EFG Capital started
12 offering the Fairfield Sentry fund, that Mark had been
13 over to New York, to the offices of Fairfield
14 Greenwich, and had spent some time and had asked to
15 review a variety of things, which I think included
16 asking the questions of whether Fairfield Greenwich
17 Group received the trading confirms of the trades.
18 I believe also that Victor or Marcelo told
19 me that Mark McCluskey had commented at one point that
20 he had, I guess, on paper tried to replicate a similar
21 strategy and that he was successful at doing it.
22 Q. Who told you that?
23 A. Again, I don't recall exactly if it was
24 Marcelo or Victor, but one of the two.
25 Q. Did you ever see the paper that he --

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1 A. No.
2 Q. -- prepared?
3 A. No.
4 Q. Other than what Mr. Echevarria or
5 Mr. Alvarez told you, do you know of anyone else at
6 EFG Capital or whoever tried to replicate the
7 split-strike-conversion strategy?
8 A. No.
9 Q. Did you ever try to do it?
10 A. No.
11 Q. All right. So you mentioned Mr. McCluskey,
12 you think, may have asked questions about transparency
13 and the validity of the strategy. Who else --
14 MR. COATES: Object to the form of the
15 question.
16 You may answer.
17 Q. (By Mr. Kellogg) Who else asked about
18 transparency to your knowledge?
19 A. Mr. Montgomery. I believe it was the
20 same -- is that -- is that the different question from
21 before?
22 Q. No. You mentioned -- you mentioned -- I
23 think you mentioned Mr. McCluskey, Mr. Echevarria,
24 Mr. Montgomery, Mr. Alvarez, Donnell and yourself.
25 So I guess better question is: When did

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1 Mike.
2 Q. And as you sit here now, do you recall
3 yourself having conversations about transparency with
4 anyone at Fairfield Sentry?
5 A. Yes.
6 Q. What do you recall?
7 A. I recall in one of my first visits that I
8 was meeting the folks at Fairfield Sentry and I
9 believe I had a conversation with Jeffrey Tucker, in
10 particular, about that subject.
11 Q. Did you bring it up or did he?
12 A. I think he was describing a lot of different
13 things about how he met Bernie Madoff and how they, I
14 guess, then formed the fund and what he had done, what
15 they and he had done personally throughout the years.
16 I believe it was part of that description.
17 Q. What do you recall him saying about the
18 issue of transparency?
19 A. In particular, that he himself had gone
20 numerous times and that staff from Fairfield Greenwich
21 had the ability to monitor the trade activity because
22 they saw the trade confirmations, and how he
23 personally had gone to Madoff's offices more than once
24 to personally verify.
25 Q. Did you have an understanding from that

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1 Mr. Montgomery do that? If you know.
2 A. He wrote a memo that, I believe, you have,
3 which is dated -- I think it's 2000 or '01, around
4 there, prior -- prior to my joining EFG Capital.
5 Q. Okay. So that's the basis of your
6 knowledge, that memo?
7 A. Yes.
8 Q. And Mr. Alvarez, what's your -- what's the
9 basis for you saying Mr. Alvarez asked questions about
10 transparency?
11 A. Conversations between me and him.
12 Q. When did you have these conversations?
13 A. At different times, but after I joined EFG
14 and I was apprising myself of the different
15 investments and the different things that were going
16 on at EFG Capital, and I believe at different times,
17 and certainly there's been conversations after the
18 fraud was announced.
19 Q. Okay. And what's the basis for you saying
20 Mr. Donnell asked questions about transparency?
21 A. Because at times I was with Mike Donnell in
22 visits in New York, and I believe that there are
23 e-mail -- I know from conversations with Mike and I
24 believe that there are e-mail communications that deal
25 with that subject from Mike or somebody responding to

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1 conversation whether Fairfield Sentry was looking at
2 trade confirmations in an electronic form or whether
3 they were getting paper confirmations after the
4 trades?
5 A. I don't recall from that conversation
6 specifically that detail.
7 Q. Okay. Do you recall from any conversation
8 with Fairfield Sentry whether you had an
9 understanding, one way or another, that the review of
10 trade confirmations was done electronically as opposed
11 to in a paper form after the trade?
12 MR. COATES: Object to the form.
13 A. Are you asking me a question, or are you --
14 Q. Mm-hmm.
15 A. I'm sorry, could you --
16 Q. The question was whether or not you recall
17 from this particular conversation with Mr. Tucker, do
18 you recall ever having an understanding as to whether
19 Fairfield Sentry was looking at trade confirmations
20 electronically in real-time or whether it was
21 reviewing them in paper confirmations after the
22 trades?
23 A. From that particular conversation with
24 Mr. Tucker, I don't recall specifically at the time.
25 This was early on. I don't recall early on from that

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Pages 17-20

00021

1 conversation if that distinction was made by him. And

2 I don't recall me asking him specifically --

3 Q. Okay.

4 A. -- that.

5 Q. At any time do you recall having an
6 understanding, one way or another, as to whether the
7 trades were being confirmed in real-time or after the
8 fact?

9 A. Well, the trades would always be -- have to
10 be confirmed after the fact. I don't think anybody
11 would let you see the trade as -- necessarily as it is
12 happening, and that -- I do recall that they mentioned
13 that, you know, there must have been different levels
14 of review, because some people would actually, as I
15 understood it, not only was it people from Fairfield
16 that would go to Madoff's offices in particular, but I
17 understand that even -- well, let me stick -- I want
18 to go back to Pricewaterhouse in a second, but the
19 people from Fairfield Greenwich would personally
20 visit.

21 I know that in New York, they had copies.
22 And I believe, also, that Fairfield Greenwich in
23 Bermuda, who was in charge in particular of doing the
24 risk management of the fund and -- and putting
25 information into different risk analysis tools, would

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1 or are you speculating it was him?

2 A. No, I -- I -- I'm -- I remember him touching

3 on the subject and, you know, and as part of the
4 conversation. I don't remember specifically, you
5 know, what he said about that other than him telling
6 me that the auditors would verify that.

7 Q. Do you remember when that happened?

8 A. Prior to -- I have to say prior to '04,
9 because I don't remember exactly when my first visit
10 was, but I know it was in the first couple of years.

11 Q. Do you know who else was at the meeting?

12 A. Actually, you know, I think -- I believe at
13 some point, I think, Mr. Tucker came to Miami as well,
14 and, you know, call it a marketing visit.

15 Q. He would come to Miami periodically with
16 the --

17 A. No, I'm not going to say periodically like
18 every year, but at least, I believe, he came once to
19 Miami.

20 Q. What was your understanding of Mr. Tucker's
21 position with Fairfield?

22 A. He was a managing director at the firm, one
23 of the three principal partners.

24 Q. Did you ever speak to anyone at
25 Pricewaterhouse about anything having to do with

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1 also receive the information.

2 So, I -- I wouldn't doubt and I don't recall
3 specifically asking if Fairfield Greenwich (Bermuda)
4 received a download dump, essentially, of the activity
5 on any one particular day to put into their systems
6 that they were using to analyze the information.

7 Now, I also understand from conversations
8 and from reading different materials that
9 Pricewaterhouse, the auditor of the fund, would also
10 verify the trade activity, maybe not every single
11 trade as the investment manager would have, but in
12 terms of auditing the fund, that they would go not
13 just to Fairfield Greenwich's offices, but I believe
14 also to Madoff's offices.

15 Q. Where did you learn that?

16 A. I believe from conversations with staff at
17 Fairfield Greenwich, in particular probably with
18 Mr. Tucker, and I remember at different times reading
19 about it and whether it was in some responses of, you
20 know, e-mails or some materials that we received from
21 Fairfield.

22 Q. As you sit here now, do you have a
23 recollection of a conversation where Mr. Tucker said
24 to you that Pricewaterhouse would audit the
25 confirmations or verify the activity in some fashion,

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1 Fairfield Sentry?

2 A. No.

3 Q. Do you know if anyone at EFG Capital ever
4 spoke to anyone at Pricewaterhouse about Fairfield
5 Sentry?

6 A. I don't think so.

7 (The referred-to document was marked for
8 identification as Plaintiff's Exhibit 118.)

9 Q. (By Mr. Kellogg) Let me show what you
10 I've marked as Exhibit 118, which is an e-mail from
11 Dan Lipton to you and others dated September 27,
12 2004. It's Bates numbers EFG Capital E-10840. This
13 is an e-mail that refers to a meeting with
14 Mr. Lipton and you the week prior to September 27,
15 2004.

16 My question to you is: If you look at this,
17 does this refresh your recollection of a meeting with
18 Mr. Lipton?

19 A. One second to read it, please.

20 Okay.

21 Q. Does this refresh your memory as to a
22 meeting that you had with Mr. Lipton in 2004 regarding
23 the issue of transparency?

24 A. Somewhat, yes.

25 Q. And reading this, does this summarize your

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1 understanding of what Fairfield Greenwich Group was
2 doing to monitor Mr. Madoff with respect to his
3 trades?

4 A. Yes.

5 Q. And did your understanding ever change as to
6 what they were doing?

7 A. Only that at some point the risk management
8 tool of something called RiskMetrics was added, I
9 believe, in Bermuda.

10 Q. What is RiskMetrics?

11 A. RiskMetrics is a risk analysis software that
12 is prevalent in the financial industry that is used --
13 originally created by, I believe before JP Morgan,
14 Morgan Guaranty, I think, way back when, and it was
15 really a tool that was created by them to monitor the
16 risk of their treasury functions and of their
17 proprietary traders.

18 And then they made it available to the
19 investment world and essentially it calculates
20 different risk parameters and some things called value
21 at risk, otherwise known as VAR. And VAR essentially
22 lets you for a particular portfolio or group of
23 securities, it essentially tells you the amount -- the
24 expected amount of dollars that the -- given the
25 positions that you have and the volatilities in the

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1 A. Well, yeah. We were reviewing a lot of
2 things that we had in the files and in preparation of
3 the production of documents for you, I saw...
4 Q. All right. Now, going back for a minute to
5 Exhibit 118, you said this did reflect your
6 understanding, at least as of this time, as to what
7 Fairfield Greenwich was doing to monitor Madoff, and
8 you said that after this time they added the VAR
9 analysis.

10 Do you know of any other changes that
11 occurred after the date of this e-mail, September 27,
12 2004?

13 A. I don't recall anything of substance that I
14 can tell you other than what I already said.

15 Q. If the procedure or if the monitoring
16 process of reviewing trades had changed and you'd
17 learned of it, would that have been important to you?

18 A. Yes.

19 Q. Why?

20 A. Because I think that, in essence, we were
21 comfortable with what they had described as --
22 summarized perhaps in this memo, and if the procedures
23 had been dramatically different in any way, we would
24 want to know. Particularly if it was, you know,
25 obviously on a change that would make it less

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1 market, that you're expected to win or lose on one
2 particular day.

3 So if you have a VAR of 100,000, that means
4 that the expectation of your portfolio the way you
5 have it right now, given the nature of the securities,
6 that that portfolio is expected to move up and down
7 \$100,000 -- within \$100,000 on any one given trading
8 day. So that was added. That RiskMetrics analytical
9 tool was added at some point, I believe it was after
10 this day.

