

00101

1 Q. -- the purpose of that was to disclose that
2 the person making the decisions as to the trades was
3 also the person with physical custody of the
4 securities. Isn't that what you were trying to tell
5 your customers?

6 A. One of the things.

7 MR. COATES: Object to form.

8 You may answer.

9 A. It was one of --

10 Q. That's one of the things you're trying to
11 tell them.

12 Now, Fairfield Greenwich is coming back here
13 to you and they're saying, well, that's not
14 technically accurate because we have an investment --
15 we have a large bank that's the actual custodian, even
16 though they don't have physical possession, and we
17 have -- we're the ones who are the investment
18 advisors, even though Madoff is the one making the
19 decision. In your mind, was that a distinction with
20 any difference in terms of what you were trying to
21 disclose to your customers?

22 MR. COATES: Object to form.

23 A. It was -- what we were trying to tell our
24 customers, that clarification didn't really -- that
25 particular one didn't really, you know, change too

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00102

1 much; and the risks that we were trying to highlight
2 to our customers, what they were trying to get us here
3 to change in some of this language was to be more
4 specific.

5 Q. Did you -- I think you said you didn't have
6 any discussions with Mr. McKeefry or anybody at
7 Fairfield Greenwich about this letter, that happened
8 with Mr. Echevarria?

9 A. I believe that it was Victor who had a
10 conversation, not me.

11 Q. What -- what did they talk about? What did
12 they say to each other? If you know.

13 A. I think Victor explained -- the only thing I
14 recall is that Victor explained why we were requiring
15 in that letter.

16 Q. And what did --

17 A. And that that letter had been a requirement
18 from EFG probably since the beginning of the
19 investments at Fairfield.

20 Q. Now, they're asking you here to send up a
21 follow-up letter to investors pointing out the
22 inaccuracies in the original letter. It's the last
23 sentence Mr. McKeefry says. Do you see that?

24 A. I see that.

25 Q. Did you send one?

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00103

1 A. No.

2 Q. Why?

3 A. Well, Fairfield Greenwich didn't rule what
4 we were doing. I know that we did look at the letter
5 and we attempted to correct the inaccuracies in the
6 letter. And if you see in -- I believe in the
7 production we gave you the different versions of this
8 letter, and I think that you will see according to the
9 timeframes, the before August 2004 letter and the post
10 August 2004 letter, and you will see that some of the
11 language has been clarified.

12 But, again, we didn't feel that the
13 substance of the risk that we were trying to pinpoint
14 to our clients changed in a way that we were -- that
15 we would need to send a clarification to the old
16 clients who had acknowledged a risk as opposed to
17 being clear for the -- clearer for the new clients
18 that were investing.

19 Q. And you think there was a new version of the
20 letter that was modified after their letter?

21 A. I'm pretty certain that that new letter was
22 modified.

23 Q. And was that -- was that -- was that new
24 letter approved by Lonnie Howell?

25 A. I don't recall if it was.

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9a Anwar et al v. Fairfield Greenwich Limited 9a

00104

1 (The referred-to document was marked for
2 identification as Plaintiff's Exhibit 130.)

3 Q. (By Mr. Kellogg) I'll show you Exhibit
4 130.

5 MR. COATES: 130?

6 Q. (By Mr. Kellogg) 130, which is EFG
7 Capital E-41622, an August 28, 2006, e-mail string
8 starting with Sixto Campano to Victor Echevarria.

9 And you say here, Lonnie never approved the
10 new version.

11 You're referring here to the new version of
12 the letter we've been discussing.

13 I guess that needs to happen as well.

14 A. One second, please.

15 Okay.

16 Q. Does this -- did Lonnie Howell ever approve
17 the form of the new letter?

18 A. I don't recall. It's possible he did.

19 MR. COATES: And for the record, there's
20 a -- Larry, in the middle of that document is a
21 document that we are going to ask to be returned
22 as privileged. There's a --

23 MR. KELLOGG: Let me see what document.

24 MR. COATES: In the middle of it, there's a
25 reference to an attorney.

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00105

1 MR. KELLOGG: Can I see it? I put it away
2 already. Let me see what you're talking about.
3 THE WITNESS: Here, Fred Link.
4 MR. COATES: And for the record, it's EFG
5 Capital 46223. In the review of 100,000
6 documents, there's a --
7 MR. KELLOGG: Which one are you talking
8 about?
9 MR. COATES: -- inadvertent reference to
10 Fred Link.
11 MR. KELLOGG: Who is Fred Link? Is he a
12 lawyer?
13 MR. COATES: Fred Link is a lawyer.
14 MR. KELLOGG: Who is he a lawyer for?
15 Q. (By Mr. Kellogg) Well, let me ask: Who's
16 Fred Link a lawyer for?
17 A. EFG International.
18 Q. Does he represent EFG Capital?
19 A. He has. We consulted with him and consult
20 with him on many things.
21 Q. Did he represent EFG Capital in connection
22 with the -- the complaints or the issues raised by
23 Fairfield Greenwich Group as to the Notice to Clients
24 letter?
25 MR. COATES: Can you repeat that, please?

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00107

1 MR. COATES: Let me just object to form.
2 You may answer.
3 A. I think that in the latter parts of GIS,
4 there was an attempt to split responsibilities for the
5 ongoing monitoring of hedge funds with, I believe,
6 Jerome or Bassam, and I believe London, but that
7 really never materialized.
8 (The referred-to document was marked for
9 identification as Plaintiff's Exhibit 131.)
10 Q. (By Mr. Kellogg) I'll mark as Exhibit 131
11 EFG Capital E-16228. It's an e-mail string
12 beginning with an e-mail from Bassam Salem to you,
13 which says, Sixto, my understanding is that there is
14 an agreement with Miami to monitor a variety of
15 funds as per attached. I do not believe anyone is
16 saying Miami is responsible. Sharing the
17 information you have as you suggest is fine.
18 What was your understanding of this
19 agreement?
20 A. Again, Bassam is assuming that there were
21 some funds that we would maintain due diligence and do
22 ongoing monitoring of. The string of e-mail --
23 e-mails here starts with a fund managed by a company
24 called Pirate Capital, which was our contact
25 originally, and I believe that we did due diligence

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00106

1 Q. (By Mr. Kellogg) Did he represent EFG
2 Capital in connection with the issue of --
3 A. He would have.
4 Q. Well, let me say the issue.
5 -- the issue of Fairfield Greenwich's
6 complaints about the Notice to Client letter?
7 A. He would have.
8 Q. Well, did he?
9 A. I suppose in this traffic and this
10 resolution, you know, he did consult with Victor.
11 Victor, as you can see, took the lead in resolving the
12 matter.
13 Q. Did you have an agreement with Bassam Salem
14 or his group or EFG Bank -- let me rephrase it.
15 Did EFG Capital have an agreement with EFG
16 Bank to monitor a variety of hedge funds including
17 Fairfield Sentry for the whole group?
18 MR. COATES: Object to the form.
19 A. Did EFG Capital have an agreement with
20 Bassam Salem to monitor a number of hedge funds for
21 the whole of EFG International, is your question?
22 Q. Or for EFG Bank, yes.
23 A. I think --
24 Q. Or for EFG International.
25 A. I think later on --

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00108

1 and we put it on our approved list prior to EFG Bank
2 looking at it.
3 Q. Well, I'm looking at page 2, which is an
4 attachment to Mr. Schonbachler's e-mail to Mr. Donnell
5 saying, We have to write a memo on each fund every
6 quarter. Would you already have the following ones
7 ready? If yes, do you have the dates when they have
8 been done?
9 And then the first one on here is Fairfield
10 Sentry, Limited. Was there -- was there an agreement
11 that Fairfield Sentry Limited would be monitored by
12 Miami for EFG Bank?
13 A. There was an understanding that EFG Capital
14 had all of the original and did have the most due
15 diligence and information and review of Fairfield
16 Sentry. There was an attempt for a brief period of
17 time to split the responsibilities according to
18 different funds and that was a failed attempt, okay,
19 not because of EFG Capital.
20 Q. Well, why was it failed?
21 A. Well, I mean, it had different parties, and
22 GIS and Bassam, among other things, went off to move
23 to Dubai and they changed their professional focus
24 and, you know, it didn't -- didn't work out.
25 Q. Okay. So let me show you -- I'm still on --

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00109

1 let's move to 2007. At some point in 2007, then,
2 Greenwich Alternative Investments was retained?
3 A. Yes.
4 Q. What was Greenwich Alternative Investments
5 retained to do?
6 A. Was retained to gather information, prepare
7 reports, and be the depository of ongoing monitoring
8 and reports of the different funds that were on EFG
9 Capital's approved list.
10 They created -- which I don't necessarily
11 think it was created for EFG Capital, but Greenwich,
12 as part of its service, provided us with something
13 called a risk dashboard, which basically put the
14 different funds that were on the approved list on a --
15 a online availability, and it basically monitored the
16 funds in that list, and particularly vis-a-vis other
17 managers in the particular strategy that were active
18 in the particular strategy of that one manager.
19 And it allowed us with that information,
20 because they would sort of map it, if you will, where
21 the performance of that fund was in the different
22 periods, vis-a-vis the universe of managers that were
23 in the particular strategy of that manager, among
24 other things.
25 They also took information and prepared in

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00110

1 a -- in a standardized form what we call the tear
2 sheets, which were the one- or maybe two-pagers, that
3 CROs could show clients when they wanted to offer a
4 hedge fund.
5 Q. Those tear sheets, if I recall what they
6 are, they're a page or two of information about the
7 fund which gives information such as its performance,
8 its strategy and so forth, which would be used by the
9 CROs to market to their customers?
10 A. Yes.
11 Q. So you retained them to do this risk
12 dashboard kind of analysis, where they're comparing
13 the fund's performance to other similar managers or
14 managers of similar strategies?
15 A. To certain indices and to other managers in
16 the universe of the investment style of the particular
17 manager.
18 Q. They -- would they -- would they compare it
19 to benchmarks, the performance to benchmarks?
20 A. They would compare -- among other things,
21 there were a couple of benchmarks, which, again, maybe
22 it was an equity benchmark, a fixed income or a hedge
23 fund index, more like index-type benchmarks.
24 Q. All right. So they would look at the
25 performance and they would give you -- what would

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00111

1 this -- this risk dashboard would be something online
2 at all times that someone could access?
3 A. It was available -- yeah, we had access to
4 it, and it was specifically there -- that application
5 was there -- when we accessed it, it was EFG Capital's
6 dashboard. I couldn't see another company's
7 dashboard, if they had one.
8 Q. Who at -- who had access to the risk
9 dashboard at EFG Capital?
10 A. I believe that that dashboard was accessible
11 to CROs. Certainly management had, and I believe that
12 that particular application was available to CROs, but
13 I'm not at this point 100 percent sure, but I think I
14 was.
15 Q. Was Greenwich Alternative Investments also
16 retained to do periodic due diligence analyses of
17 Fairfield Sentry and/or Madoff, or was that something
18 that EFG Capital continued to do?
19 A. Well, we continued to do, but as part of
20 Fairfield Sentry being an approved fund of -- of EFG
21 Capital, they received the information in terms of the
22 net asset values from the fund and, actually,
23 Greenwich also provided us with quarterly manager
24 comments where they would go directly to the managers
25 of the funds and, quarterly, talk about what was going

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00112

1 on in the -- in their particular market, in their
2 strategy performance, and I believe that they would
3 also ask the question, has anything changed in terms
4 of your management team or anything like that.
5 Q. These would be quarterly reports from
6 Greenwich?
7 A. These were -- Greenwich would quarterly go
8 and ask information of those managers, and they would
9 put the comments in the reports that they would
10 provide to us.
11 Q. Did they do that for Fairfield Sentry?
12 A. I believe they did, sir, yes.
13 Q. Okay. So you've mentioned the performance
14 analysis they would do, the tear sheets they prepare,
15 the quarterly manager comments that they would obtain.
16 Did they do anything else for EFG Capital, with
17 respect to due diligence in particular of Fairfield
18 Sentry?
19 A. No.
20 Q. Do you know whether they ever obtained any
21 comments from Mr. Madoff himself?
22 A. I don't believe they went to Mr. Madoff
23 himself.
24 Q. I've seen reference in documents, and I can
25 show you one, but something called a transparency

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00113

1 report. Do you know what that is?
2 Let me show you an e-mail, this maybe helps
3 you.
4 (The referred-to document was marked for
5 identification as Plaintiff's Exhibit 132.)
6 Q. (By Mr. Kellogg) I'll mark this as
7 Exhibit 132, sorry, which is an e-mail string
8 starting with Lourdes Barreneche to Michael Donnell
9 on December 17, 2008.
10 If you'd look at the bottom of this
11 Bates-labeled 62258, you'll see an e-mail from
12 Mr. Donnell asking Lourdes for the last four
13 transparency reports provided to EFG through Greenwich
14 in 2008.
15 Do you know what he's referring to there, or
16 what transparency reports might be?
17 A. At this point, I don't remember what those
18 transparency reports were.
19 Q. Okay. Who is Thomas Whelan? W-h-e-l-a-n.
20 A. Where are you looking at, sir?
21 Q. I'm not looking at that. You can put that
22 down. I'm done with it.
23 A. Thomas who?
24 Q. Whelan.
25 Was he connected with Greenwich Alternative

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00115

1 Hedge.
2 Q. Yes. Okay
3 A. And Van Hedge had been in the industry for a
4 while, and Van Hedge actually was a third-party
5 marketer of funds, and I believe that they would be in
6 the business of creating -- working with investors or
7 with intermediaries creating portfolios of hedge funds
8 for the clients.
9 Q. Did you ever ask Greenwich Alternative
10 Investments to do a full due diligence of Madoff or
11 Fairfield Sentry?
12 A. We didn't ask Greenwich to do a full due
13 diligence on any fund.
14 (The referred-to document was marked for
15 identification as Plaintiff's Exhibit 133.)
16 Q. (By Mr. Kellogg) We'll mark as
17 Exhibit 133 a press release from Greenwich dated
18 December 16, 2008. It says, Greenwich Alternative
19 Investments issued a statement today indicating it
20 has no direct or indirect investment with Bernard L.
21 Madoff Investment Securities, LLC, nor has the hedge
22 fund asset management firm ever had exposure to
23 investment pools managed by Madoff.
24 Quote, We simply do not invest with any
25 manager that does not allow us to conduct full due

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00114

1 Investments?
2 A. How do you spell it?
3 Q. W-h-e-l-a-n.
4 A. If you're looking at an e-mail and it says
5 at GAI or something --
6 Q. No, I'm not.
7 A. I don't recall exactly who he was.
8 Q. Do you know who you dealt with at Greenwich
9 Alternative Investments?
10 A. Mike Donnell was the lead person dealing
11 with Greenwich.
12 Q. Did Greenwich ever tell you or anyone from
13 Greenwich ever tell EFG Capital that they had declined
14 to do any business with Mr. Madoff or any of his
15 feeder funds for their own clients?
16 A. Not that I'm aware of.
17 Q. Were you aware that Greenwich Alternative
18 Investments had its own clients for whom it did due
19 diligence of funds?
20 A. Yes.
21 Q. Did they -- did they actually have their own
22 client roster of -- or investment advisory business, I
23 should say?
24 A. Greenwich Alternative Investments was the --
25 before they were called that, they were called Van

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00116

1 diligence. If we aren't comfortable with a manager's
2 trading strategy and if the sources and viability of
3 return are not verifiable, we will not invest, stated
4 Thomas Whelan, Greenwich Alternative Investments CEO.
5 In light of the unprecedented scope and size of the
6 alleged Madoff fraud, this could not illustrate any
7 more clearly the requirement for initial and ongoing
8 professional due diligence. A fund's large size or
9 its manager's reputation should never be a substitute
10 for thorough due diligence, unquote.
11 Is this the first time you're seeing this?
12 A. I don't recall seeing it before this, but it
13 certainly sounds like a marketing piece to me.
14 Q. Did anybody at Greenwich ever tell you that
15 they were unable to do a full due diligence of Madoff
16 and, therefore, they would not invest with him for
17 their own clients?
18 MR. COATES: I'm going to object to the form
19 of the question. I think you're -- I think
20 there's a lack of predicate to state --
21 MR. KELLOGG: I'm asking if he's ever told
22 him.
23 MR. COATES: Sure. Then let me just state
24 my objection.
25 You may answer, sir.

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00117

1 A. I am not aware of any comments from
2 Greenwich Alternative Investments to us that would
3 indicate that they did not invest in Madoff.
4 Q. Does EFG Capital still do business with
5 Greenwich Alternative Investments?
6 A. Yes, we do.
7 Q. Do you still use them to provide the
8 services that you described earlier for hedge funds?
9 A. Yes, sir.
10 Q. And you pay them for that?
11 A. Yes, sir.
12 Q. What do you pay them? I mean, what's the
13 basis of your compensation to them?
14 A. It's -- initially, there was a -- an amount
15 to set up each one of the funds, like a set-up amount,
16 and then a quarterly fee according to the number of
17 funds. So, per fund there's a quarterly fee.
18 The last bill I recall, I think this is like
19 some- -- it is also somewhere around \$20,000 a
20 quarter.
21 Q. We've mentioned -- as we've been talking
22 about due diligence, you've mentioned Greenwich.
23 We've mentioned GIS. At one point in time the London
24 group was somehow or other involved in conducting some
25 sort of due diligence for hedge funds.

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00118

1 Other than what we've already discussed,
2 were there any other third parties or related entities
3 who EFG Capital retained to do due diligence on the
4 Fairfield Sentry fund?
5 A. No.
6 MR. KELLOGG: All right. Lunch is here.
7 Why don't we go off the record. It's about 1:00.
8 THE VIDEOGRAPHER: Stand by to go off Media
9 Unit 2. Going off at 12:59 p.m.
10 (Thereupon, a lunch recess was taken from
11 p.m. until 1:41 p.m., after which the
12 following proceedings were held.)
13 THE VIDEOGRAPHER: We're now back on Media
14 Unit 2. The time back on the record is now
15 1:41 p.m. Thank you.
16 Q. (By Mr. Kellogg) Earlier we were speaking
17 about PRS and whether or not they had some of their
18 clients invested in Madoff or Fairfield Sentry. And
19 you said you believed that, at the end of the day
20 when the fraud was revealed, that there were some
21 customers of PRS who continued to hold Madoff or
22 Fairfield investments. Is that right?
23 A. No. I think the way that PRS manages the
24 money for the clients, PRS has funds that they manage
25 that themselves are fund of funds. So, the clients

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00119

1 invest in a PRS fund. The PRS fund invests in funds,
2 and it was one of those funds or some of those funds
3 that had exposure to a Madoff strategy through UBP.
4 (The referred-to document was marked for
5 identification as Plaintiff's Exhibit 134.)
6 Q. (By Mr. Kellogg) Let me show you what I'm
7 going to mark as Plaintiff's Exhibit 134, which is
8 an e-mail string with a Bates No. EFG Cap E-108205.
9 This is an e-mail from Jacobo Gadala-Maria. This is
10 the person who was running PRS?
11 A. Correct. He's the CEO of PRS.
12 Q. In this e-mail to Jim Lee, he is forwarding
13 some e-mails from December 2008 in which there's
14 discussion of a redemption for Fairfield Sentry and
15 Kingate by PRS as of November 30, 2007.
16 A. Mm-hmm.
17 Q. Do you see that?
18 A. Yes.
19 Q. So if I'm reading these correctly, what
20 happened was in November of 2007, PRS, either through
21 its own funds or otherwise, redeemed investments of
22 its customers in Fairfield Sentry and Kingate.
23 A. That's what it seems here.
24 Q. Okay.
25 A. It seems here that something called -- they

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00120

1 talk about a PRS feeder and something here called
2 PRS ISF 4E in the e-mail down here, which I suspect is
3 the name, the internal name they have for that feeder.
4 Q. So as you read these, PRS had a feeder fund
5 itself that had invested in Fairfield Sentry and
6 Kingate?
7 A. Mm-hmm.
8 Q. Which, in turn, were feeder funds into
9 Madoff. Is that right?
10 A. They were funds, not feeder funds. They
11 were funds that invested in the Madoff strategy,
12 Kingate and Fairfield Sentry.
13 Q. All right. According to the e-mail here,
14 \$8,442,090 was redeemed, of which Fairfield Sentry was
15 \$6,855,000 and Kingate was \$1,491,000.
16 A. Mm-hmm.
17 Q. You have to say "yes."
18 A. Yes. I'm sorry.
19 Q. What Mr. Gadala-Maria is saying here is --
20 to Jim Lee is, at the top, is that, This is one of
21 those quiet decisions that is not obvious, but which
22 has, in fact, reduced the pain for PRS clients. I
23 instructed this redemption in the third quarter of
24 last year based on the negative image I had regarding
25 Madoff products. Unfortunately, I was not more

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00121

1 assertive about the issue when UBP included Madoff
2 feeder recommendation for PRS products.
3 Do you see that?
4 A. Yes.
5 Q. In the third quarter of 2007 when this
6 happened, when the redemption happened, were you aware
7 that it happened?
8 A. No.
9 Q. Were you told that the reason it was
10 happening was because of the negative image that PRS's
11 head had regarding Madoff?
12 A. I had no idea what PRS was doing with their
13 investments.
14 Q. Is this something you would have liked to
15 have known at the time?
16 A. That they had redeemed this?
17 Q. That they --
18 A. In a way -- in a way it seemed they
19 redeemed, but they went back in to another feeder.
20 Q. In the third quarter of 2007, would you have
21 wanted to know that PRS, your -- your EFG sister
22 company, was redeeming all of its customers' funds
23 because of the negative issue -- image they had of
24 Madoff?
25 A. I think PRS at the time was in a complete

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00122

1 revamp of its investment funds because, as I mentioned
2 earlier, EFG bought PRS, I don't recall exactly when,
3 at the end of '06 or so, or the beginning of '07. And
4 Jacobo Gadala-Maria took over as CEO of the company,
5 and I know that they revamped a lot, again, as I
6 mentioned, from having an internal investment
7 management team to farming out most of the management
8 at the time to UBP.
9 Q. Is it something you would have liked to have
10 known at the time?
11 A. Again, that they had redeemed just because,
12 it wasn't here or there.
13 Q. No. It says, Because of the negative image
14 he had regarding Madoff products.
15 A. He had.
16 Q. Yes.
17 Was he still a director of EFG Capital at
18 the --
19 A. Yes.
20 Q. -- as of 2007?
21 So would you have expected one of your
22 company's directors to tell you, as chief operating
23 officer selling a lot of this, that he had a negative
24 image about Madoff so much so that he would redeem his
25 own company's investments?

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00123

1 MR. COATES: Object to form.
2 A. And then -- and then allow for it to come
3 right back in another form, as -- as it does, but, you
4 know, if Mr. Gadala-Maria had a negative image
5 regarding Madoff, I mean, that's a very general
6 statement. I don't know what his general image was or
7 what exactly he was negative about.
8 Q. Did EFG Capital have directors meetings in
9 2007?
10 A. Yes, of course.
11 Q. And how periodic were those meetings?
12 A. Quarterly.
13 Q. And at the meetings, would you discuss major
14 hedge fund products that were being offered by your
15 company?
16 A. That was not really the nature of the
17 directors meetings.
18 Q. Would Mr. Gadala-Maria attend the meetings
19 as a director?
20 A. Yes, he did.
21 Q. Did he ever raise with you any issue
22 regarding Madoff or his opinion of Madoff or his
23 opinion of Fairfield Sentry?
24 A. I don't recall him ever doing that.
25 Q. Was there a Chinese wall, if you will, or

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00124

1 some barrier between an employee of PRS discussing
2 with you PRS's view about Madoff?
3 MR. COATES: Object to form.
4 You may answer.
5 A. Was there a Chinese wall? No.
6 Q. Was there any prohibition?
7 A. No, no.
8 Q. Okay. Was there any company policy that
9 said, we have proprietary information that we will not
10 share among our different affiliates?
11 A. No.
12 Q. All right. Was there a -- was there a point
13 in time when Fairfield Sentry gave EFG an opportunity
14 to purchase an investment in the fund manager,
15 Fairfield Greenwich, or -- the fund manager, Fairfield
16 Greenwich?
17 Let me rephrase it. Was there a time when
18 EFG considered investing and purchasing a stock
19 interest in Fairfield Greenwich?
20 A. There was a -- I don't know who approached
21 who, but there was an initial approach or conversation
22 that I think it might have come from Bassam or through
23 Bassam Salem at some point, but we had understood that
24 Fairfield Greenwich Group wanted to raise capital or
25 sell a portion of the firm.

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00125

1 Q. So somehow the issue came to EFG Capital's
2 attention that Fairfield Greenwich wanted to raise
3 capital by selling stock in its own company?

4 A. Yes.

5 Q. And was EFG Capital approached as being a
6 company that might be interested in doing that?

7 A. I think we inquired about what their
8 intentions were, and there were an e-mail or two in
9 which we asked what they intended to do, and I think
10 that they intended to -- their original intention was
11 to sell a percentage of the firm.

12 Q. And did you --

13 A. And I know at one point I did talk to
14 Lourdes, I approached her and I said, is this true,
15 what are your intentions?

16 Q. What did she say?

17 A. She said yes, and I don't know if we asked
18 for some -- I think we asked for some general
19 information as to size of the assets under management
20 of the firm, and how much of that was Fairfield
21 Sentry, and I don't know if we ever got into the
22 revenues or some of the other numbers of the firm.

23 Q. Was this contemplated to be an investment by
24 EFG Capital or some other affiliate of EFG?

25 A. No, no. That would have been EFG

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00127

1 Q. Anyone else you can think of?

2 A. No.

3 Q. Was there any sort of financial analysis
4 done of -- of Fairfield Greenwich?

5 A. No.

6 Q. Was there any due diligence team put
7 together?

8 A. No.

9 Q. Did you look at any financial statements?

10 A. I don't recall if we looked at a financial
11 statement, but we did not have a team, we did not
12 perform an analysis.

13 Q. Why not? What happened to the idea?

14 A. I remember I was -- I expressed a concern
15 from a marketing point of view that since Fairfield
16 Greenwich, their business was mostly predicated upon
17 going to distributors and intermediaries such as
18 EFG -- you know, EFG, different units, and a lot of
19 the clients of Fairfield Greenwich were other Swiss
20 private banks and other firms like EFG, I had a
21 concern initially if EFG were to acquire a stake in a
22 Fairfield Greenwich, if other private banks would see
23 that as competition or a competitor of them and that
24 would have an impact on the ability to market the
25 funds. That was, you know, my own concern.

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1 International. EFG Capital had no wherewithal to do
2 this.

3 Q. So EFG Capital -- but were you the point
4 person for EFG International in considering this
5 investment?

6 MR. COATES: Object to form.

7 A. I was not the point person.

8 Q. You had some participation in it by talking
9 to Lourdes?

10 A. Yes.

11 Q. Who else was involved?

12 A. Victor, I mentioned it to him. Bassam
13 Salem. Initially, I don't think that Bassam really
14 did much after that. And I don't -- at the time our
15 CFO -- the CFO of EFG International, Rudy
16 van den Steen, was in charge at the time of
17 acquisitions and I think I informed him, I'm pretty
18 sure I informed him, and possibly Fred Link.

19 Q. Fred Link was the counsel for International?

20 A. Yeah.

21 Q. Anyone else you can think of being involved
22 in this?

23 A. I think we mentioned it to Lonnie.

24 Q. Lonnie Howell?

25 A. Yeah.

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1 I think that at the time this was probably
2 also -- it would have been a large, significant
3 investment for EFG, given the size of -- and the
4 presumed valuation of Fairfield Greenwich, and that, I
5 think, was mentioned in conversation with Rudy
6 van den Steen.

7 And we also discussed whether the fact of
8 the size of Fairfield Greenwich Group and the assets
9 under management, whether it was a majority or a
10 significant portion of the assets under management was
11 one product, which was Fairfield Sentry. And we
12 didn't like the dependence on one product. So, the
13 decision was taken early on to not entertain this for
14 all the reasons I have stated.

15 Q. Who made that decision?

16 A. Who made that decision. I believe that that
17 decision was communicated to me by Rudy, and I would
18 presume that Lonnie had something to do with that
19 decision.