11 Q. This was added by Fairfield Greenwich?

12 A. Fairfield Greenwich.

13 Q. Did you ever see any reports that showed
14 what the VAR was for any particular day?

15 A. Yes, I did.

16 Q. Under what circumstances would you see those
17 reports?

18 A. Because we would ask them. I think -- I
19 believe Mike Donnell in conversations with the
20 folks -- I think it was with Amit, we had asked at
21 times to see the RiskMetrics reports, and I know we --
22 I've seen at least one of them.

23 Q. When did you see at least one of them?

24 A. Most recently as we were reviewing --

25 Q. For this --

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1 transparent and less able to monitor risk rather than
2 the opposite, of course.

3 Q. We talked last time about securities or
4 investments or hedge funds being on a recommended and
5 approved list. Do you remember all that testimony?

6 A. (Nods head)

7 Q. What did it mean if an investment was on
8 hold?

9 A. If an investment was on hold?

10 Q. Yes.

11 A. A hedge fund?

12 Q. Say, for example, a hedge fund was on the
13 recommended list. Was there a nomenclature called "on
14 hold" or "putting on hold for now" or anything like
15 that?

16 A. I know we put things "on watch," and maybe
17 somebody could have used, you know, the word "on hold"
18 and it could be that it was on watch, but I don't
19 recall specifically that nomenclature

20 Q. Okay.

21 A. I know now maybe you're going to show me a
22 document which I used --

23 Q. Well, I'm going to ask --

24 A. -- which I used the word "on hold."

25 Q. You didn't. You didn't use it.

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Pages 25-28

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1 (The referred-to document was marked for
 2 identification as Plaintiff's Exhibit 119.)
 3 Q. (By Mr. Kellogg) It's marked as
 4 Exhibit 119. What it is, it's an e-mail from Alain
 5 Diriberri at EFG Bank to Mr. Echevarria and others.
 6 A. Mm-hmm.
 7 Q. Including Markus Caduff. You don't seem to
 8 be copied on this. It's Bates number EFG Cap E-32414.
 9 The purpose of the memo, it appears, is that
 10 Fairfield was changing its fees for the Sentry fund's
 11 Class A shares. It says, In discussion with GIS and
 12 compliance, we found out that: Although the fund is
 13 on the recommended list, Jerome considers the fund to
 14 be in the, quote, hold, unquote, category and
 15 predominantly there to ensure its follow-up by GIS.
 16 Do you see that?
 17 A. Mm-hmm.
 18 Q. Do you -- do you have an understanding of
 19 what that means? Was there some hold status for the
 20 fund imposed by Mr. Schonbachler --
 21 A. Can I see this for a second?
 22 Q. -- in 2004?
 23 Sure.
 24 A. Okay. I'm sorry, I was reading.
 25 Would you mind --

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1 Q. Well, do you have an understand-- at any
 2 time, was there a hold put on selling the fund by EFG
 3 Capital?
 4 A. I don't believe so.
 5 Q. If the bank -- if EFG Bank said, put a hold
 6 on selling the fund, would EFG Capital have followed
 7 that direction?
 8 A. We were not -- we were not obligated to do
 9 so.
 10 Q. Well, whether or not you were obligated to
 11 do so, if they did it, would you do it? Would you
 12 hold it?
 13 MR. COATES: Object to the form.
 14 You may answer, sir.
 15 A. Not necessarily.
 16 Q. Okay. Do you recall EFG Bank putting a hold
 17 on the Fairfield Sentry fund in 2004 and saying, don't
 18 sell it for a while?
 19 A. Until you showed me this document, I don't
 20 recall. And if you had asked me the question without
 21 this document, I would have said no.
 22 Q. Okay. So, having looked at this document,
 23 you're just unsure?
 24 A. I suppose they could have. I cannot tell
 25 you exactly if they followed up with that.

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1 Q. Do you have an understanding what -- what
 2 this means, that Jerome considers the fund to be in
 3 the "hold" category and predominantly there to ensure
 4 its follow-up by GIS?
 5 A. Well, as you know, Jerome worked for EFG
 6 Bank. The hold is in quotes there and, you know,
 7 Patrick and most of the people here, except for
 8 Victor, are people at EFG Bank. So they're talking
 9 about GIS and their list. But if you're asking me
 10 what I think the hold category meant -- is that what
 11 you asked me?
 12 Q. Yes, if you have an understanding.
 13 A. Well, I think that as Fairfield was changing
 14 its offering memorandum, because it was now going from
 15 a straight incentive compensation fee format to a new
 16 one, which was going to be the 1 percent plus the
 17 20 percent of the profits of the incentive
 18 compensation. So, I believe that what Jerome was
 19 saying, until we read the new prospectus to see if
 20 there's any other changes other than that, we should
 21 put a hold on selling this fund. I believe that
 22 that's probably what he meant.
 23 Q. In 2004, did EFG Capital put a hold on it,
 24 on selling the fund?
 25 A. I don't recall exactly, sir.

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1 Q. All right. Let's move to 2005.
 2 A. Let me know if you want my DayQuil.
 3 (The referred-to document was marked for
 4 identification as Plaintiff's Exhibit 120.)
 5 Q. (By Mr. Kellogg) All right. Let me --
 6 let me just show you an e-mail that I'm going to
 7 mark as Exhibit 120. This is an e-mail string
 8 beginning with an e-mail from Mr. Echevarria to you
 9 and others, Mike Donnell, Bates No. 36286.
 10 A. Mm-hmm.
 11 Q. By this time, by March of 2005, was Romy
 12 Cabrera involved in doing due diligence in Geneva?
 13 A. Again, Romy Cabrera went to work with the
 14 GIS team in Geneva, and I don't know specifically the
 15 extent of her functions other than she was active with
 16 the team that was looking at hedge funds and actually
 17 managing a -- a fund of funds.
 18 Q. As I recall, GIS stands for the Global
 19 Investment Services that were -- was a division of or
 20 a group at EFG Bank, is that right, in Geneva?
 21 A. That's right. Uh-huh.
 22 Q. And they created their own recommended list,
 23 as I understand it --
 24 A. That's right.
 25 Q. -- of hedge funds.

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Pages 29-32

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1 If you look at the third page of this
2 string, which is where this e-mail string begins, you
3 have Romy Cabrera in March of 2005 sending due
4 diligence materials for Laurus and VR.
5 Do you know what Laurus and VR are?
6 A. They're two different hedge funds.
7 Q. And asks Mr. Donnell to let her know what
8 else is missing. And he responds by saying, do you
9 have any of this type of initial due diligence memos
10 for any of the other Miami approved funds. Thanks.
11 In March of 2005, was that about the time
12 Mr. Donnell was -- was hired?
13 A. Pretty much. I think maybe he was hired a
14 month or two before, but around the time, yeah.
15 Q. And what he wanted him to do or what you
16 wanted him to do was put together the due diligence
17 files and organize the due diligence process for EFG
18 Capital?
19 A. I believe that some of the regulatory
20 recordkeeping requirements were being changed or
21 amended, and we wanted to make sure that we were in
22 compliance with those, and we wanted to make sure that
23 our files in Miami were as complete as possible for
24 the funds that were on our approved list. And
25 Mr. Donnell, as you know, was tasked with doing that.

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1 Q. And one of the things he wanted to do was
2 ask Global Investment Services what they had and
3 provide it to him; is that right?
4 A. That's what he was doing here, yes.
5 Q. Okay. And it looks, if you keep reading up,
6 it looks like they exchange some e-mails on this
7 topic, and he provided her with a report of what he
8 had and what he was looking for. We don't have that
9 attachment here. But she responds to it by saying,
10 Dear Michael -- I'm now on the first page.
11 A. I'm sorry.
12 Q. It says, Looking quickly at this, in the
13 Miami office there is (or there was) a cabinet in the
14 east wing in the hallway beside the file room where
15 two drawers were dedicated to fund information. There
16 you will find a pretty sizable file for Fairfield
17 Sentry where there is some extensive due diligence and
18 visits to Bernie Madoff's office by Marcelo Alvarez.
19 That will be better than anything I can provide you
20 for Sentry.
21 Do you see that?
22 A. Yes, I do.
23 Q. And then this is forwarded by Mr. Donnell to
24 Mr. Echevarria, who says, Amazing. And GIS wants to
25 charge us for their nonexistent due diligence. The

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1 material in that drawer must be pretty stale by now.
2 Do you see that?
3 A. Mm-hmm.
4 Q. You have to say "yes" for the --
5 A. Yes, I'm sorry.
6 Q. What was Global Investment Services charging
7 EFG Capital for due diligence?
8 A. At one point GIS was asked to -- by
9 management in Geneva, to not be a cost center, but to
10 be a profit center. And the folks at GIS then sought
11 to do different things. They had -- I think at the
12 time they already had one or two funds that, I
13 believe, were called Navigator funds, that were fund
14 of funds, that they had created, and they were
15 offering those funds to CROs at EFG. And also, there
16 was an attempt to try and get units like EFG Capital
17 to buy due diligence materials, efforts, services,
18 actually, is a better word, from them.
19 Q. And did -- did EFG Capital buy --
20 A. No.
21 Q. -- due diligence services?
22 A. No.
23 Q. Ever?
24 A. Not from them.
25 Q. Not from them.

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1 Did they ever pay for any?
2 A. Did EFG Capital ever pay for any?
3 Q. Yes.
4 A. To GIS?
5 Q. Yes.
6 A. No.
7 Q. Who did they pay? Did they pay someone
8 else?
9 A. We contracted later, as you know, the
10 services of Greenwich Alternative Investments.
11 Q. But was there any intercompany charge
12 imposed --
13 A. No.
14 Q. -- relating to due diligence done by --
15 A. No.
16 Q. -- GIS or any other division or entity of
17 EFG Bank at any time?
18 A. I do not recall and I don't have knowledge
19 if they charged any other bank. All I can tell you
20 that, as far as EFG Capital, we never paid them. We
21 never got debited.
22 Q. Did you ever see any due diligence materials
23 or due diligence analysis done by Global Investment
24 Services on Fairfield Sentry?
25 A. Other than -- from time to time I think I

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Pages 33-36

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1 may have seen a visit report from Jerome or somebody
2 like that to the offices of Fairfield Greenwich, but
3 other than that, no.
4 MR. COATES: That's my copy.
5 THE WITNESS: That's your copy?
6 MR. COATES: Yes.
7 Larry, just as a thought, as I mentioned, I
8 have to take a break at 10:30.
9 MR. KELLOGG: 10:30?
10 MR. COATES: 10:30.
11 MR. KELLOGG: I thought it was 1:00.
12 MR. COATES: I need to take one at 10:30 for
13 ten minutes.
14 MR. KELLOGG: Okay. Well, you want to --
15 you want to do it now?
16 MR. COATES: I just simply --
17 MR. KELLOGG: It's 10:28.
18 MR. COATES: If you were ready to -- if you
19 were ready to ask a short question, please,
20 please go ahead. If it was going to be a more
21 lengthy --
22 MR. KELLOGG: No, it's going to be long.
23 THE VIDEOGRAPHER: Stand by to go off Media
24 Unit 1. Going off the record at 10:29 a.m.
25 (Thereupon, a recess was taken from