20 Q. And who communicated your decision to
21 Fairfield? Sorry.

22 A. I am not certain. It could have been -- it
23 could have been Victor or myself.

24

25

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Pages 125-128

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1 (The referred-to document was marked for
2 identification as Plaintiff's Exhibit 135.)
3 Q. (By Mr. Kellogg) Let me mark as
4 Exhibit 135 a January 11, 2007, e-mail beginning
5 with Bassam Salem, Bates No. 17046.
6 A. Mm-hmm.
7 Q. On the first page, the bottom e-mail on the
8 first page is an e-mail from Mr. Salem to Jim Lee and
9 others, including Rudy van den Steen, Lawrence Howell,
10 you, Jean Pierre Cuoni. Who is he?
11 A. Who is who? I'm sorry.
12 Q. Jean Pierre Cuoni.
13 A. Chairman of the board of EFG International.
14 Q. And copying Mr. Schonbachler.
15 A. Mm-hmm.
16 Q. Discussing a meeting with Richard
17 Landsberger. Do you know who he is?
18 A. He was one of the top executives at
19 Fairfield Greenwich Group. I don't remember if he was
20 the CFO or something like that.
21 Q. He goes on to say -- Mr. Salem goes on to
22 say that he had a meeting with Mr. Landsberger with
23 Jerome. Fairfield Greenwich has now U.S. \$12 billion
24 of assets under management generating U.S. 145 million
25 in revenues. Sentry represents 50 percent of it at

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1 U.S. 6 billion. And then it discusses what the other
2 6 billion is.
3 A. Mm-hmm.
4 Q. And that they were looking for a strategic
5 partner who would take a 30 percent stake in the
6 company to help finance their expansion.
7 Is that your recollection of what was being
8 offered at that time, 30 percent in --
9 A. I think that they were trying to, yeah,
10 offer -- I don't know exactly the number 30, but a
11 stake in.
12 Q. And then it goes on to say that, When I
13 mentioned all our transactions historically ended with
14 EFG owning 100 percent of the entities, he said they
15 are open for discussions.
16 Was that -- would that have been the
17 ultimate goal had this been pursued, that -- and any
18 sort of investment like this, that EFG wants to be the
19 100 percent owner eventually?
20 MR. COATES: Object to form.
21 A. I think that the acquisitions of EFG
22 International to date, to this date had been
23 acquisitions that EFG bought 100 percent.
24 Q. Okay.
25 A. Definitely a controlling interest and

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1 100 percent of the economic interest
2 Q. Now, you respond to this e-mail by asking,
3 Have you talked to Lonnie yet about the big Madoff
4 exposure?
5 What did you mean by that?
6 A. Well, that 50 percent of -- of the
7 12 billion was Sentry.
8 Q. Okay. So that's what you meant, it would be
9 the exposure of Fairfield to Madoff?
10 A. It was the concentration of the business in
11 one product, which was Sentry, Madoff, you know.
12 Q. Before January of 2007, did you have an
13 understanding that Fairfield Greenwich and its
14 products were 50 percent in Fairfield Sentry?
15 A. I didn't know that number. I knew it was a
16 significant portion because the size of the fund.
17 We -- we offered some other funds, as you know, of
18 Fairfield, and we knew the size of these funds. So,
19 you know, you could sit down and do some math and
20 figure that the exposure was significant, not knowing
21 exactly what they were.
22 Q. And then in response Mr. Salem says, Lonnie
23 does have an issue with that exposure.
24 Did you ever talk to Mr. Howell about that
25 issue? Or about the acquisition opportunity, I should

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1 say.
2 MR. COATES: Object to form. First part of
3 it.
4 You may answer, sir.
5 A. I believe I did.
6 Q. What was -- what did you talk about? What
7 do you recall about that conversation?
8 A. Some of the numbers that were expressed
9 here, that there were 12 billion and that Sentry
10 represented 50 percent of the assets. And I think
11 that I expressed my concern from a marketing point of
12 view, which I mentioned earlier, which was that if
13 other -- I mean, look -- look at the numbers there.
14 Apparently 50 percent of the client base came from
15 Switzerland alone, and I had a concern that if one
16 Swiss bank were to own this, that other Swiss banks,
17 because of competitive purposes, would not perhaps
18 want to deal with that.
19 Q. Other than this particular discussion about
20 a potential investment, did EFG International or any
21 of its affiliates, to your knowledge, ever consider at
22 other times investing in Fairfield Greenwich?
23 A. Not that I'm aware of.
24 Q. Did there come a point in time in 2007 where
25 Mr. Howell asked you to do an analysis of all the

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Pages 129-132

00133

1 hedge funds that were being sold to determine
2 whether -- what exposures existed in those funds to
3 EFG?

4 A. He got the -- towards the third quarter of
5 2007 was when the hedge fund industry started getting
6 into the beginnings of what was a crisis. You might
7 recall that the so-called mortgage bond and mortgage
8 security crisis, you might recall that it started with
9 Bear Stearns.

10 And Bear Stearns, in particular, had two
11 funds that they managed which were large hedge funds
12 investing in -- in mortgage securities, and one was
13 appropriately or misappropriately called high grade
14 and the other one was higher higher grade or
15 something, I mean, to that effect. And those were the
16 first two funds that showed some unexpected
17 significant losses, and that's where the hedge fund
18 industry started getting into a little bit of
19 disarray.

20 So, I know we reviewed at -- around that
21 time, and possibly even after, the -- EFG's exposure.
22 I know I was asked to look into our regional exposure,
23 which meant, you know, the clients that we managed. I
24 didn't have the ability to look into Asia or Europe or
25 anything else.

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1 and I don't doubt at all that, as we evaluated and
2 commented on what was going on in the market, that we
3 made a comment as to hedge funds.

4 (The referred-to document was marked for
5 identification as Plaintiff's Exhibit 136.)

6 Q. (By Mr. Kellogg) I show you what I've
7 marked as Plaintiff's Exhibit 136, which is EFG Cap
8 E-18400. This is an e-mail string dated August 17,
9 2007, from you to Ivo Steiger.

10 A. Mm-hmm.

11 Q. On the second to last page, Bates No. 18402,
12 Jim Lee sends an e-mail to you and to Albert Chiu --

13 A. Mm-hmm.

14 Q. -- asking to assess hedge funds under your
15 customers -- hedge funds that your customers had been
16 investing into based upon what has happened with Bear
17 Stearns and others in the hedge fund industry.

18 A. Mm-hmm.

19 Q. What he says here in the last -- second to
20 last sentence of his e-mail is, You should assess if
21 any were advised, meaning any customers were advised,
22 and therefore we have a fiduciary duty to contact them
23 about the funds.

24 Do you see that?

25 A. Mm-hmm.

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1 Q. So you did that?

2 A. Yeah.

3 Q. Okay. And you found that Fairfield Sentry
4 was one of the larger exposures, right?

5 A. Yes.

6 Q. And, in fact, Madoff funds, related funds
7 were some of the larger hedge fund exposures that your
8 customers had.

9 A. And mostly Fairfield Sentry and a little bit
10 of Kingate.

11 Q. Okay. And once you determined that, was
12 there any discussion about whether customers should be
13 spoken with, discussed about, advised about the
14 situation?

15 A. Over all the industry?

16 MR. COATES: Excuse me. Object to the form
17 of the question.

18 Q. (By Mr. Kellogg) Yes.

19 A. I think that we -- we had weekly marketing
20 meetings at EFG Capital. And from time to time in
21 these weekly marketing meetings, which we call them
22 marketing because it's the marketing staff, we would
23 discuss various topics from week to week; and it was
24 the condition of the market; it was the condition of,
25 you know, funds in particular, securities, whatnot;

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1 Q. You have to say "yes."

2 A. I'm sorry. Yes.

3 Q. After -- and you go on to say, here's our
4 exposures, and the number one exposure on -- this is
5 on page 2, is Madoff. We hold approximately -- we
6 hold approximately in Madoff related funds 115 million
7 in Fairfield Sentry and the balance in Kingate. So --
8 and you discuss that as being a large exposure.

9 After reporting this information, was there
10 a firm decision to contact customers who had been
11 recommended to purchase these funds to discuss the
12 funds with them?

13 A. No. The requirements of EFG International
14 and their units are different according to where they
15 are. We in the U.S. do not have, as a broker-dealer,
16 a fiduciary duty and a fiduciary standard, except for
17 if the asset management company is doing something.
18 As the broker-dealer, we do not.

19 So, we performed this analysis for purposes
20 of sort of knowing where we were and to satisfy Jim's
21 question as to what the exposure was. And we didn't
22 feel, at this point, that there was anything in
23 particular except for the expected behavior of CROs,
24 that they're always going to be talking to their
25 clients about their investments, and they're always

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1 going to be looking for any issues, whether their
2 concentrations or whether the discomfort or whatnot.
3 Q. Did you speak to any lawyers before making a
4 decision as to whether or not you had any obligation
5 or whether you wanted to go contact the customers at
6 this point?

7 A. To any lawyers?

8 Q. Yes.

9 A. As a result of this?

10 Q. Yes.

11 A. I don't recall doing that.

12 Q. Mr. Lee is saying, you know, You should
13 assess if any were advised and therefore we have a
14 fiduciary duty to contact them about the funds.

15 You said, well, I didn't feel like I had any
16 fiduciary duty to do that.

17 My question to is: Did you -- did you get
18 any legal advice on that? Without describing what it
19 is, did you seek any legal advice on the issue?

20 MR. COATES: Let me object to the form of
21 the question.

22 You may answer, sir, and depending on your
23 response, then we'll talk about it, if the
24 attorney-client privilege attaches if at all.

25 A. Okay. I think we were aware of what our

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1 responsibilities were as a broker-dealer and what
2 duties we -- duties of care we had. So I did not -- I
3 do not at this moment think that we consulted with any
4 attorneys regarding that analysis.

5 (The referred-to document was marked for
6 identification as Plaintiff's Exhibit 137.)

7 Q. (By Mr. Kellogg) We'll mark as
8 Exhibit 137 an e-mail string Bates-labeled EFG Cap
9 E-51019. This is an e-mail string beginning with an
10 e-mail from Jim Lee to Victor Echevarria on
11 August 14, 2007.

12 The first e-mail on page 2 -- I should say
13 the last e-mail on this string, which is an e-mail
14 from Mimi Pagsibigan, P-a-g-s-i-b-i-g-a-n -- do you
15 know who that is?

16 It looks like she's international client
17 relations with Fairfield Greenwich Group. Did you
18 know her?

19 A. No, not really.

20 Q. She's referring to a semi-annual update
21 letter covering Fairfield Sentry Limited. When
22 Fairfield Greenwich would provide updates to you or to
23 EFG Capital, would they be, in turn, sent to clients
24 who are -- who had purchased those funds?

25 A. I do not know exactly, but most likely they

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1 were.

2 Q. When -- when --

3 A. Matter of fact, some of them I know -- I

4 don't know if all of them were, but some of them were
5 because there were some that had to do with this --
6 this so-called seeding initiative, which was when

7 Fairfield Sentry took a certain percentage, I think it

8 was 5 percent, of its assets and wanted to seed new

9 managers. And I -- that came in the form of a letter

10 and a report, and I know that was communicated to the

11 clients who owned it because it was a significant

12 factor. And these semi-annual letters, I -- I believe

13 we probably did. I can't tell you for certain that we

14 did all, but..

15 Q. Your feeling is or your understanding is

16 that if something had changed, like we're now going to

17 seed 5 percent of our investments into other managers,

18 something material had changed, you would send that

19 along to the clients?

20 A. I think we would, but I think that, also,

21 semi-annual report, we, you know, very likely would

22 have forwarded it as well.

23 Q. Would you have made any distinction between

24 those clients of yours who were solicited or

25 unsolicited?

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1 A. No.

2 Q. You'd send them to everybody?

3 A. (Nods head.)

4 Q. Is that right?

5 A. That's right.

6 Q. Would it -- would you make any analysis as

7 to whether the customers had transferred their

8 investments in, having purchased them somewhere else?

9 A. No.

10 Q. So you'd just get a list of whoever owned it

11 and you would send whatever you were sending out to

12 everybody?

13 A. That's right.

14 Q. The reason I'm showing you --

15 A. Some -- some of that -- okay.

16 Q. Go ahead.

17 A. Some of those responsibilities are really

18 the custodian's responsibilities as well, because it

19 is something known in this -- in the industry,

20 sometimes it's -- it's a corporate action. A stock

21 split, for example. The custodian would want the

22 clients to understand that there is a stock split.

23 Sometimes there is a report that comes in and, you

24 know, it is really also the custodian's responsibility

25 to do so. But I interrupted your question.

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Pages 137-140

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1 Q. No, it's all right. I got a little
2 sidetracked on that.
3 But the -- on the first page there's an
4 e-mail from Jim Lee to Victor Echevarria, which I'm
5 not sure I understand, maybe you do as corporate
6 representative.
7 He says, If you have a range changes are
8 some will be doing well like a broken clock is right
9 twice a day. Just remember there is minimal
10 disclosure. I wonder if GA has Fairfield. I think
11 they said no because of nondisclosure. I also would
12 like to know how they did so far performance-wise.
13 A. This is Jim Lee.
14 Q. Yes, I know.
15 A. And --
16 Q. Go ahead.
17 A. It's probably Jim Lee using his finger
18 typing on the BlackBerry.
19 Q. Okay.
20 A. Let me -- let me see where this would be
21 coming from. So I read the beginning of Mirni
22 whatever's e-mail, and then Silvio Maglio.
23 Semi-annual update. This would have been sent from
24 Silvio to Olivier and Jim. Jim then sends -- but they
25 have only four or five negative months, sells well for

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1 them. On the other hand, FGG's multi manager/advisor
2 funds have done very well.
3 If have a change -- a range changes and some
4 will be doing well like a broken clock is right twice
5 a day.
6 I have no idea, sir.
7 Q. Okay.
8 A. I'm sorry.
9 Q. Do you know what GA is?
10 A. No, and I have never seen this e-mail
11 before. So...
12 Q. Okay. Just thought I'd take a shot.
13 A. Broken clock is right twice a day.
14 Interesting.
15 Q. Well, I take that to mean even a broken
16 clock is right twice a day.
17 A. Okay.
18 Q. But I don't know what he's referring to.
19 MR. COATES: Good.
20 A. Something like what my grandfather would
21 say.
22 Q. All right. We move into 2008. As you sit
23 here now, do you recall any particular due diligence
24 done in 2008 prior to the fraud being revealed in
25 December?

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1 A. Anything different than to our ongoing --
2 Q. Yes.
3 A. -- monitoring in 2008 --
4 Q. Yes.
5 A. -- regarding Fairfield Sentry?
6 Q. Do you remember any particular meetings that
7 you had with them about due diligence, any additional
8 analyses that were done, anything like that?
9 A. No, but I think at the time the hedge fund
10 world and the financial world was in a state of -- of
11 flux. I mean, you had Bear Stearns who had the crisis
12 and Lehman Brothers had the crisis, I believe,
13 probably -- I think it was in the summer of 2008. And
14 I think at that time we maybe increased the frequency
15 of contact with the different managers in general, the
16 hedge fund managers, the managers in general.
17 Q. And do you remember any particular increase
18 in contacts with Fairfield Sentry or Fairfield
19 Greenwich, I should say?
20 A. Not more than perhaps other managers that we
21 would talk to.
22 Q. Do you recall in 2008 -- oh, I'm sorry.
23 This is -- I found an e-mail here from 2002. So let's
24 jump backwards for a minute, see --
25 A. To when?

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1 Q. 2002.
2 A. Okay.
3 Q. -- see if you know something about this.
4 (The referred-to document was marked for
5 identification as Plaintiff's Exhibit 138.)
6 Q. (By Mr. Kellogg) Let me show you what I
7 marked as Plaintiff's Exhibit 138. This is a
8 May 24, 2002, e-mail from Jerome Schonbachler to
9 Victor Echevarria, Bates-labeled 6074.
10 In this e-mail Mr. Schonbachler is saying
11 that, As Kingate Global USD fund becomes more and more
12 like a black box, as Societe Generale does not get
13 explanations on this opacity, I prefer to remove this
14 fund from the recommended list.
15 My question to you is: Subsequent to this
16 time, was Kingate put back on the recommended list or
17 on the approved list?
18 A. I do not recall exactly if it was put back
19 or, frankly, even taken off, for that matter.
20 Q. In 2008, did you consider or did EFG Capital
21 consider switching its customers from Fairfield Sentry
22 to Kingate?
23 A. In when? I'm sorry.
24 Q. In November of 2008.
25 A. I don't think there was a real concerted

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1 consideration for the corporate level to do that.
2 Q. Did you -- did you consider doing that
3 because the fees were lower for Kingate than they were
4 for Fairfield Sentry? Fees to charge to investors.
5 A. I don't recall that we made a concerted
6 effort, but we might have discussed it.
7 Q. Okay.
8 A. We discussed it, yeah.
9 (The referred-to document was marked for
10 identification as Plaintiff's Exhibit 139.)
11 Q. (By Mr. Kellogg) Let me show you what
12 I'll mark as Exhibit 139. This is EFG Cap E-57635,
13 an e-mail dated November 14, 2008, from you to
14 Michael Donnell, in which -- and he has forwarded to
15 you an e-mail from Lourdes Barreneche talking about
16 the difference between Sentry and Kingate and in
17 particular the fees charged.
18 And you say, Time to switch to Kingate, I
19 think. Don't they also do a DD? So with 1 percent
20 allocated to non SSC deduction was 70 bps? That
21 sounds like a total wipeout.
22 What did you mean?
23 A. Give me a second, please.
24 Q. Yeah.
25 A. Okay. And your question is what I meant

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1 A. Well, sir, notice the dates.
2 Q. It's right near the end there.
3 A. So do you want me to answer what happened
4 with that idea?
5 Q. Was there any analysis done --
6 A. There was about 28 days in order to consider
7 that further, and I don't think -- at -- at the time
8 we had already had a number of redemptions in
9 Fairfield Sentry during the last month. And as a
10 matter of fact, for the November 30th NAV, net asset
11 value, which was a so-called dealing date, we had a
12 number of redemptions already pending. And,
13 unfortunately, those would have been paid three or
14 four days after the announcement of the fraud, of
15 course, had there been money. So there was really no
16 real time to react any further.
17 Q. Did you look into getting a distribution
18 agreement with Kingate?
19 A. I don't think we -- there was somebody at
20 one point who used to work for Fairfield Greenwich in
21 Spain that I think started working with Kingate, and I
22 think he visited Victor at one point and I don't know
23 if he offered a distribution agreement or anything
24 like that. So, other than a couple conversations like
25 that, there was never -- at least I never spoke to

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1 with the 1 percent allocated to non -- that statement?
2 Q. Well, it sounds like you're saying time to
3 switch to Kingate. Why were you saying that?
4 A. I think that what I referred to is, judging
5 from the information that was here, that with
6 1 percent at the time as reported by, I think, either
7 as reported -- or our knowledge of what was not in the
8 split-strike-conversion strategy was apparently at the
9 time 1 percent of the assets. And with 1 percent of
10 the assets, the deduction or -- from the returns of
11 the split-strike-conversion strategy was 70 basis
12 points, which is 70 percent of the 1 percent.
13 So what I mean by a total wipeout is that if
14 you allocate 1 percent of the fund to somebody and all
15 else being equal, your return goes down .7, that means
16 that strategy lost 70 percent of its market value,
17 which in layman's term is almost a wipeout.
18 So that's what I meant there and, you know,
19 I was suggesting -- and I said to Mike, you know, is
20 it time that we -- if that's going to happen, that
21 these seeding strategies are going to cause a
22 deduction on the performance of the fund, well,
23 obviously, that's not good for the investors and maybe
24 we should consider it.
25 Q. What happened with that idea?

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1 Kingate.
2 Q. What was that person's name; do you
3 remember?
4 A. Yeah. And again, I -- I think -- I think it
5 was Kingate that he was offering. His name was Carlos
6 Garcia-Ordenez. Garcia O-r-d-o-n-e-z. Compound last
7 name.
8 (The referred-to document was marked for
9 identification as Plaintiff's Exhibit 140.)
10 Q. (By Mr. Kellogg) Let me show you an
11 e-mail I'm marking as Plaintiff's Exhibit 140, which
12 is a -- starts with an e-mail from you to Michael
13 Donnell, and which has in the string --
14 MR. COATES: Thank you.
15 THE WITNESS: There you go.
16 Q. -- good memory -- Carlos Garcia-Ordenez in
17 November.
18 A. Surprised it was that late. I thought it
19 was earlier.
20 Q. In the e-mail that is the last one on the
21 first page, this is from Mr. Donnell to
22 Mr. Garcia-Ordenez, he says, Our target retrocession
23 for a Madoff feeder is the equivalent of 20 percent of
24 the 1 percent management fee per annum and 20 percent
25 of the 20 percent performance fee per annum, which is

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1 equivalent to a 4 percent performance fee.
2 A. Mm-hmm.
3 Q. Is -- is that true? Was that -- was that
4 the target for distribution of Madoff feeder funds
5 that you were looking for?
6 A. Well, I think that if we were negotiating
7 with -- and, by the way, I think Carlos Garcia-Ordonez
8 worked as an independent third-party marketer. And I
9 think that, looking at this, he was not employed by
10 the company that managed Kingate, but as a third-party
11 independent, and I think he was trying to get us to
12 allocate more money to Kingate.
13 And Mike's point here is basically saying,
14 well, this is what we get with Fairfield Sentry. If
15 you have exactly the same thing, we would be looking
16 to get that kind of compensation if we're going to add
17 clients to that. You know, 4 percent performance fee,
18 that's 20 of the 20. It's just math.
19 Q. Twenty -- 20 percent of the 20 percent
20 equals 4 percent?
21 A. Twenty of the -- yeah, 20 -- it's 4 percent
22 of the performance.
23 Q. So if the performance increases by \$1,000,
24 EFG's compensation would give them 4 percent of that?
25 A. Forty. Yeah, 40 bucks. That's what that

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1 means. 130 -- that was 140.
2 MR. COATES: That was 140, yeah.
3 Q. (By Mr. Kellogg) Have you ever heard of
4 something called a Monaco fund?
5 A. A Monaco fund?
6 Q. Yes. Did EFG Monaco -- there is an EFG in
7 Monaco, is there not?
8 A. There is an EFG -- subsidiary of EFG
9 International that is domiciled in Monaco.
10 Q. Did it sponsor any Madoff fund or any fund
11 of funds that would have Madoff or a Madoff feeder
12 fund in it, to your knowledge?
13 A. I'm aware that there was some exposure of
14 Monaco clients to a vehicle, whether it's a fund, I
15 don't know, exactly through what, but that had
16 exposure to Madoff's strategy.
17 Q. And do you know what that -- was that an
18 EFG-sponsored fund?
19 A. I -- I can't tell you.
20 Q. Did you ever receive any due diligence
21 analysis of any -- done by EFG Monaco?
22 A. No.
23 Q. Did you ever share any EFG Capital's due
24 diligence of Fairfield Sentry with anybody in Monaco?
25 A. No.

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1 Q. Did you consider distributing the Emerald
2 fund?
3 A. The what?
4 Q. The Emerald fund through Fairfield
5 Greenwich.
6 MR. COATES: I'm sorry, can -- I'm going to
7 object to the form of the question. You mean
8 distribute through EFG Capital or Fairfield --
9 Q. (By Mr. Kellogg) Were you aware of
10 Fairfield Greenwich starting up a new fund right
11 near the end called Emerald?
12 A. I was going to ask you if that's what it
13 was. I -- yeah, towards the last month or so of the
14 Fairfield -- of the life of the Fairfield Greenwich
15 fund, there was a new fund and, I believe, yes, it was
16 called Emerald, that they were trying to raise money
17 for, Fairfield Greenwich was.
18 Q. And did -- did you learn anything about that
19 fund or do any analysis of it?
20 A. We had -- Mike Donnell and I had a
21 conversation with some people at Fairfield Greenwich,
22 and I believe Jeffrey Tucker was one of the members of
23 Fairfield. Lourdes was always -- she was our main
24 point of contact. Lourdes Barreneche. And there was
25 a distinction -- this was -- this was funds that were

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1 to be managed by Madoff, the company. I don't recall
2 exactly who. I seem to recall that they might have
3 said something about Madoff's sons or something. But
4 it had a distinction to the basic strategy.
5 And I don't recall exactly if it was a -- a
6 more concentrated -- actually, I think that's what it
7 was. I think the split-strike-conversion had as its
8 universe the S & P 100 Index, stocks that composed the
9 Index, and I think that they were trying to make a
10 distinction that the Emerald fund was going to be more
11 concentrated in the investments that it made or
12 something like that. I'm not 100 percent sure, but
13 there was a slight distinction which, to them, made it
14 attractive.
15 Q. Were the projected returns higher than the
16 split-strike-conversion strategy employed by Fairfield
17 Sentry?
18 A. I think that the -- I think that the fund
19 was to be somewhat more volatile, but with an
20 expectation of higher returns because of the
21 concentration.
22 Q. Were you given any materials to analyze?
23 A. We were probably given something
24 preliminary, but I don't recall, you know, a whole
25 package, you know, sent to us.

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1 Q. Were any investments sold to any of your
2 customers for Emerald?

3 A. No. I think that the fund, if it launched,
4 it launched with capital from the principals of
5 Fairfield. I don't recall that it went beyond that.

6 Q. Did -- did EFG Capital or any EFG entity, to
7 your knowledge, sell structured products such as
8 notes? I think you mentioned before there were notes
9 that might be secured or might -- might be tied to the
10 performance of a Fairfield Sentry or a Madoff feeder
11 fund; is that right?

12 A. There were some.

13 Q. How did that work? How did those products
14 work, generally speaking?

15 A. There was usually a large financial
16 institution slash investment bank that would put the
17 note together. Sometimes those notes came as a
18 request of an investor that liked the strategy and
19 would want to gear up the leverage, gear up the
20 return. Instead of doing it by borrowing money and
21 investing in the traditional sense, some of these
22 notes -- and there weren't that many that I was aware
23 of, but there were -- some of these notes actually
24 gave you a geared-up or a levered exposure to the
25 Madoff strategy.

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1 structuring these sorts of investments be?

2 A. Nothing. In structuring, nothing.

3 Q. Well, what would your role be?

4 A. Selling it. Buying it from Banco Bilbao
5 Vizcaya, if it was the issuer and the structure of the
6 note, and selling it to a client.

7 Q. And so this would be a note from the
8 investment bank or the bank that could be purchased by
9 an investor, and EFG Capital was sort of a middleman?

10 A. These notes were issued -- arranged and
11 issued by the investment banks, like take BBV, Banco
12 Bilbao Vizcaya. And sometimes these notes were -- the
13 issuer of these notes were a special purpose vehicle
14 that was put together by Banco Bilbao Vizcaya for the
15 purpose of issuing these notes.

16 So the issuer of the note itself might not
17 read Banco Bilbao Vizcaya because it was one of their
18 special purpose companies that were created for this
19 purpose. So when you read the issuer of the note, it
20 might say a name that doesn't mean anything. Okay.

21 So in some cases I remember that Fairfield
22 Greenwich at one time or another would make us aware
23 that Banco Bilbao Vizcaya was doing this. At times a
24 client would tell us, hey, I heard about this, I would
25 like, you know, to buy this; and at times we might

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1 I remember we had one client in particular
2 who was a regular and large investor in Fairfield
3 Sentry and Kingate and he held accounts or
4 relationships with other financial institutions in
5 town and, you know, sometimes he would move the
6 position from us to another bank and then back, and
7 then a month later it would come back to us, and he
8 sort of did that. And he, in particular, I think, was
9 interested in a levered -- a levered Fairfield Sentry
10 Madoff split-strike-conversion strategy, because it
11 was his belief that the returns and the volatility of
12 the fund were low enough that he would take a bet on
13 the cost of the money being less than the return of
14 the fund.

15 So there were several, but very few
16 circumstances that those notes were shown -- actually
17 shown to us and shown to clients. I believe there was
18 one that was put together by one of the Spanish banks,
19 Banco Bilbao Vizcaya, BBV. Banco Bilbao Vizcaya, with
20 a Z. And they put together a fund -- I'm sorry, a
21 note and there was another one. It -- it was not
22 something we regularly did, and most of the times that
23 we did were at the request of clients that were
24 interested in that.

25 Q. What would EFG Capital's participation in

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1 have seen something from the investment banks that we
2 would tend to turn around and to some clients we would
3 show the investment.

4 Q. Did you have situations where a client would
5 come to you and say, can you -- can you find an
6 investment bank that would issue such a note secured
7 by Fairfield Sentry?

8 A. I think we -- at one point, it was sometimes
9 an institutional client, like, you know, not an
10 individual, but sometimes a bank, an institutional
11 client of ours as a bank would say, hey, I would like
12 a note on Fairfield Greenwich, wrapped around
13 Fairfield Greenwich, and I'd -- at some point, the
14 concept of notes that were principally -- principal
15 guaranteed also was, you know, around. Some people
16 wanted a principal guaranteed investment with an
17 exposure to a particular strategy. So, yes.

18 (The referred-to document was marked for
19 identification as Plaintiff's Exhibit 141.)

20 Q. (By Mr. Kellogg) Let me show you what
21 I'll mark as Exhibit 141. This is Bates No. EFG Cap
22 E-6504, e-mail string starting with Sixto Campano to
23 Jerome Schonbachler, October 16, 2002.

24 You're responding to an e-mail from
25 Mr. Schonbachler, which he says, Dear Sixto, As of a

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1 guaranteed product around Fairfield Sentry and Fisher
2 Francis, I have been asking different investment banks
3 for a bit of time and they all refused to include
4 Fairfield Sentry as Sentry is very opaque and now
5 seeds other funds. For this one, I think it is
6 unlikely anybody will do it. Doing it on Fisher
7 Francis alone may be easier as the returns are more
8 transparent.

9 Do you know what's being discussed here?

10 A. Give me a second.

11 Q. Take a look.

12 A. Okay. Yes. So I'm making reference to a
13 request from an institution that apparently I was in
14 contact with at the time who asked about a note that
15 would be capital guaranteed that would invest
16 50 percent into Fairfield Sentry or be exposed to
17 50 percent Fairfield Sentry and 50 percent to Fisher
18 Francis, which was another fund that was sponsored by
19 Fairfield Greenwich called Fisher Francis Trees &
20 Watts diversified alpha was the full name of that
21 fund.

22 Q. And what you're being told here is that
23 they're probably not going to be able to do it for
24 Fairfield Sentry because it's very opaque and seeds
25 other funds. Was that the outcome of this?