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1 speak to at GIS? Also, Marcelo's due diligence visit
2 was various years ago prior to the existence of GIS.
3 How can they still be relying on that?
4 And then you say, I would have a personal
5 meeting with Mike to discuss.
6 And he said, I already did.
7 Do you recall what this issue was all about
8 and how it was resolved?
9 A. Again, Mike was trying to complete our
10 records and files about hedge funds in general, and we
11 were trying to gather as much information as possible
12 to complete those files. And I believe that we had
13 asked GIS also for copies of anything that they had in
14 their files so that we could also add to our files.
15 And that's what I know was happening at this time.
16 Q. Do you know whether any ongoing due
17 diligence reports were ever provided by GIS as a
18 result of these requests here?
19 A. I don't know. But I mentioned earlier, I
20 believe at some point I have seen a trip report of
21 sorts, or at least in an e-mail format, or in a memo
22 format, or in some sort of format by Jerome.
23 Q. What is AIA?
24 A. AIA is a company called Access International
25 in New York, which was a firm that was a -- two

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1 a.m. until 10:49 a.m., which the
2 following proceedings were held:)
3 THE VIDEOGRAPHER: We're now back on Media
4 Unit 1; the time on the record is now 10:49 a.m.
5 Q. (By Mr. Kellogg) I'll show you what I'll
6 mark as Exhibit 121, which is an e-mail string under
7 Bates Nos. EFG Cap E-36341.
8 In this e-mail, Mr. Donnell in March 2005
9 tells you and Mr. Echevarria that GIS has provided no
10 initial or ongoing due diligence reports on this fund,
11 meaning Fairfield Sentry, and has referred me to the
12 due diligence completed by Marcelo. Please let me
13 know if you want me to set up a conference call with
14 the manager to get an update on the fund and address
15 these concerns.
16 Do you know what concerns were there in
17 March of 2005?
18 A. No.
19 Q. Do you know whether a conference call with
20 the manager was set up at this time?
21 A. I don't recall a conference call set up with
22 a manager specifically as a result of this e-mail.
23 Q. Mr. Echevarria responds by saying, I can't
24 believe this is correct. Jerome spent an entire
25 afternoon at FGG a couple of weeks ago. Who did you

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1 things, a third-party marketer of hedge funds. Do you
2 know what that is? It's a company that is an
3 independent company that contracts with hedge funds to
4 market, you know -- hedge fund companies and managers
5 that don't particularly have a marketing arm,
6 sometimes they use the services of third-party
7 marketers. So they did that and I believe that they
8 also had -- provided services in terms of due
9 diligence and monitoring of hedge funds for people.
10 Q. Did EFG Capital ever use Access
11 International to do any due diligence of Fairfield
12 Sentry?
13 A. We never hired them to do anything.
14 Q. Did EFG Bank ever hire Access International
15 to do due diligence of Fairfield Sentry?
16 A. I believe EFG Bank hired AIA to do due
17 diligence on some funds and also -- let me think, let
18 me think -- AIA -- I don't want to speculate, but I
19 think AIA had another feeder, marketed another feeder
20 into a -- Madoff's split-strike-conversion. I don't
21 think it was specifically Fairfield Sentry.
22 (The referred-to document was marked for
23 identification as Plaintiff's Exhibit 122.)
24 Q. (By Mr. Kellogg) Let me show you
25 Exhibit 122, which is an e-mail string under Bates

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Pages 37-40

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1 label EFG Cap E-12606. It's an e-mail string that
2 begins March 14, 2005, from you to Bassam Salem.
3 And I draw your attention to the second
4 page. There's an e-mail, the third from the bottom,
5 from Mr. Donnell to Mr. Schonbachler and others that
6 says, Dear Jerome, when was our last ongoing due
7 diligence meeting/conference call with the fund
8 manager?

9 And he's referring to FGG weekly fund
10 reports. Do you see that?

11 A. Well, that reference is how this started,
12 but I see your -- I see the e-mail that you're
13 pointing to.

14 Q. Then it says, We have ongoing monitoring
15 done every month by AIA.

16 And then Mr. Donnell says, Regarding AIA,
17 have you had a chance to follow up with them regarding
18 Miami's use of the research - you were discussing the
19 matter with AIA and Van Hedge.

20 Does this refresh your memory at all as to
21 whether AIA was hired to do some sort of monthly
22 monitoring of Fairfield Greenwich Group or its funds?

23 A. EFG Capital never hired AIA to do monthly
24 monitoring of Fairfield Sentry.

25 Q. Okay. Did EFG Bank do it, did they hire

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1 or not Access International reports would be shared
2 regarding Fairfield Sentry with EFG Capital and who
3 would pay for those reports?

4 A. I don't recall specifically about AIA. I
5 think that we had discussions about them sharing any
6 due diligence that they had with us. And I guess very
7 likely I could have -- we could have included in the
8 conversation of them sharing whatever they had, it
9 would have included them -- we hoping that they would
10 share any reports that they had from AIA.

11 And the second part of your question was
12 whether -- something about pay?

13 Q. Yeah. Well, when you -- let me step back a
14 minute. When you say, "we had discussions with them,"
15 who are you referring to?

16 A. Bassam.

17 Q. Sorry.

18 A. Bassam and I.

19 Q. So you and he had discussions about whether
20 Access International or other due diligence reports
21 would be shared between the bank and EFG Capital?

22 A. Or they were going to let us have copies of
23 reports that they had.

24 Q. And were they going to or weren't they?

25 A. Well, it was one of those things that was

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1 Access International to do monthly monitoring?

2 A. Again, I know -- I believe that AIA was
3 hired by EFG Bank to do ongoing reviews and due
4 diligence on some funds. I am not sure if that was
5 regarding Fairfield Sentry, in particular, or another
6 fund that participated in the same -- another feeder
7 fund in the same strategy that Fairfield Sentry
8 utilized with Madoff.

9 Q. Okay. On the first page at the bottom, this
10 is again on Exhibit 122, it says, I have not received
11 an AIA report or an EFG ongoing report regarding
12 Fairfield Sentry. Did I miss it?

13 Does this refresh your memory as to whether
14 AIA was doing monthly monitoring for EFG Bank of
15 Fairfield Sentry?

16 A. Not any more than I've just said.

17 Q. Did you ever see any AIA or Access
18 International monitoring reports on Fairfield Sentry?

19 A. I don't recall.

20 Q. Do you recall having a discussion with
21 Mr. Salem --

22 A. Mr. Who? I'm sorry.

23 Q. Bassam Salem.

24 A. Salem. I'm sorry.

25 Q. -- with Mr. Salem about the topic of whether

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1 moved, it was fluid; and they, you know, first said
2 yes and then, you know, it sort of didn't happen that
3 much, and then the discussion as to the fees came up
4 and then the discussion as to, you know, whether GIS,
5 how they were going to make money and, you know, so it
6 was an ongoing thing that's sort of fluid and it
7 changed over time.

8 Q. What period of time are we talking about
9 where these discussions were ongoing?

10 A. The discussions of whether we were going to
11 pay for GIS for services?

12 Q. Well, whether you were going to get it,
13 whether you were going to be able to share --

14 A. Well --

15 Q. -- their due diligence and, if so, who pays
16 for it?

17 A. Sir, that conversation -- I'm sorry.

18 MR. COATES: Again, you've been very good
19 this session, both of you, but please let him
20 finish the question before you respond.

21 A. Sorry. Are you done?

22 Q. Yeah, I'm done.

23 A. Okay.

24 That was a discussion that came up more than
25 once, starting probably in '03 and then maybe again at

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1 some point in '04, and then again in '05. And it
2 probably ended when GIS sort of disbanded, which I
3 believe was early in '06 or so.
4 Q. During that period of time, did GIS actually
5 share its due diligence analyses with EFG Capital
6 generally?
7 A. I -- to the best of my recollections, I
8 believe that we received something at some point.
9 Some things at some points in time.
10 Q. And do you remember what you received
11 regarding Fairfield Sentry?
12 A. Regarding Fairfield Sentry.
13 Q. Yeah, let's stick with that.
14 A. Other than perhaps me recollecting some
15 comments, again, and I have to tell you from my
16 recollection that AIA was looking at another feeder
17 fund, and I can't remember what it was, and other --
18 and at times there were, again, trip visits by Jerome
19 and maybe even Bassam at some point went to New York,
20 and some comments and perhaps e-mails and maybe a
21 report about a visit or so about Fairfield Sentry.
22 Other than specifically about Fairfield Sentry, I
23 don't recall anything other than that.
24 Q. And was one of the reasons that this
25 discussion was ongoing -- I think what you said was

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1 in senior management above Mr. Salem?
2 A. Which issue, sir?
3 Q. The issue of we would like to share more --
4 the due diligence analysis of GIS.
5 A. I'm sure I did.
6 Q. Do you remember them specifically?
7 A. It was probably with Mr. Jim Lee.
8 Q. And what do you recall?
9 A. Sorry?
10 Q. What do you recall?
11 A. I'm trying to remember if Bassam reported to
12 Jim Lee at one point, and I believe he did; and I
13 remember saying that it made sense, if the
14 organization had resources in different places, that
15 those resources be shared.
16 Q. What did he say?
17 A. I don't recall exactly, but I do not recall
18 him not agreeing.
19 Q. You were -- at that point in time, were you
20 discussing about what GIS might share or other
21 portions of the organization?
22 A. I was recalling mostly GIS.
23 Q. And from your mind, in your mind, was that
24 a -- was that a problem or an issue, they just weren't
25 sharing what you thought they should share?

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1 that there were discussions as to who was going to pay
2 for it, how was GIS going to become a profit center.
3 Is that right?
4 MR. COATES: Object to form.
5 You may answer.
6 A. Why were we having those discussions, you're
7 asking me?
8 Q. No. One of the reasons you weren't getting
9 everything you thought you would be getting was
10 because there were ongoing discussions about who's
11 going to pay, right?
12 A. I'm not suggesting that necessarily was the
13 reason. So, I'm not suggesting specifically that they
14 were then blocking anything that they had because we
15 weren't paying.
16 Q. Well, what was the reason that they weren't
17 sharing everything you wanted to have shared?
18 MR. COATES: Object to the form of the
19 question.
20 A. I can't tell you the reason other than, you
21 know, perhaps they were on their sort of mode and
22 timetable about their work and maybe we were not
23 necessarily a priority for them. I don't know. I
24 couldn't tell you.
25 Q. Did you ever discuss the issue with anyone

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1 MR. COATES: Object to form.
2 You may answer.
3 A. Not really, because we felt that we still
4 had our own obligation and we had to continue to
5 monitor the funds and the activity of the funds that
6 were on our list sort of regardless of what they were
7 doing.
8 Q. If another division of EFG, either the bank
9 or another subsidiary of the bank, had rejected Madoff
10 on due diligence grounds, is that something you would
11 have wanted to know?
12 MR. COATES: Object to form.
13 A. It depends on what the rejection was about.
14 Q. If the rejection was, we've conducted due
15 diligence and we don't want to do business with
16 Mr. Madoff, would you have wanted to know that?
17 MR. COATES: Object to form.
18 A. Depends on why.
19 Q. Well, I mean, it's not -- if another area of
20 your bank thinks -- sorry. If another area of EFG
21 International says, we don't think we should be doing
22 business with Madoff, and you know you're doing it
23 through Fairfield Sentry for a lot of your customers,
24 it's a big hedge fund that you're selling, is that
25 something you would have expected them to share with

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1 you?