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1 derivative product that's based on it unless they
2 understand it?

3 A. Well, it's --

4 MR. COATES: Object to form.

5 You may answer.

6 A. That's not what I said. I mean, I said that
7 if they do not even know that 5 percent allocation,
8 what it's, you know, exactly what it's trading and
9 what it's doing, it's very difficult for me to create
10 a model that will track something that I don't know
11 what it's doing.

12 Q. That would be the same for the 95 percent,
13 you'd -- they would want to model that and track it,
14 wouldn't they?

15 A. And the 95 percent that, as we all know and
16 we've discussed here, you know, Madoff kept his
17 investment model very close to his chest, and it was
18 very difficult to go out and replicate it if you
19 didn't have, you know, absolute total visibility into
20 the trades and why they were being done.

21 Q. So -- okay. If I understand what you're
22 saying, then, is when an investment bank or somebody
23 who is creating one of these things and they create a
24 derivative product that tracks what another product is
25 doing, they want to be able to create models from

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1 A. Yes, it's -- go back to the seeding strategy
2 in which Fairfield Sentry, when they changed their
3 limitations to be 100 percent split-strike-conversion
4 Madoff and they took 5 percent and they invested it in
5 any -- in managers that they were seeding, which were
6 new managers most likely without a track record that
7 the folks at Fairfield Greenwich thought were -- were
8 good investments and, you know, at times they don't
9 work.

10 For example, before in the question you were
11 asking me about the total wipeout, one of those
12 seedlings obviously didn't do that well. And some --
13 if you're an investment bank and the way you construct
14 the structured notes is that you essentially have to
15 create a derivative, okay, that invests into that --
16 that tracks the performance of the underlying.

17 If you have in there something you don't
18 understand and you cannot model because you don't have
19 visibility into that 5 percent, for example, it's very
20 difficult for you to model something that then you'll
21 be held to in terms of performance and then you
22 couldn't -- you couldn't get your note to perform. Is
23 that clear?

24 Q. Well, what you're saying is if you don't
25 understand it, they're not going to create a

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1 which they can predict what that other product is
2 going to do. And with the Fairfield Sentry, you had
3 5 percent in brand-new funds that didn't really have a
4 track record and you had 95 percent in Madoff, who
5 kept all of his trades close to the vest, so it was
6 hard to model them. Is that true?

7 A. It was hard to model them.

8 MR. COATES: Object to the form.

9 You can answer.

10 A. Yes.

11 (The referred-to document was marked for
12 identification as Plaintiff's Exhibit 142.)

13 Q. (By Mr. Kellogg) Exhibit 142 is an e-mail
14 from Sheila Wilensky to you dated, January 27, 2003,
15 Bates No. EFG Cap E-7353.

16 Who is Sheila Wilensky again?

17 A. Sheila Wilensky is a CRO with EFG Capital.

18 Q. Now, this e-mail string begins at the end
19 where Sheila Wilensky is asking Bassam Salem about a
20 prospect that she has, a substantial family group in
21 Mexico that has asked about a structure with certain
22 characteristics, a capital protected note five to
23 seven years on a basket of Fairfield Greenwich funds,
24 where they'd like to draw income of 1 and 2 percent,
25 and there's some discussion back and forth as to

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1 whether Mr. Bassam -- I mean, Mr. Salem can assist her
2 in finding such a product for her prospect.

3 Why would Mr. Salem be involved in this?

4 A. Because at the time there wasn't anybody at
5 EFG Capital that had the expertise or the contacts
6 with the investment banks that would normally put
7 together such a product.

8 So I think Bassam supposedly had, and Jerome
9 had come from, I believe, Banque Paribas in France or
10 in Switzerland, and he had come from one of those
11 desks where they did this kind of thing.

12 Q. If you look at page 7355, Jerome
13 Schonbachler says to you and others that, The
14 inclusion of Fairfield Sentry is the problem in the
15 structure. The guarantor has asked for a time
16 extension in order to perform some calculations on
17 Sentry.

18 Is that -- does that go toward the issue you
19 were discussing earlier that whoever is going to do
20 this wants to be able to model what Madoff is doing?

21 A. Yes.

22 Q. And if we move forward on 7354, there's some
23 more discussion about it. And on the front page,
24 7353, Mr. Schonbachler says to Sheila, copying you, in
25 the second paragraph, We asked the Fairfield Greenwich

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1 Capital and Fairfield Sentry in offering this.

2 As you know from other people's depositions
3 and testimony so far, and I think some of the reports
4 that you have read, at times some people from EFG,
5 when they asked, were given access in the offices of
6 Fairfield Greenwich to review trades.

7 I don't think that Fairfield Greenwich was
8 amenable to sending that out to an investment bank to
9 review because, among other things, those investment
10 banks were of the Credit Suisse type, which are the
11 ones that Madoff himself were concerned with copying
12 strategies and whatnot, and that was something that
13 they normally wanted to keep close to themselves.

14 Q. To your understanding, who was it from EFG
15 that actually looked at confirmations of trades in
16 Fairfield Sentry's offices?

17 A. I believe that Dart Montgomery did. I think
18 that Mark McCluskey did in the beginning. I believe
19 that -- I'm not 100 percent sure, but I think Marcello
20 Alvarez at one point initially also saw some of those
21 and just at least those people.

22 Q. Okay. Anyone else you can think of as you
23 sit here now?

24 A. No.

25 Q. What's the EFG Alternative Investment fund?

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1 representative, Lourdes Barreneche, about receiving by
2 e-mail every trade done by Fairfield Sentry, mid
3 December 2002. We did not receive anything yet from
4 Fairfield. We were waiting for this flow of
5 information in order to find a bank comfortable enough
6 to provide the guarantee.

7 And you suggest that since Lourdes is going
8 to be in your office on Thursday, that we can get
9 Bassam to see her for a moment.

10 And she says, Good idea.

11 Do you know whether Fairfield Sentry
12 provided, as part of this analysis, copies of its
13 trade confirmations for that period of time?

14 MR. COATES: Object to form.

15 A. No, I don't.

16 Q. Do you know in discussing or considering any
17 of these sorts of structured products whether EFG ever
18 was given access to Fairfield Sentry confirmations of
19 trades?

20 A. I don't think any of the structured products
21 went far enough, actually. I'm even surprised that
22 this one you're showing me went that far along, but I
23 don't think that anything went as far as -- as that.
24 And I don't know if -- I don't think there's too many
25 of these circumstances throughout the life of EFG

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1 A. The EFG Alternative Investment fund. I'm
2 not sure if that is a fund offered by EFG (London).

3 Q. Let me --

4 A. If you could refresh my memory, I'd be happy
5 to --

6 (The referred-to document was marked for
7 identification as Plaintiff's Exhibit 143.)

8 Q. (By Mr. Kellogg) Here's Exhibit 143.

9 It's an e-mail from Mike Palin -- to Michael Palin.

10 It's Bates No. 59 --

11 A. Michael Palin to Michael Palin. Okay.

12 Q. It's from him to him. Bates No. 59047. It
13 says --

14 A. Okay.

15 Q. -- This is to advise we do not have exposure
16 to any Madoff strategies in the EFG Alternative
17 Investment fund.

18 A. Okay. I think -- I think that Michael
19 Palin, who, again, I told you was a CRO in the Hong
20 Kong office, I think he had created a fund called --
21 no. Actually, no, wait a second. I don't know if he
22 created. I think this was a fund that at one point
23 was given to Michael Palin, who had hedge funds in
24 his -- for his clients. I believe that Michael Palin
25 at one point managed this EFG Alternative Investments

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1 fund, which was, I think, an EFG bank fund. I don't
2 think that he started it, I think he was given the
3 task of managing that fund.
4 Q. So this is an EFG managed fund from EFG
5 International? EFG Bank?
6 A. EFG Bank.
7 Q. All right. So an EFG Bank managed fund that
8 he was managing. He didn't create it, but he managed
9 it?
10 A. I don't think he created it. I think this
11 was -- this might have been created by Jerome and
12 Bassam at one point, and I -- I -- I seem to recollect
13 that at one point Michael Palin was given the task of
14 managing that fund.
15 Q. Do you know whether the EFG Alternative
16 Investment fund ever had any investments in any Madoff
17 strategies?
18 A. I don't know.
19 MR. KELLOGG: We need to change the tape.
20 Let's change the tape and take a couple minutes.
21 THE VIDEOGRAPHER: Stand by to go off Media
22 Unit 2. Going off the record at 2:50 p.m.
23 (Thereupon, a recess was taken from
24 2:50 p.m. until 3:09 p.m., after which the
25 following proceedings were held:)

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1 involved in maybe the first draft.
2 Q. Marketing and communications with which --
3 A. EFG International.
4 Q. Who is that?
5 A. His name is Keith Gapp. Two Ps.
6 (The referred-to document was marked for
7 identification as Plaintiff's Exhibit 144.)
8 Q. (By Mr. Kellogg) Let me show you what I
9 marked as Exhibit 144, which is an e-mail string
10 from Albert Chiu to various individuals, dated
11 January 6, 2009.
12 This is an e-mail that he's circulating to a
13 number of people, including Mozamil Afzal, Jim Lee,
14 Keith Gapp, Sixto Campano, Gyongyi King, and Robert
15 Chiu. Do you see that?
16 A. One second. Let me read the last -- okay.
17 Q. Were these individuals who are -- who are
18 the addressees of this e-mail, along with Mr. Albert
19 Chiu, were they involved in the drafting of the Madoff
20 Q & A?
21 A. I don't think -- I don't recall comments
22 from Moz Afzal or Gyongyi King in the drafting of this
23 Q & A, sort of. I think the central person to receive
24 any comments to a draft was Keith Gapp at EFG
25 International. And I don't recall also how much

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1 THE VIDEOGRAPHER: We're now back on the
2 video record. This is the start of Media Unit
3 No. 3. The time back on the record is 3:09 p.m.
4 Q. (By Mr. Kellogg) After the Madoff fraud
5 was revealed, there were several communications from
6 EFG Capital and EFG International to its customers
7 about the situation. Are you familiar with those?
8 A. Yes.
9 Q. One of the communications included something
10 called a Madoff Q & A or question and answer. Have
11 you seen that?
12 A. Yes.
13 Q. Were you involved in preparing it?
14 A. I was involved in seeing the drafts.
15 Q. Did you review drafts and make comments?
16 A. Some.
17 Q. Did other people within EFG International,
18 EFG Bank, EFG Capital also review that Q & A and make
19 comments?
20 A. Yes.
21 Q. Who -- who was involved in that process?
22 A. Mostly people from our legal department in
23 Switzerland, the general counsel's office, and I
24 believe that a gentleman who is in charge of
25 communications, marketing communications was also

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1 Robert Chiu commented on this. But the other folks --
2 now, it doesn't mean that I saw every comment from
3 everybody.
4 Q. It says here that amendments are going to be
5 sent to you because you're going to be putting
6 together the final compilations. Is that what
7 happened?
8 A. I think we started, but I think this was
9 sort of given up to Keith Gapp in the end.
10 Q. All right. So it says in the e-mail from
11 Albert Chiu, quote, Although I understand that it is
12 not easy to put it correctly given the situation
13 (given the difference in views on the strategy among
14 different centers), it is essential to put in the
15 Q & A what due diligence the bank had performed before
16 we allow the CRO to market the fund to the clients,
17 unquote.
18 What were the difference in views on
19 strategy among the different centers?
20 A. Given the difference in views on the
21 strategy amongst the different centers.
22 I don't recall that in particular between
23 Albert Chiu and ourselves we had a different view on
24 the strategy. So, I don't know --
25 Q. So you don't -- you don't know what he

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1 means?

2 A. No.

3 Q. It says, quote, After all, Fairfield Sentry,
4 for example, has been on the bank's approved list of
5 hedge funds for a long time until CMA and Moz took
6 over the approved list in the recent two years,
7 unquote.

8 A. Mm-hmm.

9 Q. Once the bank's approved list was taken over
10 by CMA and Moz, did Fairfield Sentry drop off the
11 bank's approved list?

12 A. I -- I take objection to -- to his statement
13 there. I don't think CMA ever took over the approved
14 list. And I know that at one point Moz Afzal and the
15 people in London started taking the lead in hedge
16 fund, as they are today, in the bank's -- EFG Bank's
17 hedge fund approved list and -- and program.

18 I do not recall ever that CMA took over the
19 list, and I don't recall ever that the fund was taken
20 off the list. It was certainly not taken off of our
21 list in Miami.

22 Q. Okay. So you don't recall the bank ever
23 taking Fairfield Sentry off the approved list; is that
24 right?

25 A. I don't recall that, sir.

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1 because it was a decision at EFG International that
2 they wanted to create a document that was eventually
3 authored by them and usable by other units of EFG
4 International and not just EFG Capital.

5 (The referred-to document was marked for
6 identification as Plaintiff's Exhibit 145.)

7 Q. (By Mr. Kellogg) Let me show you what I
8 think is the Q & A. I'll mark it as Exhibit 145.

9 This is an e-mail from Keith Gapp to a number of
10 people, lots of people.

11 A. Lots and lots.

12 Q. Under Bates No. 23694.

13 Is this the final version of the Q & A, to
14 your knowledge?

15 A. I believe it was the last -- the final
16 version of the Q & A, yes.

17 Q. Okay. Was this actually distributed to all
18 the CROs?

19 A. Yes.

20 Q. And was it distributed by the CROs to
21 customers who invested in Fairfield Sentry?

22 A. I do not believe -- I think the instructions
23 were that this was for internal use only as it's
24 labeled on the bottom of the page, and I think that
25 the instructions from EFG International, the parent

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1 Q. Did you -- did you tell Mr. Chiu your views
2 on his e-mail?

3 A. I don't remember.

4 Q. Did you have a conversation with him?

5 A. I don't remember having a conversation with
6 him after this date.

7 Q. Did you talk to anybody else who this e-mail
8 is addressed to as to what the difference in views
9 might be among the different centers of EFG or whether
10 or not Fairfield had been taken off the EFG Bank
11 approved list?

12 MR. COATES: Object to form.

13 A. I don't recall specifically having a
14 conversation specifically as you're describing.

15 Q. Do you have -- do you recall any
16 conversation with anybody who's listed here about the
17 issues addressed in this e-mail?

18 A. I don't recall having a conversation about
19 the issues addressed in this e-mail. There was a lot
20 of back and forth because while the Q & A -- I don't
21 remember where it started, and the concept of having a
22 Q & A might have started in Miami and that's perhaps,
23 you know, why we initially came up with the initial
24 draft.

25 This was taken over by EFG International

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1 company, as you read in the second page, was that if
2 anyone needed to send -- it can be made selectively to
3 clients, available to clients with the approval of the
4 business heads of the particular units of EFG
5 International.

6 Q. Did you or Victor Echevarria approve use of
7 these or delivery of these to any clients?

8 A. We might have. I do not recall specifically
9 that we did or didn't.

10 Q. On page 2 of the Q & A, which was Bates
11 No. 62697, the question that's posed here is, why did
12 so many institutions and individuals invest with BMIS,
13 which is Bernie Madoff Investment Securities.

14 And one of the answers, the last sentence on
15 this page, it said, Several of the funds had
16 undertaken due diligence similar to that undertaken by
17 EFG International. This involved receiving trade
18 tickets with a one- to two-day lag, verifying price,
19 and aggregating ticket results to calculate daily
20 performance. This was then compared to actual
21 published performance with historically perfect
22 correlation, unquote.

23 My question to you is: Did EFG
24 International actually do that?

25 A. I think it says -- no. It said due

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1 diligence similar to that undertaken by EFG
2 International, and I believe we, at the onset of our
3 due diligence, as I mentioned earlier, had some people
4 from EFG Capital verify some of the tickets and -- and
5 compare them.
6 Q. So I'm trying to understand. Are you saying
7 that EFG Capital in its initial due diligence, to your
8 understanding, looked at trade tickets within one or
9 two days after the trade, verified the price,
10 aggregated the ticket results, and calculated daily
11 performance?
12 A. No.
13 Q. Did that happen?
14 A. I'm not saying that.
15 Q. All right. Did EFG International ever do
16 that, to your knowledge?
17 A. Not to my knowledge.
18 Q. Now, moving down on page 3, the next
19 question -- the third -- the second question on this
20 page asked is --
21 A. I'm sorry, what page? Same page?
22 Q. 23698.
23 A. Okay.
24 Q. The second question on the page says, How
25 did this exposure arise, and then there's an answer.

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1 please?
2 Q. While they were selling the product. While
3 EFG Capital was selling the product, did anybody at
4 EFG Capital know how many SEC investigations had been
5 conducted, or is this information that you learned
6 later for this question and answer?
7 A. No. I mean, we know from -- for example, we
8 know that when the articles of the Barron's and the
9 MAR hedge, I think around that time there were
10 comments in those articles, or around the time of
11 those articles, that investigations had been made and
12 that they had not uncovered -- they had not uncovered
13 any issues.
14 I think that the -- it was expected that
15 FINRA, at the time the NASD, and broker-dealers and
16 then -- I'm sorry, and the SEC and the New York Stock
17 Exchange would also perform their audits, I think that
18 at times, you know, we might have been made aware.
19 I -- I don't know -- if your question was
20 specifically while we were selling this, did we know
21 specifically how many examinations had been conducted
22 on BMIS, I -- I don't know that we know the answer to
23 that. I know we know some were done and definitely
24 post the discovery of the fraud, there were a lot of
25 publications which made reference to the number.

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1 The fourth paragraph down says, quote, Some parts of
2 the business had examined BMIS and decided not to
3 invest, unquote.
4 Are you referring to some parts of the
5 business in EFG International?
6 A. Yes.
7 Q. Which parts of the business examined BMIS
8 and decided not to invest?
9 A. I think he's referring to CMA and EFG Bank
10 (London).
11 Q. If you'd turn to the next page, 23699, the
12 first question there is: Didn't the regulators have
13 any concerns about Madoff or BMIS?
14 The answer is: The SEC and other regulators
15 conducted at least eight examinations of Madoff and
16 BMIS over the past 16 years and never found any
17 significant irregularities or red flags. To the
18 contrary, the regulators repeatedly re-approved BMIS's
19 registrations and allowed it to continue doing
20 business, unquote.
21 My question to you is: While you were at
22 EFG or while EFG Capital was selling the Fairfield
23 Sentry investment, did anyone at EFG Capital know how
24 many examinations the SEC had done?
25 A. While I was -- what was your qualifier,

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1 Q. Before the publications of those numbers
2 after the fraud was revealed, did EFG Capital know the
3 subject matter of any investigation that the SEC might
4 have conducted on Bernard Madoff Securities?
5 A. I don't know if -- I don't recall right now
6 if the -- as a result of the articles that came out
7 around 2001, I believe.
8 Q. The Barron's article?
9 A. I think it was 2001, around that time, I
10 think that the -- I'm not sure. Maybe front-running,
11 I think, was perhaps what was covered in some of those
12 articles, whether the firm was front-running.
13 Q. When you reviewed Mr. Pehrsson's memorandum,
14 which we reviewed last --
15 A. Mr. who?
16 Q. Remember Mr. Pehrsson's memorandum --
17 A. Oh. Yeah.
18 Q. -- from last time?
19 Did you consider informing the SEC of the
20 hole in the Chinese wall that was referred to in that
21 memo?
22 A. No.
23 (The referred-to document was marked for
24 identification as Plaintiff's Exhibit 146.)
25 Q. (By Mr. Kellogg) I'm going to show you an

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1 e-mail from Jacobo Gadala-Maria, Exhibit 146,
2 Plaintiff's Exhibit 146, which is 108471, an e-mail
3 dated December 18, 2008.
4 This is from him to you, BT, who was the
5 sub-advisor for the PRS fund of funds that we talked
6 about earlier.
7 He says -- he's referring to a frequently
8 asked question put out by UBP as being a good
9 document, but the emphasis on the SEC begs the
10 question. If all we needed was the SEC's seal of
11 approval to decide where to invest, why would PRS need
12 to hire sub-advisors? Many banks around the world
13 decided long ago that Madoff did not pass their due
14 diligence, basically because the returns could not be
15 reproduced, the trades could not be verified with
16 Madoff counterparties, and the auditors Madoff used
17 were no-names instead of reputable world-class firms,
18 unquote.
19 Do you agree with him?
20 A. Do I agree with the statement he's making
21 here?
22 Q. Yes.
23 A. No.
24 Q. You don't?
25 A. No.

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1 Q. Have you ever seen this e-mail before today?
2 A. No.
3 Q. Did you ever have a discussion with him
4 about whether it's appropriate to take comfort in the
5 fact that the SEC didn't shut Madoff down earlier?
6 A. No.
7 Q. Have you ever talked with him about whether
8 or not he thought that UBP in advising PRS to invest
9 in Madoff funds, that they had not done a good job?
10 A. No.
11 MR. COATES: Object to form.
12 Q. You have to say "yes" or --
13 A. No. No.
14 Q. Have you ever had any discussions with him
15 about Madoff?
16 A. No.
17 Q. Have you ever had any discussions with him
18 about Fairfield Sentry?
19 A. When he was president of EFG Capital, he was
20 mostly in charge of our institutional sales effort and
21 not the private client sales effort, and I think at
22 times he asked what our exposure was or, you know,
23 comments like that, but nothing of more substance than
24 that.
25 Q. Is he still a director today of EFG Capital?

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1 A. Technically, today, yes.
2 Q. Well, what do you mean by that,
3 "technically, today"?
4 A. Because I believe that the -- well, today,
5 yes.
6 Q. Is he going to change out? Is he going to
7 leave? Are there going to be changes made?
8 A. I believe that he will not be a director of
9 EFG Capital at some point in 2011.
10 Q. Why not? Is he going to leave? What's
11 happening?
12 A. No. He's concentrating on PRS and he also
13 has some responsibility for some of EFG's business in
14 Spain, and we feel that he is somewhat detached from
15 the business of EFG Capital.
16 Q. All right. I want to move to a different
17 topic. We mentioned before, when we were talking
18 about some of the e-mails today, that customers of EFG
19 Capital had the ability to purchase investment
20 securities on margin. Is that right?
21 A. That's right.
22 Q. And "on margin" means EFG Bank is going to
23 lend them money in order to buy the security and the
24 loan will be secured by the value of the security or
25 other securities in the account. Is that right?

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1 A. With a slight clarification that I would
2 like to make.
3 Q. Sure.
4 A. Some -- EFG Capital has three different
5 custodial platforms. EFG Bank is one. JP Morgan
6 Securities is another, through a clearing contract,
7 corresponding clearing contract. And with a company
8 call Pershing, which is a unit of Bank of New York
9 where we also have a clearing contract.
10 In the Pershing and in the JP Morgan
11 Securities, when a client wants to essentially
12 leverage or borrow money, that is known in the
13 securities industry as margin. In the case of the
14 clients that do not have custody in those platforms,
15 the borrowing happens in the client's custodial
16 account at EFG Bank and EFG Bank provides what is more
17 known in Europe as a loan or lombard loan, but it's a
18 loan rather than the use of margin.
19 Q. Okay. So there's a --
20 A. The end result --
21 Q. -- understanding --
22 A. The end result is -- you know, but
23 there's such things as, you know, federal rules Reg T
24 and margin, and when things qual-- you know, there's
25 all those things in the U.S. Securities industry which

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1 do not really apply to the accounts that are domiciled
2 and custodied in Switzerland.

3 Q So if an EFG Capital customer purchases
4 security and has the security in the custody of EFG
5 Bank, in that account, that customer has the ability
6 to borrow money to purchase that security or other
7 securities. Is that right?

8 A. Has the ability to request a credit
9 facility, yes.

10 Q. And if the borrower is creditworthy and the
11 collateral is good, EFG Bank will make a loan. Is
12 that right?

13 A. If -- yeah. If they like the collateral, if
14 they like the diversification, if they like the
15 client, if they like all those things, yes.

16 Q. So EFG Bank would be doing an analysis of
17 the particular investment to determine how much of a
18 loan it's going to give on a particular investment; is
19 that true?

20 A. That's the end result, but they would assign
21 what's called loanable values, and that's what you
22 referred to earlier as LV in some communications, but
23 they would assign loanable values to securities.

24 Q. So if a customer bought a security for, say,
25 \$100, the bank would look at that security and say,

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1 A. Yes.

2 Q. Now, was there an analysis done of Fairfield
3 Sentry as to -- by the credit people at EFG Bank to
4 determine what the loan value would be on an
5 investment in Fairfield Sentry?

6 A. There was analysis done to assign a loanable
7 value to Fairfield Sentry, yes.

8 Q. Was there a global limit as to the amount of
9 money EFG Bank would lend on an aggregate basis to
10 everybody secured by Fairfield Sentry?

11 A. I think there's a global limit on almost
12 every security that EFG were to lend on, not just
13 Fairfield Sentry.

14 Q. What was the global limit for Fairfield
15 Sentry?

16 A. It -- it changed and, obviously, a setting
17 of a global limit has to do with, you know, as your
18 balance sheet and your capital and your equity gets
19 larger, then you could, and in some cases, expand
20 the -- you could, not that there necessarily is, but
21 it's one of the considerations that you take.

22 I think that the credit limit on Fairfield
23 Sentry oscillated between, I don't know, 10, 15 to, at
24 one point maybe I think it was, maybe 25 million or
25 something like that.

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1 I'm going to give it a value of something

2 A. 50 percent.

3 Q. 50 percent. And I will lend you 50 percent
4 of the value of that particular security. Is that
5 generally, in a simplified way, how it works?

6 A. Yes.

7 Q. Now, with respect to hedge funds, if an
8 investor wanted to buy a hedge fund, put it in his EFG
9 Bank custodial account and borrow money against it,
10 would a loan value be given to the hedge fund just
11 like any other investment?

12 A. Yes.

13 Q. And to give that loan value, there'd have to
14 be an analysis done by the credit people at EFG Bank;
15 is that right?

16 A. That's correct.

17 Q. Is that the department that Jim Lee was the
18 head of?

19 A. The head of the credit department is really
20 Ivo Steiger. At one point early in my career at EFG,
21 I believe that Ivo reported to Jim Lee, but more as
22 Jim Lee, head of the Credit Committee or so. But the
23 head of the credit department in EFG Bank is Ivo
24 Steiger.

25 Q. And Jim Lee is above him in some fashion?

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1 Q. If a customer wanted to borrow money secured
2 by Fairfield Sentry, what would the process be? The
3 CRO would take an application somewhere? What would
4 happen?

5 A. The CRO has to prepare a credit request, and
6 that credit request has to be recommended by the
7 business head. In this case, the recommendation for
8 the most -- most of the years that I've been at EFG
9 Capital was mostly myself or Victor, and that credit
10 request is then submitted to the credit department of
11 the bank for their review.

12 Q. And the credit -- there'd be a Credit
13 Committee you said or a credit department?

14 A. There's a credit department, okay, and aside
15 from the credit department, there is a Credit
16 Committee, and then there is another -- and these are
17 all according to limits. I mean, if it's -- the
18 Credit Committee has, in essence, we call it, signing
19 authority or has the authority under certain
20 conditions and certain types of portfolio that meet
21 certain requirements to grant the -- the credit
22 facility.

23 If it doesn't meet the, sort of call it,
24 automatic credit limits, it would then go to a Credit
25 Committee; and if the amounts being asked for in the

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1 credit facility or a concentration, limits are
2 different, or a variety of reasons, it might go to an
3 Executive Credit Committee.
4 Q. Now, we saw last time we got together that
5 at different points in time EFG Capital had in excess
6 of \$100 million of customer money invested in
7 Fairfield Sentry.
8 A. Mm-hmm.
9 Q. Is that right?
10 A. Yes. Sorry.
11 Q. And the global limit, which would include --
12 the global limit would include EFG Capital, EFG
13 London, EFG International, EFG Bank, anybody that was
14 selling Fairfield Sentry?
15 A. At the time -- you've got to take it
16 throughout the years. EFG Bank was the holding
17 company and was the -- the entity until October of
18 2005. Our clients who would have had custody, who
19 would have requested a credit facility from the bank
20 at the time would have fallen under that limit.
21 Hong Kong -- the Switz -- Switzerland and
22 the European business that belonged to the bank would
23 have fallen under those limits. Hong Kong, which was
24 a branch of the bank in Switzerland, would have fallen
25 under those limits.

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1 Now, in 2005, for example, EFG Private Bank
2 (London) was not a subsidiary of EFG Bank, it was
3 actually a sister company owned by the majority
4 shareholder.
5 Post the creation of EFG International where
6 EFG Private Bank in London, which was one of the
7 larger additions in terms of banks and booking centers
8 to EFG International, became a part of EFG
9 International.
10 So from that point on, it was not automatic,
11 but throughout the next year or two, the processes,
12 the exposures, the limits, the committees, all of that
13 was -- started to mold itself so that in, you know,
14 years later, the limits would have been looked at and
15 imposed by EFG International and the risk committees
16 of EFG International. Those were things that sort
17 of --
18 Q. Evolved?
19 A. Evolved.
20 (The referred-to document was marked for
21 identification as Plaintiff's Exhibit 147.)
22 Q. (By Mr. Kellogg) I'll show you what I'll
23 mark as Exhibit 147, which is an e-mail from you to
24 Jim Lee.
25 A. This is small.