2 MR. COATES: Object to form.

3 A. Again, depends on the reason why they were

4 saying we don't want to do business with Mr. Madoff or

5 the fund.

6 Q. Okay. Under what circumstances would you

7 want to know and under what circumstances wouldn't you

8 care?

9 A. If, for example --

10 MR. COATES: Object to the form of this

11 question. It's speculation.

12 You may answer.

13 A. We would like to know if somebody were to,

14 in the due diligence process, find out that for some

15 reason it's a fraud, for example, that type of thing,

16 we would want to know.

17 If, for example, the particular unit of EFG

18 International was selecting funds for inclusion in, I

19 don't know, a fund of funds, a particular structure,

20 you know, a collection of funds or, I mean, something

21 like that, and they basically say, well, we don't

22 understand the strategy and we basically want to only

23 invest in funds that are, you know, strategies that we

24 understand and, therefore, you know, we're not going

25 to. Or, for example, if they say the fund's too big,

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1 Q. Fraud was revealed.

2 (The referred-to document was marked for

3 identification as Plaintiff's Exhibit 124.)

4 Q. (By Mr. Kellogg) Let me show you

5 Exhibit 124.

6 Is that something you would have wanted to

7 know?

8 A. That CMA rejected them?

9 Q. Yes, for failing due diligence.

10 A. CMA -- well, failing due diligence, I don't

11 necess- -- I mean, failing due diligence is -- is

12 different things. CMA was in the business of

13 reviewing, I believe, thousands of fund managers every

14 year. And of the thousands of fund managers, I

15 believe that they did not include, and I'm not going

16 to say failed due diligence in some cases, some

17 managers might have failed their due diligence for a

18 variety of reasons, but I don't, you know -- they

19 certainly did not include in their fund of funds

20 thousands of fund managers.

21 Q. Okay.

22 A. They might not like the strategies. They

23 might not like -- they might not understand the

24 investments. Again, there were a variety of reasons

25 why.

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1 or if they say we don't like to invest in funds which

2 have a large composition of their shareholders coming

3 from fund of funds as opposed to end investors, we

4 don't invest in those.

5 There's some reasons like that which, you

6 know, are not as important as perhaps somebody saying,

7 hey, you know, I know that this guy is a fraud.

8 Q. Did -- what is CMA?

9 A. CMA is a company that EFG International

10 acquired, I believe it was the end of '06 or beginning

11 of '07. I think the end of '06, around that time.

12 I'm not exactly sure.

13 It was a company that managed fund of funds

14 and also had structured notes issued or arranged for

15 structured notes issued that were linked to -- whose

16 performance of the notes were linked to a variety of

17 hedge funds.

18 Q. Were you aware that CMA had rejected Madoff

19 because he had failed due diligence?

20 A. No.

21 Q. Did Mr. Lee ever tell you that?

22 A. No. Well, no, unless --

23 Q. I mean, before -- before the fraud

24 collapsed.

25 A. No.

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1 Q. Okay. Let me show you what I've marked as

2 Exhibit 124, which is Bates label EFG Capital E-59521.

3 It's an e-mail string from December 12, 2008, the day

4 after the Madoff fraud was revealed.

5 And I direct your attention to the first

6 page, the third e-mail from Jim Lee to Robert Chiu,

7 C-h-i-u. It says, I am comforted to have seen that

8 Madoff was not an acceptable counter- --

9 A. I'm sorry, are you in the mid- --

10 Q. Right here.

11 A. Okay.

12 Q. I am comforted to have seen that Madoff was

13 not an acceptable counterparty at CMA ever. They

14 failed the DD there due to nondisclosure, et cetera.

15 Before this e-mail was circulated and

16 maybe -- did you see this e-mail? It wasn't

17 circulated to you.

18 A. I don't recall seeing this particular

19 e-mail.

20 Q. Before today, did you know that CMA had

21 rejected Madoff as an acceptable counterparty because

22 they had failed due diligence due to nondisclosure?

23 A. Before today?

24 Q. Yes.

25 A. I have, in preparing for this deposition,

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Pages 49-52

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1 I seen some e-mail that says that CMA did not invest in
2 Madoff.
3 Q. Okay. And before you were preparing for the
4 deposition, did you know that they had rejected -- CMA
5 had rejected Madoff as a counterparty for the reasons
6 stated here by Mr. Lee?
7 A. After the fraud was detected, I remember in
8 some conversation that Mr. Lee had mentioned that CMA
9 had not invested because they did not feel that they
10 understood the strategy and that they could not
11 monitor the strategy.
12 Q. When Mr. Lee told you that, did you remind
13 him that you had spoken with him and said, I certainly
14 would like other units of EFG to share with us
15 information they might have --
16 MR. COATES: Object --
17 Q. -- and that he had not disagreed with you?
18 A. My conversation --
19 MR. COATES: Excuse me. Object to form.
20 You may answer.
21 A. My conversation with Mr. Lee, I believe,
22 when I had it, we were discussing specifically Bassam
23 Salem, who, I believe, reported to him. When we had
24 that conversation, I don't think that CMA was even in
25 the radar screen of EFG International.

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1 A. I believe they had Fairfield Sentry in some
2 of their clients' portfolios.
3 Q. This is copied to someone named Albert Chiu.
4 Who is that?
5 A. They're not related.
6 Q. Okay.
7 A. But it's -- he is right underneath. Albert
8 Chiu now is the CEO, he used to be the deputy CEO, to
9 Bob Chiu, but they are not related.
10 Q. And that's for the Asian region?
11 A. That's for the Asian region, sir.
12 Q. Is Robert Chiu still there?
13 A. Robert Chiu is still there.
14 Q. What is his job now?
15 A. He's chairman of the region, and Albert is
16 the CEO of the region.
17 Q. While I'm thinking about that, you are
18 the -- you are the president and CEO and
19 Mr. Echevarria is the chairman, is that right?
20 A. Today, we don't have a president.
21 Q. Today you don't have a president.
22 A. I'm the CEO and Victor is the chairman.
23 Q. How do you -- how do you differentiate
24 between your responsibilities at EFG Capital?
25 A. Issues such as -- where we -- where we

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1 Q. Okay. When you had the discussion with
2 Mr. Lee about when he -- when he said, you know,
3 CME -- CMA never did business with Madoff, did you ask
4 him why you were never told that?
5 A. No.
6 Q. Why not? Why didn't you ask him, why didn't
7 you tell me that?
8 A. Because --
9 MR. COATES: Object to form.
10 You may answer.
11 A. -- he was telling me that the reasons why
12 CMA -- when we had a conversation about it, and he
13 told me that CMA was not investing in Madoff because
14 of their disclosure and their ability to monitor the
15 strategy, there's a lot of different funds, again,
16 that do not get included in CMAs, or did not get
17 included in CMAs fund of funds or structured notes for
18 the same reason. So, no, I did not ask him further on
19 that question.
20 Q. Who -- who is Robert Chiu, C-h-i-u?
21 A. Bob Chiu is the C- -- well, he is the -- was
22 the CEO of EFG in Asia and now is, I think, the
23 chairman of the region, of the Asian region.
24 Q. Do you know whether the Asian region did
25 business with Madoff or Fairfield Sentry?

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1 touch, so to speak, in our responsibilities is in the
2 management of some CROs. In particular, Victor has
3 overall responsibility for sales, which specifically
4 on a day-to-day basis some CROs report to me and many,
5 not -- the majority report to him. He has a couple of
6 offices that report to him, the Los Angeles office of
7 EFG Capital Asset Management and the office in Peru,
8 in Lima, report to him.
9 I have overall responsibility for the
10 general activities of the firm. Compliance actually
11 is also -- I'm sorry -- compliance is also under
12 Victor.
13 I have overall responsibility for the
14 general operations of the firm, which include, you
15 know, the general ops, IT, accounting, reporting, and
16 some general marketing responsibilities and issues
17 such as due diligence reports to me.
18 Q. Okay. Thank you.
19 A. So think of the difference like sales,
20 overall sales and operations.
21 Q. Generally speaking, that's the division?
22 A. Mm-hmm.
23 Q. With some overlap?
24 A. Yes, at the sales level.
25 Q. Who is Moz Afzal? M-o-z-A-f-z-a-l.

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1 A. He is a gentleman in London, who is now the
2 chief investment officer of the bank in London called
3 EFG -- it's called EFG Private Bank, which is a
4 subsidiary of EFG International. And there is a new
5 company which is recently being formed, domiciled in
6 Singapore, which is called EFG Asset Management, and
7 he is the chief investment officer of EFG Asset
8 Management at the present time.

9 Q. Was he chief investment officer of EFG
10 Private Bank in, say, 2007, 2008?

11 A. In London? EFG Private Bank London?

12 Q. Yes.

13 A. At what time, sir?

14 Q. 2007, 2008.

15 A. I believe so.

16 Q. Were you aware that his team did not accept
17 the Madoff funds on due diligence grounds?

18 A. I became aware of this after the fraud.

19 (The referred-to document was marked for
20 identification as Plaintiff's Exhibit 125.)

21 Q. (By Mr. Kellogg) I'll show you what I'll
22 mark as Exhibit 125, which is an e-mail string with
23 a Bates number of EFG Capital E-21395, which is an
24 e-mail from Jim Lee to a number of people.

25 A. Mm-hmm.

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1 A. Do you want me to go down the list?

2 Q. Yes, why don't you.

3 A. Well, Victor, you know who he is.

4 You know myself.

5 Jacobo Gadala-Maria at this time of this
6 e-mail, and certainly before that as well, was the CEO
7 of a company called PRS International, which is a
8 subsidiary of EFG International as well. Jacobo was,
9 I believe, 2007, at some point in 2007, when EFG
10 International acquired PRS International, Jacobo was
11 asked to move from EFG Capital, where he had been
12 president of EFG Capital since the fall of 2005, he
13 had been asked to move to PRS. So I'm curious as to
14 why his e-mail signature says EFG Capital, because at
15 this time, he was -- his only association with EFG
16 Capital was that of being a director of EFG Capital.
17 But anyhow, so that's Jacobo.

18 Benjamin Hein is a fellow working in PRS
19 International, in the investment advisor of PRS
20 International.

21 Albert Chiu is at the time, and at this
22 time, I believe, he was already the -- actually, I
23 don't know about this time, he was either the deputy
24 CEO or the CEO at the time of EFG Bank in Asia.