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1 Q. It's EFG Capital E-6062. This looks to be
2 an e-mail string in May of 2002 with a discussion of a
3 credit request like your -- we've been discussing for
4 someone to borrow money secured by Fairfield Sentry.
5 A. Where -- where does this begin?
6 Q. Well, if you start at the back.
7 A. Okay.
8 Q. There's an existing facility of a million
9 and a half dollars -- I'm sorry, \$5.1 million and the
10 client has asked for a letter confirming the facility
11 is in place, can you do it, and the discussion evolves
12 to the renewal of that facility as a lombard limit
13 with concentration on Fairfield Sentry fund,
14 83 percent of the total loanable value. And the
15 response to that is, in my opinion, this facility
16 cannot be confirmed as drawings are subject to
17 available within the Fairfield limit.
18 A. Where are you, sir?
19 Q. I'm on page 6063.
20 A. What section?
21 Q. Right in the middle here.
22 A. In the middle?
23 Q. Yeah.
24 A. So this is Patrick De Figueiredo. In my
25 opinion, this facility cannot be confirmed as drawings

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1 are subject to availability within Fairfield limit.
2 Okay. I read that.
3 Q. Now, the Fairfield limit, is that the global
4 limit we were discussing a minute ago?
5 A. Yes.
6 Q. All right. So going to the top of the page,
7 this is an e-mail from Jim Lee to you.
8 A. Same page?
9 Q. Yes.
10 He says, We should be -- Mr. Lee says to
11 you, We should be looking every way to get our
12 Fairfield concentrations down from today's level, not
13 to try to push always to the limit. I don't believe
14 it's prudent for us to do otherwise, unquote.
15 Was there an effort at this period of time
16 in 2002 to reduce loans secured by Fairfield Sentry so
17 that they weren't bumping up against the global limit?
18 A. Well, you never want things to bump up
19 against the limit all the time. But I don't recall --
20 this is early on in my existence, I don't recall too
21 much of an effort to reduce the credit limits. I
22 don't even know what they were at this time, to be
23 honest with you.
24 Q. Okay. If you go to the first page, right
25 here in the middle, there's an e-mail from Jim Lee to

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1 you where he says, Sixto, you should know I have
2 advised Albert Chiu to stop promoting Fairfield some
3 time ago, and to promote others. If he knew there's
4 availability, he will justifiably cry foul, unquote.

5 Albert Chiu was the person in charge of Asia
6 at that time?

7 A. Mm-hmm.

8 Q. You have to say "yes."

9 A. Yes, sir.

10 Q. And did you know before this that Jim Lee
11 had said stop promoting Fairfield to anybody?

12 A. I think he might have been talking about
13 credit. The Asians are -- probably have been the
14 largest users of leverage and credit at EFG Bank. It
15 is the nature I've seen of the Asian clients to love
16 the concept of leverage.

17 So, Albert Chiu was constantly fighting for
18 limits and trying to sort of control the availability
19 of limits almost, you know, in every security, whether
20 it was foreign exchange lines or whether it was
21 insurance facilities and the like. So, I think what
22 he's saying is that, you know, if you give Albert one,
23 he'll take one and a half in availability.

24 Q. So he was talking about stop promoting loans
25 secured by Fairfield?

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1 Q. Okay.

2 A. Drawn limit.

3 Q. Drawn limit. And what he's saying is there
4 may be other lines that are going to take it above the
5 \$15 million.

6 A. Well, I think what he's saying is that
7 there's approved lines for other clients that if they
8 were all to draw at the same time would be larger than
9 the capacity under the 15 million line.

10 Q. Victor responds to him, the next mail up --
11 e-mail up, in the last paragraph says, Going forward
12 with other clients with Fairfield holdings, our
13 strategy will be to recommend that they diversify some
14 of those holdings into other hedge funds in the EFG PB
15 recommended list or the approved list. By taking this
16 approach, we could further diversify client portfolios
17 and try to bring the Fairfield dependency below the
18 25 percent level, giving us some additional room in
19 the \$15 million global limit.

20 Was that the strategy at least in 2002?

21 A. Well, I think that insofar as credit, it was
22 our strategy to diversify the holdings so that when
23 you diversify the holdings, you create less of a
24 dependency on one security.

25 In EFG bank, I know they had this concept of

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1 A. I think so.

2 Q. Did he also give you that instruction at any
3 time, stop promoting loans secured by Fairfield?

4 A. No. I think that we -- we worked under the
5 limits and at times, you know, we bumped under those
6 limits and, as a matter of fact, sometimes the limits
7 would be temporarily increased for a particular client
8 on a particular situation. And I recall that
9 happening post this date.

10 (The referred-to document was marked for
11 identification as Plaintiff's Exhibit 148.)

12 Q. (By Mr. Kellogg) All right. Let me show
13 you Exhibit 148, which is a number of e-mails,
14 starting with one from you to Victor Echevarria,
15 June 27, 2002, which is EFG Capital E-6136.

16 This is a few months later in 2002 and on
17 the third from the last page, 6139, Jim Lee e-mails
18 Victor Echevarria and says, I have outlined the
19 position on our overall exposure to Fairfield before.
20 Although there seems to be room under the \$15 million
21 limit, this should be seen against the substantial
22 lines approved but not yet drawn.

23 Does this mean that at least as of 2002 the
24 global limit was \$15 million?

25 A. That's what it means, yes.

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1 gross reliance and, basically, I don't recall exactly
2 what it was, but gross reliance, I think that the more
3 diversified the portfolio was, the less gross reliance
4 you had, and I think that the 15 million had to do
5 with gross reliance.

6 So, from a credit point of view, I think at
7 the time if you looked at the credit facilities that
8 were granted to EFG Capital customers by EFG Bank, I
9 think many of them had exposure to Fairfield Sentry.
10 And I think that from a credit perspective, I thought
11 we wanted to diversify it as much as possible.

12 Q. Now, the next e-mail going forward on
13 page 6138, Jim Lee says, I recommend you take an
14 affirmative action to control the usage as follows:
15 One, no new credit requests with Fairfield
16 concentration risk (i.e., more than 25 percent of
17 total loan value of portfolio).

18 Now, that means going forward loan value of
19 Fairfield couldn't exceed 25 percent. Is that what
20 that means?

21 A. Of the total loanable value of the
22 portfolio.

23 Q. So if a portfolio was \$1,000, no more than
24 25 percent of that can be Fairfield Sentry. Is that
25 what it means?

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1 A. No. I think you have to calculate the
2 loanable value of the portfolio and the different
3 securities. So you take the loanable value of each
4 security, you add it up, and then you end up with a
5 loanable value for the portfolio.
6 You compare the loanable value of the
7 security in question, which you're asking Fairfield
8 Sentry, and they didn't want the loanable value of
9 Fairfield Sentry to be more than 25 percent of the sum
10 of the loanable value of the portfolio.
11 Q. His third recommendation here is that you
12 actively work with the CROs to reduce our Fairfield
13 exposure (for instance, by buying hedge funds of the
14 recommended or approved list), whether drawn or
15 undrawn. To this point, I would like you to revert
16 with a target to which you will reduce usage by this
17 year end. Without this target, which must be
18 meaningful to be taken seriously, I cannot be
19 convinced that we have an affirmative action plan.
20 This may seem draconian, but the desire to reduce our
21 dependence on Fairfield has been expressed before, but
22 I think we need to take action now.
23 Was there something driving this seemingly
24 push by Mr. Lee to reduce the Fairfield Sentry loans,
25 we don't -- EFG Bank appears didn't want to make many

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1 additional loans or increase their credit exposure to
2 the Fairfield Sentry investment. Is that right?
3 A. Well, I think that you have to take this in
4 context of what the net capital of the bank was at the
5 time. And you're talking of mid 2002 and starting in
6 2001, and the net capital of the bank at that time,
7 I'm guessing, but maybe was \$100 million or -- or
8 something like that. We can look that up.
9 And I think that as -- as an asset
10 individual exposure to one security vis-a-vis the
11 capital of the bank, I think Fairfield Sentry was one
12 of the largest credit exposures that the bank had to
13 any one security. When you add to that that all hedge
14 funds have vis-a-vis a bond or a stock limited
15 liquidity, because you have to wait 45 days, and
16 actually Fairfield Sentry was one of the better ones,
17 because it had monthly liquidity with 15 days' notice
18 as opposed to other hedge funds who perhaps had
19 longer. So, I think that vis-a-vis the capital of the
20 bank and the limits that were assigned to individual
21 securities, I think that there was a desire to reduce
22 that.
23 Q. The bank felt it would be exposed if its
24 capital was, say, \$100 million net -- net capital and
25 it had \$15 million, you know --

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1 A. Risk.
2 Q. -- risk on one investment --
3 A. Mm-hmm.
4 Q. -- it didn't want to be concentrated.
5 A. Yes.
6 Q. When -- when the bank did its credit
7 analysis of Fairfield -- of a loan secured by
8 Fairfield, would it look at the Fairfield investment
9 and make its own determination as to what it thought
10 that investment -- investments risks were? In other
11 words, did it --
12 A. Yes.
13 Q. -- look at the financials of Fairfield
14 Sentry? Did it try to understand Fairfield's
15 business?
16 A. Oh, they would like -- in -- in analyzing
17 whether to assign X, Y or Z loanable value to a
18 security, you -- you know, you -- they did, and I know
19 you would want to understand what the strategy is,
20 what the liquidity is, what the volatility is, what
21 the performance is, all of the factors that are
22 underlying an investment.
23 Q. Did you ever see any such analysis by the
24 bank?
25 A. No.

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1 (The referred-to document was marked for
2 identification as Plaintiff's Exhibit 149.)
3 Q. (By Mr. Kellogg) Exhibit 149.
4 A. I -- go ahead.
5 Q. Go ahead.
6 A. No. We might get to it.
7 Q. You never know.
8 This is an e-mail, EFG Cap E-7127, from
9 Mr. Echevarria to all CROs and others saying,
10 Effective immediately, no further credit requests
11 which rely on Fairfield Sentry will be considered.
12 This includes any draw downs on approved facilities.
13 A. Mm-hmm.
14 Q. What caused this to happen?
15 A. Caused what to happen? That we were at the
16 limit?
17 Q. A directive --
18 A. Well, I mean, I think --
19 Q. -- no more -- no more credit requests on
20 Fairfield.
21 A. Well, I think in -- in the bottom it said
22 that if there was a \$15 million limit and we were at
23 4.72 [sic] --
24 Q. Oh, I see.
25 A. -- there's essentially no more room under

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1 the approved limits. So essentially even if you had
2 any facility approved that you could draw down at this
3 point, the subject matter tells you the maximum
4 exposure under Fairfield Sentry has been reached.

5 Q. So what happened after this, if anything?

6 A. I don't know -- I don't know how much
7 diversification was done. I know that later on there
8 were some clients that divested of some of the
9 holdings of Fairfield. I don't know if those clients
10 were the ones that had limits. I do think that this
11 limit of 15 million at some point was higher than
12 15 million.

13 Q. Do you remember when it changed?

14 A. No, but I -- I recall there was one
15 particular Brazilian client, at least on a temporary
16 basis, where the limit was increased for a particular
17 period of time for that client, and I -- by at least
18 five or \$10 million. So, I don't recall exactly.

19 By the way, Fairfield Sentry enjoyed one of
20 the higher loanable values of the hedge funds in the
21 list.

22 Q. You mean in terms of percentage or --

23 A. Percentage.

24 Q. -- in terms of global amount?

25 A. Percentage. Percentage.

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1 you and Victor which says, in part, As discussed with
2 Jim and Lonnie, the risk concentration on Fairfield
3 should be reduced to 20 percent of total loan value
4 before end of 2003 unless Credit Committee approved
5 such risk concentration. The same is true for
6 accounts showing gross value reliance.

7 A. Mm-hmm.

8 Q. What's referred here by -- to by "risk
9 concentration"? Does this mean the loan value
10 can't be more than 25 percent?

11 A. Well, remember before we were talking
12 25 percent of loan -- of loanable value of portfolio,
13 and I think that here they wanted to reduce it to
14 20 percent, which would have meant that either the
15 portfolio increase in diversification or the other
16 assets in the portfolio had a substantially higher
17 loanable value.

18 By the way, all these things with loanable
19 value, I'm not an expert, but --

20 Q. Okay.

21 A. -- all these things with loanable value and
22 certain types of assets, the bank has to take a
23 capital charge, essentially, when they make loans.

24 Q. Mm-hmm.

25 A. And that is a rule for the Swiss Federal

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1 Q. What was -- what was the percentage? What
2 was the average percentage?

3 A. I believe it was 45 percent loanable value.

4 Q. So the average hedge fund would only --
5 could only get 45 percent?

6 A. No, no. Fairfield Sentry was 45. Many of
7 the other hedge funds were 35 percent.

8 Q. Do you know why it had a higher loan value
9 than other hedge funds?

10 A. One is the liquidity of the fund was better
11 than other funds in terms of the ability to -- to
12 redeem, was one of the particular reasons, and I think
13 that the other reason was understanding of the
14 strategy, which was very simple.

15 (The referred-to document was marked for
16 identification as Plaintiff's Exhibit 150.)

17 Q. (By Mr. Kellogg) Let me show you what
18 I'll mark as Exhibit 150, which is a May 5, 2003,
19 e-mail, Bates-labeled EFG E-21925. This is an
20 e-mail from Adrianna Campuzano to Olivier Baldin.

21 Who are these people?

22 A. Who is -- Adrianna Campuzano is a CRO in
23 Miami. Olivia Baldin is a member of the credit
24 department in Switzerland.

25 Q. At the bottom Mr. Baldwin sends an e-mail to

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1 Banking Commission in terms of rules as to what the
2 risk weight of a particular asset is. Okay?

3 And banks have to have a certain amount of
4 capital for the amount of assets that they have. I
5 mean, everybody is talking about Basel I, Basel II,
6 Basel III, which you might hear now in terms of some
7 of the banks, and that is your -- your capital ratios.

8 And when you -- in order to calculate your
9 capital ratios, you have to take the weighted average
10 of the assets that you have on the books and loans is
11 a significant asset of the asset side of the balance
12 sheet of the bank.

13 So when you calculate how much capital you
14 need for a particular loan that you have, hedge funds,
15 for example, given their liquidity in particular, had
16 and -- and have a larger capital charge than a bond.
17 So, if I have a commodity, which is how much capital
18 do I have to support my loan book, right, then if I
19 can make \$1 here and I need \$1 of capital, and I can
20 make \$1 dollar here and I can make -- but I need \$5 of
21 capital, which one are you going to make? And that's
22 when you manage exposure and that's when you get your
23 return on your capital calculation. So all of those
24 things are in the background of these decisions.