25 Bob Chiu we already discussed.

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1 You're looking at the top?

2 Q. Yes, I am.

3 And I don't know that -- I don't see
4 you're -- yes, I do. I see you're co-opted with this.

5 Do you recall receiving this e-mail?

6 A. Yes.

7 Q. It says here, Madoff could well be the atom
8 bomb for the HF and wealth management industries while
9 Lehman was simply a tsunami for banks and investment
10 banks. While it is comforting to note that our
11 in-house specialists, CMA and Moz Afzal's team, did
12 not accept the Madoff funds on due diligence grounds
13 and EFG management (led by Lonnie principally)
14 expressed strong doubts about Madoff as early as 2002

15 and took steps to mitigate our risks, if clients
16 sought to invest in his funds, Madoff's fraud
17 nonetheless will affect the trust our clients will
18 place with private bankers and wealth managers. I
19 thought we had survived the Lehman debacle reasonably
20 well, but I'm not so sure that recovering the trust of
21 clients after Madoff will be accomplished until well
22 after the losses have been forgotten. I hope I am
23 200 percent wrong here.

24 The recipients of this e-mail, are these
25 senior managers of EFG Capital and EFG Bank?

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1 John Williamson is the head -- has been the
2 head and is still the head of EFG Private Bank in
3 London.

4 And George Catsiapis was the head of EFG in
5 Monaco.

6 Lawrence Howell, I believe you know who he
7 is.

8 Mozamil Afzal, we just covered as being the
9 chief investment officer of EFG Private Bank in
10 London.

11 And Sabby Mionis was one of the two
12 principals at CMA.

13 Q. So would you say this e-mail was addressed
14 to the senior managers of the different units of EFG
15 International?

16 MR. COATES: Object to form.

17 Q. Let me -- let me rephrase it.

18 Were all these individuals senior managers
19 of different units of EFG International?

20 A. Benjamin Hein was not. The other folks were
21 senior managers, but this is certainly not the
22 totality.

23 Q. It's not everybody.

24 A. No.

25 Q. Before you received this e-mail, did you

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1 know that CMA and Moz Afzal's team had not accepted
2 Madoff's funds on due diligence grounds?
3 A. No.
4 Q. Is that something you would have wanted to
5 know, that the private bank in London had also
6 rejected Madoff's or his feeder funds?
7 A. Again, I'll use the same answer I gave you
8 before. It depends on the reasons why they did not
9 want to invest in Madoff-related products.
10 Q. It says also here that -- that Lonnie --
11 that would be Lonnie Howell?
12 A. Yes.
13 Q. Lonnie Howell expressed strong doubts about
14 Madoff as early as 2002. Were you aware of that?
15 A. I think he was referring there to the issue
16 of custody, which was the issue that Lonnie -- of
17 Madoff being the subcustodian of the fund, and Lonnie
18 always wanted to have that risk highlighted to the
19 clients.
20 And that's why I think it says, took steps
21 to mitigate our risk if clients sought to invest in
22 his funds. And, really, that is referring to the
23 disclaimer letters that the clients would acknowledge
24 that the custody was in the hands of Madoff.
25 Q. So you understood this sentence that's

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1 MR. KELLOGG: So we'll get to it. Thank
2 you.
3 THE WITNESS: I'm only --
4 MR. KELLOGG: Thank you.
5 THE WITNESS: I mean, it doesn't affect me.
6 It's just --
7 MR. COATES: We'll be searching for days for
8 the missing exhibit.
9 THE WITNESS: Yeah.
10 You're on PRS?
11 Q. (By Mr. Kellogg) Yes. What was the
12 business or is the business of PRS?
13 A. PRS is a registered investment advisor here
14 in the -- in the U.S., and PRS also owns a registered
15 advisor in Cayman. PRS advises clients as a
16 registered investment advisor on their investments,
17 and PRS also manages funds for the group of clients
18 that they manage. The majority of those clients are
19 of Spanish -- from Spain, Spanish origin and
20 residence. And PRS also -- it works a little bit as a
21 family office of sorts and they administer family
22 funds for family groups, which are singular funds
23 specifically formed for a family group. Those funds
24 are domiciled in Cayman, Grand Cayman.
25 Q. Was there a time when either Fairfield

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1 saying, he took -- that Mr. Howell took steps to
2 mitigate EFG's risks if the clients sought to invest
3 in the funds, what was meant by Mr. Lee was that you
4 had disclosed the custody issue to the customers?
5 A. Absolutely.
6 Q. Do you know of any other concerns that
7 Mr. Howell had about Madoff prior to the fraud being
8 revealed?
9 A. No.
10 Q. Now, you mentioned PRS International. What
11 was the business of PRS?
12 A. What is?
13 Q. Yeah.
14 A. Or was?
15 Q. Well, did it change?
16 A. No. But you're asking --
17 Q. What is or was the --
18 A. By the way, I think you might have skipped
19 123, or maybe it was me.
20 Q. Let me see.
21 MR. COATES: I think Sixto is correct.
22 MR. KELLOGG: Okay. I think -- I have 123
23 here. I put a sticker on it, but I haven't used
24 it yet. I took a side detour off my outline.
25 THE WITNESS: Okay. Well --

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1 Sentry and/or other Madoff feeder funds were part of
2 the investments that PRS made for its managed
3 customers?
4 A. Was there a time. I believe there was a
5 time or more than one time that Madoff funds were part
6 of PRS's investment.
7 Q. When you say there's more than one time,
8 when -- when was that?
9 A. PRS changed the management or altered its
10 management. PRS had an in-house -- when EFG acquired
11 PRS, PRS had an in-house investment advisory staff.
12 That effort was outsourced, and I don't recall exactly
13 in the beginning, but shortly thereafter that was
14 outsourced, and part of that outsourcing went to a
15 bank in Switzerland called UBP, Union Bancaire Prive.
16 And I know that UBP included -- I don't recall if it
17 was Fairfield Sentry exactly, but the Madoff.
18 Q. Do you know whether UBP and/or PRS did any
19 due diligence analysis of Madoff or the feeder fund
20 that they were offering to their -- or putting in
21 their customers' portfolios?
22 A. I don't know specifically that they did, but
23 that was a significant part of UBP's business was the
24 management of hedge funds, I think, in the
25 international hedge fund investment; and definitely

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1 amongst Swiss private banks, UBP was known to be one
2 of the top investors in hedge funds.
3 Q. Did you ever review or see any due diligence
4 analysis of Madoff or any Madoff feeder fund done by
5 UBP?
6 A. No.
7 Q. Did you ever see any such analysis done by
8 PRS?
9 A. No.
10 Q. Did you ever share any of EFG Capital's due
11 diligence analysis with either UBP or PRS?
12 A. No.
13 Q. Why?
14 A. We -- we did not have any relationship with
15 UBP.
16 Q. Okay.
17 A. And, frankly, the business of PRS is run
18 very independently of EFG Capital.
19 Q. Was there ever any discussion between EFG
20 Capital and PRS about sharing due diligence analysis
21 for any funds?
22 A. No.
23 Q. Did you consider -- did you ever consider
24 sharing any or broaching that subject with them?
25 A. No.

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1 Fairfield Greenwich was one. There was another one
2 that I think you're aware of called Kingate, which was
3 a, I think, 100 percent investment into Madoff. There
4 was one called Harold, I think, like the man Harold,
5 Harold fund, and there were several other feeder funds
6 around.
7 And from time to time, I believe we received
8 people that knew that we had a relationship with
9 Fairfield Greenwich, and I think at some point some of
10 them might have suggested that maybe we would want to
11 do that. But I don't recall at this moment a very
12 specific concerted effort where we said, let's create
13 a feeder into the Madoff strategy.
14 Q. Kingate was -- was not on the recommended
15 list of EFG Capital; is that right?
16 A. Hmm. Kingate was not on the recommended
17 list. I don't believe so.
18 Q. And Kingate was 100 percent invested in the
19 same Madoff split-strike-conversion strategy as
20 Fairfield Sentry, right?
21 A. Yes.
22 Q. Why is it that Kingate was not acceptable to
23 be on the recommended list, whereas, Fairfield Sentry
24 was? It was the same strategy, same manager.
25 A. I'm not --

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1 Q. Did there come a time when they removed all
2 their customers from Madoff or the Madoff feeder fund
3 they were offering?
4 A. I think that they had some money in, uhm,
5 through one of the UBP vehicles at the time of the
6 fraud.
7 Q. Okay. Have any claims, to your knowledge,
8 been brought against UBP by PRS or any other EFG
9 affiliate regarding that investment?
10 A. I'm not aware of any.
11 Q. Do you know whether UBP still provides
12 services to PRS?
13 A. Uhm, you know, I'm not exactly sure.
14 Q. All right. In -- in March of 2005, did you
15 consider the possibility of EFG Capital or EFG -- any
16 division of EFG creating its own feeder fund for
17 Madoff?
18 A. We might have had a conversation, but I
19 don't think that we really did much that you could
20 consider it a concerted effort to do so.
21 Q. What do you recall doing or considering or
22 talking about?
23 A. Well, there were lots of people offering --
24 lots of people. There were several different ways and
25 companies that had feeder into the Madoff strategies.

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1 MR. COATES: Okay.
2 A. I'm not so -- I got that.
3 MR. COATES: Let him finish the question.
4 A. I'm not so sure that we didn't have -- that
5 we had a problem with a client investing in Kingate.
6 I think that we didn't have a relationship with
7 Kingate, the -- the fund company, the manager, as we
8 had with Fairfield Greenwich, and I think that we
9 were, again, over the years comfortable with the
10 amount of information, service, due diligence,
11 et cetera, that we had with Fairfield Greenwich. And
12 we didn't have that with Kingate.
13 Q. Did Kingate pay retrocessions?
14 A. I don't think so, no.
15 Q. When you say "relationship," are you
16 referring to the retrocession agreement and
17 distribution agreements that you have --
18 A. No, because relationship --
19 MR. COATES: Object to form.
20 You may answer.
21 A. -- relationship with the principals,
22 relationship with the firm, you know, service,
23 et cetera.
24 Q. What do you mean by "service"?
25 A. Just, you know, when you ask them a

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Pages 65-68

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1 question, you got an answer. When you called and you
2 had an issue with something regarding the
3 administrator, a question, you get an answer.

4 So, I mean, service, when you get service
5 from a financial institution or you get service from
6 anybody, you know, it just means that you have
7 service, good service.

8 (The referred-to document was marked for
9 identification as Plaintiff's Exhibit 123.)

10 Q. (By Mr. Kellogg) Let me show you
11 Exhibit 123. This is an e-mail string under Bates
12 label EFG Capital E-12680. And this is a
13 several-page e-mail string. The first e-mail on it
14 is March 21, 2005, from Jerome Schonbachler to Sixto
15 Campano. But I want to start at the back.

16 The last e-mail on the last page --

17 A. 12686?

18 Q. -- page 12686 --

19 A. Mm-hmm.

20 Q. -- there's an e-mail from redacted. That
21 means the name has been removed. I don't know why,
22 but it's been removed. It's an e-mail to you that
23 says, Dear All, as you can see, Safra -- Safra is
24 another bank, isn't it?

25 A. Safra is a bank.

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1 Q. All right. Let's -- let's keep reading

2 along there.

3 A. Okay.

4 Q. You respond by saying, Thanks for the
5 e-mail. I'll make sure Jerome and company reply and
6 get back to you.

7 And then Mr. Schonbachler says to you, We
8 already have a managed account with Madoff reserved
9 with the EF Focus fund.

10 A. Mm-hmm.

11 Q. That was a -- that was an EFG-sponsored
12 fund, the Focus fund?

13 A. EFG Bank.

14 Q. EFG Bank-sponsored Focus fund.

15 And through that Focus fund, EFG Bank had a
16 managed account with Mr. Madoff?

17 A. EFG Bank created the Focus fund, and I
18 believe the Focus fund had originally three
19 allocations to the funds that were in -- allocations
20 to managers. I think maybe at one point they might
21 have added a fourth, but I believe it was three
22 different strategies. And I think that one of those
23 strategies was allocated a third -- was like a third,
24 a third, a third. And I believe that one of those
25 strategies was allocated to a Madoff feeder, but I

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1 Q. Okay. As you can see, Safra is dealing
2 directly with Madoff and offering a Fairfield/Kingate
3 type of fund priced at an extremely competitively
4 condition (1.5 percent p.a. of management fee only)
5 which puts Fairfield at completely a very
6 disadvantageous position. This is a strong indication
7 that Mr. Madoff is seriously diversifying its list of
8 distributors. Is not this the right time for EFG to
9 call Madoff -- Mr. Madoff and open a managed account
10 with him? I look forward to hearing from you.

11 Does this refresh your memory as to, in this
12 timeframe, February, March of 2005, there was
13 discussion about EFG directly opening a managed
14 account with Mr. Madoff?

15 A. I suspect that this e-mail is redacted
16 because I think that came from a client. So, this
17 e-mail that you just read, I think, originated from a
18 client and that doesn't mean that EFG was at this
19 time, after the reading of this e-mail, considering
20 opening a feeder fund.

21 But if we -- you want me to remember more
22 about the situation --

23 Q. Well, let's keep going.

24 A. -- you got to -- you got to -- you got to
25 let me read more.

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1 I think that's the one I was referring to earlier that
2 would come through AIA, that you were asking before --

3 Q. Yes.

4 A. -- Access International that I referred to
5 earlier. So, I think that's -- that's where -- that's
6 where it was.

7 Q. So having reviewed this, you think when
8 Access International was doing some due diligence of
9 Madoff, it was in connection with the Focus fund?

10 A. It was in connection with the feeder fund
11 that the Focus fund used to access the Madoff
12 strategy. Follow?

13 Q. Do you know whether as part of the Focus
14 fund, as Mr. Schonbachler says here, there was a
15 managed account with Madoff, between EFG Bank and
16 Madoff or EFG -- some EFG entity and Madoff?

17 A. I don't recall specifically that it was a
18 managed account, but that's what it says there.

19 Q. But your recollection looking at this now is
20 that whatever it was, whether it was a managed account
21 or another feeder fund, Access International was doing
22 some sort of due diligence analysis of the
23 relationship. Is that right?

24 A. Let me try and answer it, because I think
25 that we're mixing -- again, just to be specific.

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00073

1 Q. Mm-hmm.
2 A. The EFG Focus fund was created by EFG Bank.
3 Q. Yes.
4 A. And part of it was to invest in three
5 strategies. One of the strategies was the
6 split-strike-conversion strategy.
7 Q. Right.
8 A. And I believe that one -- that that strategy
9 was effected through a vehicle that Access
10 International had arranged for EFG Bank for the Focus
11 fund.
12 And as I mentioned earlier, I believe that
13 in some comments from Jerome in some of the traffic
14 where he states that Access International is
15 monitoring a performance, and I believe earlier you
16 had even indicated it was monitoring Fairfield Sentry,
17 and I believe I tried to clarify to you that I didn't
18 think it was monitoring Fairfield Sentry, per se, but
19 that it was monitoring the Madoff
20 split-strike-conversion strategy, which would
21 presumably be the same for different feeder funds.
22 Q. Was any -- any due diligence done in
23 connection with the Focus fund's investment into
24 Madoff or the Madoff strategy, was any of that ever
25 shared with EFG Capital?

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1 A. I don't recall seeing it.
2 Q. Did you ever ask for it?
3 A. I don't believe so.
4 Q. Why?
5 A. Again, we had our own due diligence that we
6 started doing at the onset of EFG clients investing,
7 and I've also stated that we were -- continued to do
8 that throughout the years, and I don't think that we
9 considered that we needed it.
10 Q. Notwithstanding the fact you never saw any
11 of their due diligence that they might have done in
12 connection with the Focus fund, in preparation for
13 this deposition and since the EFG -- or the Madoff
14 fraud has been revealed, do you know whether EFG
15 examined any trade confirmations of the Madoff
16 split-strike strategy in connection with the Focus
17 fund?
18 MR. COATES: I want to object to the form.
19 You say EFG. Be more precise.
20 Q. (By Mr. Kellogg) EFG Bank. I guess it's
21 EFG Bank.
22 A. I don't know if that happened.
23 Q. Okay. Do you know whether they did any
24 analysis of the auditors?
25 A. I don't know that that happened.

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1 Q. Okay. Moving up on the e-mail chain here,
2 it says, Dear Sixto, the product is only reserved for
3 Focus. The fees are the same as Sentry. We have
4 problems with Kingate as we do not have full
5 transparency.
6 A. Mm-hmm.
7 Q. Did -- did EFG Bank have different issues
8 with Kingate than EFG Capital did?
9 A. I don't recall anything specific, you know,
10 in the -- in the light of what the statement you just
11 read from Jerome.
12 I did tell you earlier that we at EFG
13 Capital -- sorry -- we at EFG Capital -- I just hit
14 the mic -- we at EFG Capital did not have that ongoing
15 fluid relationship with Kingate ourselves. So I
16 presume Jerome was expressing that he was -- that they
17 had the same issue.
18 Q. Okay. Moving upwards, you say to
19 Mr. Schonbachler, So then Safra has something that we
20 do not have. Why does it have to be reserved for
21 Focus only? Can we launch another Focus feeding only
22 into Madoff?
23 And he says, Safra invested U.S. dollars
24 50 million from their own money. Nothing that EFG is
25 willing to do now. If we can have a commitment of

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1 U.S. dollars 20 million, we could create a feeder fund
2 into the managed account. It has been reserved for
3 EFG Focus before because of capacity constraint and
4 also because we want to make money on the deal and not
5 give it for free to any client. Please let me know
6 what you think. Please bear in mind that the creation
7 of a feeder cost U.S. dollars \$50,000.
8 Does this refresh your memory at all as to
9 whether, at this period of time, EFG Capital was
10 considering creating such a feeder fund?
11 A. Well, other than the introduction of the
12 topic through this e-mail string, I don't think that
13 you could constitute that a consideration, or maybe
14 you can constitute this dialogue to be the beginnings
15 of a consideration with whether EFG Capital could do
16 something. But I don't recall prior to this string of
17 e-mails another consideration as to creating a
18 separate feeder fund.
19 Q. Okay. You respond by saying, I think we can
20 come up with 20 thou- -- 20 million from our clients
21 if we get more money and more transparency. Are you
22 sure we can do this?
23 What did you mean by that, "if we get more
24 money and more transparency"?
25 A. Well, more money, I think earlier here he

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1 was referring to the Safra strategy that only had a
2 1-1/2 percent management fee, which would have omitted
3 the charge of the performance fee, of the 20 percent
4 performance carry. So, I think that what I was
5 referring to there, that if -- if we could create a
6 feeder where we would keep the 20 percent and not have
7 to get only a portion of it, we would make more money.
8 Q. So what you're saying there is if the fees
9 made sense to EFG, you could come up with the
10 \$20 million from clients --
11 A. I also -- I also said "more transparency,"
12 which means that if it were our vehicle, then I think
13 the level of responsibility that we would have would
14 get elevated because it would be our vehicle.
15 So the same thing that I've described to you
16 that Fairfield Greenwich has summarized in the Dan
17 Lipton e-mail that you showed me earlier which
18 summarized our understanding of what the procedures
19 were. If we were to create a feeder, which was an EFG
20 International, Capital, Bank, you know, something, I
21 felt that we would need to have that level of access
22 ourselves all the time.
23 Q. You would need that from Mr. Madoff?
24 A. We would need that from Mr. Madoff.
25 Q. The next page, there's some discussion back

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1 Q. What did you mean when you said, is this a
2 Sphinx fund?
3 A. There was a -- a fund platform that had been
4 created by Jerome in Switzerland, which was a master
5 fund to invest and -- and then it had classes. It was
6 created so you could have different classes within the
7 master fund, and each class was created -- would have
8 been created for a particular investment.
9 And so, therefore, it's -- it's -- it was at
10 least, and I can't tell you that it's commonly used
11 now, but it was the type of situation where you would
12 gain efficiencies for not having to register a new
13 fund when you were creating a new fund, and you could
14 just issue a new class of shares for that master fund.
15 And the Sphinx was such a master fund.
16 Q. Okay. Did you ever talk to Mr. Madoff or
17 anybody at EFG Capital, I should say, talk to
18 Mr. Madoff about this idea?
19 A. No.
20 Q. Did anyone at EFG, to your knowledge, EFG,
21 the entirety EFG, talk to Mr. Madoff about this idea
22 of creating a feeder fund?
23 A. Not that I know of.
24 Q. What happened to this idea?
25 A. If you let me read a little bit more, I

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1 and forth about whether you mean 28 million in years
2 or months and you say months.
3 Then moving to page 12682, and you say to
4 Mr. Schonbachler on March 10 that, Had a meeting today
5 and the \$10 million in three to four months should be
6 easy. Would this be a Sphinx fund? What would be
7 fees you think? It would need to be better than
8 Sentry either to the client or the CROs. Thanks.
9 Do you remember this meeting and who was
10 there?
11 A. I'm sorry, say it again.
12 Q. Do you remember this meeting that you refer
13 to here, who was at the meeting?
14 A. I think I probably had a meeting with some
15 CROs who understood the Fairfield Sentry fund and who
16 would have the majority of the exposure to Fairfield
17 Sentry fund, the majority of the clients exposed to
18 Fairfield Sentry fund.
19 Q. And what you're saying here is if -- if it
20 was competitive or better than Sentry, both to the
21 client and the CROs, your CROs could raise \$10 million
22 in three to four months; is that right?
23 A. That's what I inferred.
24 Q. Do you know what CROs you met with?
25 A. I don't recall exactly.

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1 might be able to tell you, because I don't recall
2 exactly.
3 Q. Well, let's -- let's keep going through it.
4 A. Okay.
5 Q. I don't know if it answers the question, but
6 maybe you'll remember something.
7 The next e-mail says, Dear Sixto -- this is
8 from Mr. Schonbachler -- he says, I spoke with Lonnie
9 and he seems okay with it. He is nevertheless adamant
10 about the fact that the fund will have zero percent LV
11 on itself --
12 A. Mm-hmm.
13 Q. -- and the credit guys will only give LV
14 against a lombard portfolio.
15 A. Mm-hmm.
16 Q. What did you understand that to mean?
17 A. That LV is loanable value, and the credit
18 department at EFG Bank is in charge with assigning
19 loanable values to individual securities.
20 And I think what this said is that the fund
21 will have zero loanable value if you have a singular
22 holding, if you have only one exposure in your
23 portfolio. You would not, because the concept of a
24 lombard portfolio, as it's known in Switzerland, is a
25 diversified portfolio of securities. Lombard usually

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1 means at least five and more like perhaps ten
2 investments in general.
3 So the standard practice of the credit
4 department is not to assign loanable value when you
5 only have concentration in one security as opposed to
6 a variety of securities, very diversified.
7 Q. Okay. So he seemed -- Lonnie Howell seemed
8 okay with the idea about a Madoff feeder fund, he just
9 didn't want to lend any money for it to be purchased
10 on margin if it was the only security in the account.
11 Is that what you're saying?
12 A. Yes, that's what that says.
13 Q. And it says, We went to Mike -- On another
14 topic, we went to Mike Donnell and all the due
15 diligence -- was sent to Mike Donnell all the due
16 diligence he requested. Lonnie came back to me saying
17 he/somebody complained about the lack of information.
18 And you respond by saying, On the comment of
19 feedback, see my other e-mail. I called Bassam,
20 because when we asked for the AIA comments of Madoff,
21 you responded talk to Bassam and I did, and he
22 indicated we should not get it, and we got into the
23 perennial discussion of who pays for what, et cetera.
24 So it was I who called Lonnie.
25 This refers to that discussion you were

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1 charge? Is AIA in the monitoring fee?
2 He responds that Madoff account would be
3 like Fairfield Sentry, 1.5 and 20. And that you would
4 add 1 percent on the feeder fund, .5 percent for the
5 CRO, and .5 percent for the risk manager and GIS.
6 You say, So it's more expensive than Sentry?
7 And he responds, These are the current
8 conditions of the managed account. Madoff charges
9 1.5 percent for this one on top of the 20 percent.
10 A. Mm-hmm.
11 Q. Does this refresh your memory at all as to
12 what happened with this idea, now that we've gone
13 through the e-mail chain?
14 A. Yeah, it died.
15 Q. Just died? Why did it die?
16 A. It was -- didn't make sense.
17 Q. Because it would cost more money to the
18 client than Fairfield or --
19 A. Yeah. I mean, it's difficult to go tell a
20 client and say, hey, let's take your money out of
21 Fairfield Sentry with this particular structure and
22 why don't you buy this new feeder from EFG which is
23 going to cost you more money. It just didn't make
24 sense to us.
25 Q. All right. Other than this e-mail string

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1 talking about?
2 A. Yeah.
3 Q. Do you remember the conversation with Lonnie
4 Howell where you went to him and said, hey, I'd like
5 to get the AIA information on Madoff and Bassam won't
6 give it to me because we haven't paid for it, or
7 something like that?
8 A. I don't recall exactly that conversation,
9 but I don't doubt at all that I called Lonnie at some
10 point or in a conversation with Lonnie that I made
11 reference to what I called there the perennial
12 discussion of who pays for what.
13 Q. Okay. Your next e-mail you asked what would
14 the pricing of the fund be, how much would the
15 management fee and incentive, and how much of either
16 of those would be kept by EFG, AIA or Madoff.
17 A. Mm-hmm.
18 Q. He responds by saying, I propose the pricing
19 to be 1 percent per annum for the risk monitoring fee,
20 .5 percent to go to anyone who sells it, and .5 to go
21 for the risk management and fund administration.
22 Additionally, you could charge a performance fee, as
23 the managed account does not give any retro like
24 Fairfield Sentry today.
25 And then you ask him, What would Madoff

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1 here, do you recall any other instance in which EFG
2 Capital or any EFG entity considered opening up a
3 feeder fund for Madoff?
4 A. I do not recollect any other situation.
5 MR. KELLOGG: All right. We need to change
6 the tape, so let's go off the record.
7 THE VIDEOGRAPHER: Stand by. Going off
8 Media Unit Number 1. Now going off the record at
9 a.m.
10 (Thereupon, a recess was taken from
11 a.m. until 12:09 p.m., after which the
12 following proceedings were held.)
13 THE VIDEOGRAPHER: We're now back on the
14 video record. This is the start of Media Unit
15 Number 2. The time back on the record is now
16 p.m.
17 (The referred-to document was marked for
18 identification as Plaintiff's Exhibit 126.)
19 Q. (By Mr. Kellogg) Okay. Before we broke,
20 we were talking about the Focus fund. Let me show
21 you what I've marked as Exhibit 126, which is an
22 e-mail string with Bates No. EFG Cap E-12616. It
23 begins with an e-mail from you to Jerome
24 Schonbachler in March -- on March 14, 2005.
25 In -- in your e-mail, you're responding to

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1 Mr. Schonbachler, who has asked you or has said to you
2 that CS, which refers to Credit Suisse, had a fund
3 position and not a managed account. Their management
4 wanted to have full transparency every minute and
5 Madoff refused, arguing that Credit Suisse could
6 replicate his strategy for Credit Suisse's benefit
7 only. It became a big issue, and CS decided to
8 redeem. CS wanted full transparency as they had a lot
9 of mortgages which were not currently marked to market
10 at this time.

11 Do you recall an issue around the same time
12 period, March of 2005, where you had heard something
13 about Credit Suisse redeeming its position with Madoff
14 because of transparency issues?

15 A. I am reminded because in preparing for the
16 deposition, I saw at least some part of this e-mail.

17 Q. Okay. So what do you recall about that
18 issue?

19 A. My recollection is from reading parts of
20 this, and I think that this all started with a client
21 making a comment that -- let me not speculate, sorry
22 Give me a second.

23 Okay. Yeah. I guess this started with a
24 comment and then there's another CRO that jumps in, as
25 part of the string, saying that he had spoken to Maria

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1 reasons for Credit Suisse's redemption?

2 A. Well, we spoke to --

3 MR. COATES: Object to form.

4 You may answer.

5 A. From EFG Capital, Ricardo Ventura spoke to
6 Lourdes Barreneche at Fairfield Greenwich.

7 Q. Yes. Did anyone speak to anyone at Credit
8 Suisse, to your knowledge?

9 A. Not to my knowledge.

10 Q. All right. The issue that I'm pointing out
11 here, that I'm asking about is, the explanation given
12 to you by Mr. Schonbachler is that Credit Suisse's
13 management wanted to have full transparency every
14 minute and Madoff refused to do that.

15 A. Mm-hmm.

16 Q. You respond by saying, Isn't full

17 transparency what we have through the Focus account?

18 A. Mm-hmm.

19 Q. How come they don't mind with us?

20 Did anybody answer your question?

21 A. I would have presumed there was another
22 e-mail answering this.

23 Q. I haven't seen it.

24 A. But apparently -- and I have -- you know.

25 Q. There may be. I don't know.

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1 Lafitte, which is a person working for EFG in Buenos
2 Aires, saying that they had also heard something
3 similar, that Credit Suisse had asked its clients to
4 redeem from Fairfield Sentry.

5 Q. And so you inquired about that?

6 A. I think we went -- Ricardo Ventura, who's at
7 the bottom of the first page, used to -- now he's a
8 CRO. At the time for a while -- I don't know exactly.
9 I think, at -- at that time, he was sitting in our
10 trading desk. And he makes reference there that he
11 spoke to Lourdes, and that would be Lourdes Barreneche
12 at Fairfield Greenwich, and he recounts there the
13 conversation.

14 And then Jerome, whom Ricardo -- Ricardo
15 copied and I believe was copied on the whole string,
16 jumps in and says what it says, that this is very old
17 stuff, that Credit Suisse had had a lot of problems on
18 the mortgage market, and that would be investing in
19 mortgage bank securities.

20 And he makes reference there that Jerome
21 says, my wife was the head of risk for Credit Suisse
22 First Boston at the time. So his information was
23 coming from, I guess, his wife who was saying that.

24 Q. Do you know whether anybody spoke with
25 anyone other than Mr. Schonbachler's wife about the

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1 A. There may be. I, at this point, do not
2 recall if there was an answer to that particular
3 question.

4 Q. Was your understanding that through the
5 Focus account, EFG Bank had full transparency every
6 minute to Madoff's trades?

7 A. As I sit here today, I don't recall that
8 transpar- -- that statement that you made.

9 Q. Do you recall one way or another, or you
10 just don't remember?

11 A. I don't think it was EFG. If any- -- if
12 anybody, I think this came through AIA, and I don't
13 think that EFG had that transparency that you're
14 talking about, because it wasn't EFG's account --
15 managed account. Sorry. It wasn't EFG's managed
16 account.

17 I believe -- I believe it was AIA's managed
18 account and EFG had a piece or invested through that
19 managed account. So, I don't believe that the Focus
20 fund's investment into the Madoff
21 split-strike-conversion strategy was, in fact, a
22 EFG-managed account. I think they had a piece and
23 access to an account that was AIA's account.

24 Q. So you think AIA had its own managed
25 account, and some of the money in that account

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1 belonged to EFG's Focus account?
 2 A. Yes.
 3 Q. Or Focus fund, I should say
 4 A. Yes.
 5 Q. And so your understanding is if anybody had
 6 minute-to-minute transparency, it would be AIA?
 7 A. If they did, being that it was their
 8 account, it was -- it would have been them.
 9 Q. And you're questioning here, saying, well,
 10 Madoff is afraid someone is going to steal his
 11 strategy if they give minute-by-minute updating. How
 12 come he doesn't care with us, or AIA maybe is what you
 13 meant. And you don't recall getting an answer or what
 14 the answer might have been?
 15 A. I don't recall getting an answer, but the
 16 issue of competitors gaining access to Madoff strategy
 17 was an issue that from the beginning was known to EFG
 18 that Madoff's concerned that that would happen.
 19 I certainly don't think that AIA was a
 20 competitor to Madoff, given, you know, the size and
 21 the type of firm that AIA was. I believe that there
 22 would have been a perception definitely that Credit
 23 Suisse could have been a formidable competitor to
 24 Madoff.
 25 Q. Did -- was the Focus fund sold by EFG

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1 Q. How about the Notice to Clients that would
 2 say, Mr. Madoff's firm is a subcustodian, and one of
 3 the risks of the fund is he's a subcustodian and has
 4 physical custody of the securities; that's the notice
 5 you say stopped in 2005?
 6 A. Correct.
 7 Q. When there was a more general disclosure for
 8 all hedge funds saying there's -- custody is a risk
 9 and other things.
 10 A. A list of disclaimers and risk statements.
 11 Q. When the Notice to Clients was -- was used,
 12 that was directed -- that was directed to the Madoff
 13 Fairfield Sentry custody issue; is that right?
 14 A. Correct.
 15 Q. Was that same disclosure and consent
 16 required for investors into the Focus fund?
 17 A. Again, let me just try and make sure --
 18 you're talking about that letter in which we
 19 highlighted the custodianship, that -- was that letter
 20 used when clients invested into the Focus fund?
 21 Q. My understanding, you gave them a letter,
 22 you'd have the clients sign off on it.
 23 A. Yeah. Mm-hmm.
 24 Q. Was that given also to the Focus fund
 25 investors?

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1 Capital's CROs?
 2 A. I believe in some small amount, yes.
 3 Q. There was a product available for sale on
 4 the recommended list?
 5 A. There was a product recommended for sale.
 6 Q. We've discussed last time around about
 7 whenever anybody invested in the Fairfield Sentry
 8 fund, they would sign a form that said -- it was
 9 called Notice to Clients that talked about the custody
 10 issue. Do you remember that being done by every
 11 investor in Fairfield through EFG?
 12 A. Which stopped at one point.
 13 Q. Well, when did that stop?
 14 A. I believe it stopped sometime around --
 15 probably sometime at the end of '05.
 16 Q. And was it ever reinstated again?
 17 A. No, because it was replaced with the
 18 extensive additional risk disclosures that were
 19 prepared for clients' signature.
 20 Q. Okay. So the Notice to Client and the risk
 21 disclosures associated with the Fairfield Sentry fund,
 22 were those also used in connection with the Focus
 23 fund?
 24 A. They would have been, because it was a hedge
 25 fund.

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1 A. I don't believe so, because the Focus
 2 fund -- I think that when it started, the Focus fund
 3 itself, and perhaps when we offered it, was concurrent
 4 probably with us instituting the new disclosure
 5 procedures of having the expanded additional risk
 6 disclosures.
 7 (The referred-to document was marked for
 8 identification as Plaintiff's Exhibit 127.)
 9 Q. (By Mr. Kellogg) All right. Let me show
 10 you what I'm marking as Plaintiff's Exhibit 127.
 11 Which is Bates label EFG Cap E-10075. This is an
 12 e-mail string beginning with a June 23, 2004, e-mail
 13 from you to Romy Cabrera. Starting with Romy
 14 Cabrera's e-mail to you at the very bottom of page 1
 15 and going on to the second page of this exhibit, it
 16 says, How are things in Miami, et cetera. Bassam
 17 asked me to send you the information on the Focus
 18 fund. I should have it posted on the GIS by the end
 19 of the week. Please -- also, please note there will
 20 be a disclaimer that the client would have to sign
 21 off. The final copy is not yet available, but will
 22 be shortly.
 23 You respond by saying, Why do we need a
 24 disclaimer? Can I circulate this?
 25 She says, Lonnie wants a disclaimer as one

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00093

1 portion is the Sentry strategy.
2 You respond by saying, But is it Madoff?
3 The disclaimer was because of the fact that Sentry was
4 custodied at Madoff and not an independent. I thought
5 it was not because of the strategy. Who is the
6 manager? And where does he custody?
7 She says, Madoff and Madoff.
8 Does this refresh your memory as to whether
9 that disclosure was required for the Focus fund?
10 A. Somewhat. But I believe you're going to ask
11 me what happened after when -- if we required this
12 disclosure after this --
13 Q. What --
14 A. And as I -- as I sit here today, I do not
15 recall exactly if that was requested.
16 Q. You don't recall one way or another?
17 A. I don't recall.
18 Q. All right. Let's go back, then, to due
19 diligence of 2006. Do you recall any specific due
20 diligence meetings or efforts done in 2006?
21 A. Do I recall any due diligence meetings on
22 what?
23 Q. On Fairfield Sentry.
24 A. In 2006?
25 Q. Yes. Anything -- anything stick out in your

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1 be the appropriate party to keep a custody letter
2 up-to-date.
3 And this is in 2006. Was the custody letter
4 and the Notice to Clients still being used in 2006?
5 A. Okay. So your question was, was a letter
6 still being used --
7 Q. Yes.
8 A. -- in 2006. I suppose that it was still
9 being used in 2006.
10 Q. Did there come a point in time in 2006 where
11 Fairfield Greenwich discovered that this letter was
12 being sent out to EFG's clients and objected to it?
13 A. I don't know the date. I remember that
14 Fairfield Greenwich at one point objected to the
15 letter.
16 Q. What do you recall about that issue?
17 A. I recall that -- I believe it was the
18 internal general counsel of Fairfield Greenwich sent
19 us a letter in which they clarified. They -- they --
20 I don't know if -- well, if it was an objection.
21 I believe they sent us a letter indicating
22 that some of the facts in the letter that we had been
23 using were incorrect and perhaps -- I don't know if
24 out of date could also be said. And I remember that,
25 in fact, some of the comments of the general counsel

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00094

1 mind about 2006?
2 A. 2006. Other than perhaps something related
3 to performance or not, I don't recall of anything in
4 particular at this moment.
5 Q. Okay. Who is Karen Egger, E-g-g-e-r?
6 A. Karen Egger was in-house counsel at EFG
7 Bank, and I believe the compliance function of EFG
8 Bank reported to her as head of legal and compliance.
9 Q. And who is Michael Palin?
10 A. Michael Palin is a CRO in Hong Kong.
11 Q. Was Hong Kong also selling Fairfield Sentry
12 or Madoff feeder funds?
13 A. I believe that Hong Kong had clients, yes,
14 in Fairfield Sentry.
15 Q. Do you know if they had any clients in any
16 other Madoff feeder funds?
17 A. I don't recall that specifically.
18 (The referred-to document was marked for
19 identification as Plaintiff's Exhibit 128.)
20 Q. (By Mr. Kellogg) All right. I'm just
21 going to touch on this. This is Plaintiff's
22 Exhibit 20 -- 128. It's EFG Capital E-16084. This
23 is an e-mail string involving Karen Egger, Michael
24 Palin, and you're copied on some of it, talking
25 about who follows a Fairfield Sentry fund and would

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1 were correct in that our letter could have been
2 improved, and I think it was improved.
3 (The referred-to document was marked for
4 identification as Plaintiff's Exhibit 129.)
5 Q. (By Mr. Kellogg) I'll show you
6 Exhibit 129, and ask if this is the letter objecting
7 that you just referred to. It's Bates-labeled
8 EFG Capital 16200, and it's from Mark McKeefry dated
9 August 24, 2006.
10 A. Yes, this was a letter that we received from
11 them objecting to some of the language.
12 Q. Now, before -- before this communication
13 from their general counsel, had -- had EFG shared the
14 Notice to Clients in that disclosure letter with
15 anybody at Fairfield Greenwich?
16 A. I don't recall, but I don't think so.
17 Q. All right. So somehow or other they -- do
18 you know how they learned about the letter?
19 A. No, I don't. I presume --
20 Q. And -- I'm sorry.
21 A. -- somebody might have given them a copy, I
22 don't know.
23 Q. In their letter they say they were dismayed
24 that the letter contained multiple inaccuracies that
25 were -- which were purported to be facts.

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1 Was that -- was that your understanding,
2 that they were dismayed with EFG Bank at this point?
3 MR. COATES: Object to form.
4 A. That's what it says there.
5 Q. Did you have conversations along with this
6 letter, around that time, with Mr. McKeefry, or
7 Lourdes Barreneche, or anyone?
8 A. I don't think I had conversations. I think
9 Victor had a conversation after this letter was
10 received.
11 Q. Okay. The first thing they say was an
12 inaccuracy is that the letter erroneously states that
13 the fund's assets are custodized with its investment
14 advisor, Bernard L. Madoff Investment Securities, LLC,
15 and not with a major international bank.
16 Was that right or was that wrong, that
17 statement?
18 A. Our statement or his? Our -- well, I think
19 our -- our letter, if you -- if you go to the next
20 page --
21 Q. Right.
22 A. -- it says --
23 MR. COATES: It's not a good copy, it's hard
24 to read.
25 A. Yeah, but I think we can -- we can read in

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1 when you have a custodian, the custodian also has
2 responsibilities, and the custodian, in fact, in the
3 fund was a significant player in the international
4 fund's administration and custodianship market, Citco.
5 Q. He goes on to say here that -- that one of
6 the multiple inaccuracies is that Bernard Madoff is
7 not an investment advisor to the fund.
8 Well, what was your understanding? Was he
9 or was he not the investment advisor for this fund?
10 A. Technically, he was not.
11 Q. What was he?
12 A. He was a discretionary manager of the
13 account. And he -- basically upon his or their,
14 Madoff Securities' direction, the trades were
15 executed.
16 Q. So after -- up until this time, did you
17 understand Bernard Madoff to be the person making the
18 decisions as to what trades were made in this
19 strategy?
20 A. Himself?
21 Q. Yes, or his company.
22 A. His company.
23 Q. Your understanding was his company was
24 making the decisions as to the trades, right?
25 A. (Nods head.)

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1 the -- what, I guess, would be the third paragraph,
2 However, we would like to highlight the fact that the
3 funds assets are custodized with the fund's investment
4 advisor, Bernard Madoff Investment Securities, a
5 registered broker-dealer in New York, not affiliated
6 with the fund's director or the investment manager
7 Fairfield Greenwich, rather than with a major
8 international bank as is the case with most investment
9 funds.
10 So that wording, as it was included in our
11 letter, was inaccurate because it failed to -- it sort
12 of jumped into the subcustodian of the fund being
13 Madoff Securities and it omitted clarifying that Citco
14 Bank was the custodian utilizing Bernard Madoff as a
15 subcustodian.
16 Q. So what they're saying is erroneous and
17 dismaying about the -- about your letter is that EFG
18 Bank or EFG said that the funds were actually
19 custodied with Bernard L. Madoff, when in reality they
20 were subcustodied with him. That was their concern?
21 A. Yes.
22 Q. Was that a big distinction in your mind
23 between "custody" and "subcustody" in terms of saying
24 something accurate or inaccurate about the situation?
25 A. It's a -- it's a distinction because you --

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1 Q. Now, what they're telling you here is that
2 he's not the investment advisor of the fund, instead
3 the fund maintains accounts with him through which
4 their strategy is implemented.
5 Did you take that to mean that Fairfield
6 Greenwich (Bermuda), who was the manager of the fund,
7 was actually making the decisions, or was -- was
8 Madoff Securities making the decisions?
9 MR. COATES: Object to form.
10 A. As investment advisor in Bermuda Fairfield
11 Greenwich, Limited, they were, as part of the
12 structure, the investment advisor, taking and, I
13 believe, at some point, delegating the investment
14 decisions or taking the investment -- specific
15 investment decisions from Madoff.
16 We didn't think that that technicality was
17 that important because, I guess, everybody knew that
18 the one -- the entity who directed and came up with
19 the trading ideas and effected the trading ideas was
20 through Bernard Madoff Securities.
21 Q. When your Notice to Clients went out --
22 A. When what?
23 Q. When your Notice to Clients were given to
24 clients --
25 A. Okay.

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