25

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Pages 197-200

00201

1 (The referred-to document was marked for
2 identification as Plaintiff's Exhibit 151.)
3 Q. (By Mr. Kellogg) I show you what I'll
4 mark as Exhibit 151, which is Bates-labeled EFG Cap
5 E-13126.
6 Can you identify what this is? It's dated
7 May 30, 2005.
8 A. This -- this should have -- there's a name
9 of a client here that should be redacted as well.
10 Q. Is the name on here? I didn't see it.
11 A. On the introduction section.
12 MR. JACOBSON: We'll redact it at the break.
13 MR. KELLOGG: Yeah. I -- I don't even see
14 it.
15 Q. (By Mr. Kellogg) What is it? What is
16 this document?
17 A. Let me look at it for a second. This is an
18 EFG Bank document, so...
19 What day is this? May 30.
20 Q. May 30, 2005.
21 A. This is a copy, I believe, of an internal
22 EFG Bank memorandum which seems to be some sort of a
23 submission to the Credit Committee by the credit
24 department.
25 Q. Well, I'm -- so you're not really familiar

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00203

1 for all loans involving Fairfield or --
2 A. I don't know if it was a policy.
3 Q. -- Madoff funds?
4 A. I don't know if it was a policy. I think
5 that the credit department, again, in managing the
6 capital requirements of the bank and the loan, always
7 wanted diversification. So when you did that
8 calculation and you diversified the assets, if one
9 were to go bad, then I think you -- if you -- if you
10 manage your gross reliance like that, you could reduce
11 your capital requirements on the overall loan of the
12 portfolio.
13 MR. KELLOGG: Let's go off the record for a
14 second.
15 THE VIDEOGRAPHER: Stand by to go off Media
16 Unit Number 3. Going off at 4:07 p.m.
17 (Thereupon, a recess was taken from
18 4:07 p.m. until 4:24 p.m., after which the
19 following proceedings were held:)
20 THE VIDEOGRAPHER: We're now back on Media
21 Unit 4. The time back on the record is 4:24 p.m.
22 Q. (By Mr. Kellogg) In our last deposition
23 we were talking about a letter in February of 2003
24 that was sent out to all of the EFG Capital
25 customers who had purchased Fairfield Sentry which

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00202

1 with what the form of this document is?
2 A. This is not our creation. This is not an
3 EFG Capital creation.
4 Q. On the second page under the heading
5 Conclusion, the last sentence says, It is also
6 important to note that in all cases, if Madoff
7 Securities Family funds were to go to zero value, the
8 gross value of the remaining assets in the portfolio
9 more than covers the loan to the client.
10 A. Mm-hmm.
11 Q. Was that the policy as of May of 2005, that
12 for loans on portfolios that include Fairfield, while
13 there may be a loan value given to Fairfield, there
14 must be sufficient assets in the remainder of the
15 portfolio to pay off the loan if Madoff goes to zero?
16 MR. COATES: Object to the form.
17 A. I think that in this account they were
18 requesting some sizable limits, an increase of
19 10 million in Fairfield Family. So I think that
20 comment says that they can do that overall limit, but
21 the overall assets in the portfolio -- the other
22 assets which are not Madoff-related assets must
23 cover -- the gross value of those assets must -- must
24 cover the loan.
25 Q. My question to you is: Was that the policy

Page 202

00204

1 suggested diversification of the accounts.
2 Actually, it was sent to all those who were
3 concentrated. Do you know what I'm talking about?
4 A. Yes. Mm-hmm.
5 (The referred-to document was marked for
6 identification as Plaintiff's Exhibit 152.)
7 Q. (By Mr. Kellogg) Right. I want to show
8 you a draft of that letter. I'll mark it as
9 Exhibit 152. It's Bates Number 7707. It's an
10 e-mail from you to Dart Montgomery on February 25,
11 2003, which attaches a draft of the letter we just
12 referred to.
13 A. Mm-hmm.
14 Q. My question to you is: Does this draft
15 contain your comments and revisions to the letter?
16 A. I don't know if this was the first draft or
17 second draft. It's certainly not --
18 Q. It's not the final version.
19 A. -- marked.
20 It's not the final?
21 Q. It's not the final version, I can tell you
22 that. It's a draft.
23 And if you want, I have all the drafts here
24 if you want to look at them. I just didn't want to
25 take the time to go through them all. It's 4:00.

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Pages 201-204

00205

1 A. There's no way I can tell you in this draft,
2 without looking at anything else and this is not
3 marked or anything, if this included personal comments
4 from mine.

5 Q. Okay. Well, let me point out to you on the
6 last page of the draft, 7709, the last paragraph says,
7 quote, We wish to stress that this letter is prompted
8 only by our general philosophy that a well-managed
9 portfolio should be appropriately diversified, and not
10 by any unstated concerns about Fairfield. And then in
11 parentheses it says, I am on the fence about this last
12 paragraph, closed paren, unquote.

13 A. Mm-hmm.

14 Q. Is that your comment?

15 A. I don't know. Truly, I don't.

16 Q. Do you know -- do you know whether you had
17 an issue about whether the final paragraph in this
18 draft should be contained -- should be contained in
19 it?

20 A. I don't recall if that is mine or if, at the
21 time, I was concerned about that paragraph just from
22 looking at this. Sorry.

23 Q. Is it true that the letter was prompted by
24 the general philosophy that a well-managed portfolio
25 should be appropriately diversified, and not by any

Page 205

00207

1 general philosophy that a portfolio should be
2 appropriately diversified, I'll tell you yes.

3 Q. Okay. Were lawyers involved in drafting
4 this letter?

5 A. No. Dart Montgomery, I believe, was the
6 only one who was involved and, as you know, at times
7 he acted as in-house counsel.

8 Q. Let me show you what has already been marked
9 as Exhibit 57. I'll show you another copy of it.

10 It's the amended answers to interrogatories in this
11 case that EFG Capital provided. And on page 11, EFG
12 was asked to identify the aggregate amount of money
13 invested by your customers in Fairfield Sentry through
14 you.

15 A. Mm-hmm.

16 Q. And in answer says that customers identified
17 in response to Interrogatory No. 1, had a total -- net
18 total of \$43,407,760.74 invested in Fairfield Sentry
19 on December 11, 2008.

20 Attached to these answers is an Exhibit A,
21 which has a schedule of Fairfield investors' net
22 investment in Fairfield Sentry on December 11, 2008.
23 Do you see that?

24 A. Yes.

25 Q. Is the \$43 million figure that's in the

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00206

1 unstated concerns about Fairfield?

2 A. Yes.

3 Q. And if that were true, is that something you
4 think would have been in the final version of the
5 letter?

6 MR. COATES: Object to form.

7 A. I don't know what the difference is between
8 the first or if this is version -- actually, this
9 here, I don't know who put this number here. Is this
10 "Yours Truly, MIA 1 number," whose number is this?
11 Does anybody know?

12 Q. What are you referring to?

13 A. Below the "yours truly," there's an
14 MIA number 12v2.

15 Q. It looks to be a Word identification number
16 for the document.

17 A. It's certainly not a type of identification
18 that I personally have used. So, I don't know that I
19 would have added that. So, I don't know, frankly,
20 just looking at this letter between this and a further
21 draft or a final letter, if -- how the letter was
22 conveyed without looking at the final draft and if
23 that needed to be there.

24 It was certainly -- I will tell you that if
25 part of your question is whether it was our and my

Page 206

00208

1 answer to Interrogatory 12, is that a compilation of
2 what's on Exhibit A?

3 A. I believe so.

4 Q. So if I look at Exhibit A, what it shows is
5 for each inves- -- each customer, who's identified by
6 number, the profit or loss on that account. Is that
7 what this shows?

8 A. This would show the net investment. So
9 if -- net investment as defined by any subscriptions
10 minus any redemptions, if there were so.

11 So, to use an example, the first one,
12 Customer 277, if that customer invested \$3 million and
13 never redeemed or withdrew any money, that's the net
14 investment of that client. Okay.

15 If we go to, as an example, go to Customer
16 23, the second one. If that customer had invested
17 over time or at one shot or whatever 3,627,784.49 and
18 had redeemed 1 million, the net investment of that
19 client would be 2,627,784.49. I'm using that as an
20 example.

21 If you then go to the last page and you look
22 at the last customer, okay, and you say, well, this
23 client invested \$5 million throughout time, but ended
24 up redeeming 7,746,682, well, then he made money, so
25 his net investment would be positive.

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Pages 205-208

00209

1 Q. What if a customer invested -- taking the
2 ones where you have a profit here, for example, the
3 one you just mentioned, the last one. That person had
4 invested \$2 million and according to the person's
5 account statements the net asset value had increased
6 to -- by an amount of an additional \$2.7 million and
7 they redeemed what they thought were the profits. Did
8 you, in making this calculation, consider that
9 redemption of supposed profits to actually be a return
10 of the investment?

11 A. Yes.

12 Q. So you did this as a money in, money out.

13 A. Yeah. So --

14 Q. Cash in, cash out.

15 A. So to do the math in that example you just
16 gave of a client having invested 2.7 --

17 Q. A client invested \$2 million --

18 A. \$2 million.

19 Q. -- and got an account statement that says
20 your account is now worth 5 -- \$4,700,000, and he
21 said, well, I'll take my profits out.

22 A. Yeah.

23 Q. I still think I have \$2 million there.

24 Under this calculation, though, you're saying, no, you
25 took out the entire amount of your investment.

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00211

1 A. -- 30th, because the November one hadn't
2 been finalized or calculated, so I don't think that
3 EFG Bank posted on interim net asset values, but
4 month-end reporting asset values.

5 So, we -- we could produce a report which
6 would indicate what the reported value of the holdings
7 of the clients were. Now, of course, those are the
8 holdings as of the date in question, as of the last
9 date of the NAV.

10 Q. Right.

11 A. If they took money in or money out or what
12 math they used, you know, but I think if you're asking
13 me can we produce a report showing the aggregate
14 reported value according to the number of shares that
15 the clients held, those -- it would qualify it by
16 those invested through EFG or, I mean, whichever way,
17 but we -- we could produce a report, which according
18 to the qualifiers that would be requested in terms of
19 that they invest through or not, that would show the
20 reported value.

21 Q. Per -- per customer, per client, could you
22 generate a report that shows the dates and the amounts
23 of the redemptions?

24 A. Yes. It would take some time.

25 Q. I mean, you must have done that in order to

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00210

1 A. Yeah. Cash in, cash out.

2 Q. Okay. That's what I wanted --

3 A. Yes.

4 Q. -- to know.

5 A. Yes.

6 Q. Do you have records available that would
7 tell EFG Capital what the customers believed were
8 their net investments as of December 11, without
9 taking into consideration whether redemptions were
10 profits or whether they were actually return of
11 capital?

12 MR. COATES: Object to the form.

13 A. That perhaps is a difficult -- first of all,
14 I don't know what customers' math would be.

15 Q. Yeah. Let me rephrase it. Do you have
16 records that would show what the net asset values
17 according to EFG Bank's records as custodian would
18 show for that date?

19 A. We have records that would show per account,
20 or according to each account, the value of the
21 holdings as of the last net asset value reported --

22 Q. Okay.

23 A. -- which most likely would have been
24 October --

25 Q. Mm-hmm.

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00212

1 come to this net --

2 A. That's what I'm saying. We -- you know, you
3 have data and how you slice it and dice it, you do it
4 according to the purpose of what you're trying to
5 achieve. If you ask me from the data that we have,
6 could we, with a certain degree of accuracy over the
7 long time period that you're talking about, look at
8 any one particular client and look at the -- you said
9 redemptions?

10 Q. Redemptions.

11 A. Yes.

12 Q. Are there -- I'll call them, for the want of
13 a better term, are there work papers behind this
14 schedule that will show how you came up with the
15 calculations?

16 A. There are spreadsheets and work papers, yes.

17 Q. Did somebody -- did you hire an outside firm
18 to do this or did you do it internally?

19 A. No, we did it internally.

20 Q. And you have some spreadsheets that will
21 show by customer what the net investment was, what the
22 net asset value was at the end, at least reported,
23 and --

24 A. They might not be in --

25 Q. -- what the redemptions were?

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Pages 209-212

00213

- 1 A. They might not be in the same spreadsheet
2 because, you know, if we were looking at finding net
3 investment as defined as reported in this
4 interrogatory under net investment, we have
5 spreadsheets that would show and add up the
6 subscriptions and redemptions. In that spreadsheet,
7 we might not necessarily have a column that says what
8 is the reported value at the end --
9 Q. Right.
10 A. -- of this claim.
11 Q. But you think it could be generated.
12 A. It could be added. It could be added.
13 Q. Okay.
14 A. As a column.
15 Q. Periodically Fairfield Sentry provided or
16 amended, I should say, or supple-- let me --
17 periodically Fairfield Sentry came out with new
18 offering memoranda. Is that right?
19 A. Amended the offering memoranda.
20 Q. They would amend it and make some changes.
21 Is that right?
22 A. Yes.
23 Q. When those came in, would you, as a matter
24 of practice, review them?
25 A. Yes.

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00214

- 1 Q. Would you personally do that, or would you
2 have somebody on your staff do it? How would that be
3 accomplished?
4 A. It was most likely people in the staff.
5 Q. What was the purpose of reviewing them as
6 they came in? Was that part of the due diligence?
7 A. It's part of your ongoing monitoring of
8 something and your diligence to see if anything
9 material changed.
10 Q. And so what you'd be looking for is, are
11 there material changes in, say, the business objective
12 or the investment manager, or something material like
13 that?
14 MR. COATES: Object to form.
15 You may answer.
16 A. For -- for example, the offering memorandum
17 made reference to certain limitations that the fund
18 had, not more than 10 percent in one security, not
19 more than, you know, all those things would normally
20 be things that you would look at and prepare, you
21 know, for example.
22 Q. If -- if, for example, the offering
23 memorandum changed, said, you know, Bernie did not --
24 no longer said Bernard Madoff Securities was the
25 investment manager or was the investment advisor to

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00215

- 1 the manager, would that have been something material
2 you'd been looking for? By "you," I mean EFG Capital.
3 A. If it -- in one said that he was the
4 investment manager and the other one said -- it
5 disappeared?
6 Q. Yeah.
7 A. Disappeared from that?
8 Q. Yeah, it disappears.
9 A. We would look and ask questions.
10 Q. You would ask questions of whom, the
11 Fairfield Sentry?
12 A. Yes.
13 Q. If -- if Fairfield Sentry had made the
14 decision to change from Bernard Madoff, like they did,
15 they took 5 percent and put it in other investment --
16 in other funds, is that something that you would have
17 informed all of the customers who had EFG -- I mean,
18 who had Fairfield Sentry investments?
19 A. If they changed what?
20 Q. If they changed from Madoff to some other
21 manager.
22 A. Most likely.
23 Q. That would be something material in your
24 mind?
25 A. Yes.

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00216

- 1 Q. And if they did change, you would get on the
2 phone and ask them about it, ask Fairfield Sentry
3 about it --
4 A. Yes.
5 Q. -- to explain it?
6 MR. COATES: Object to form of the question.
7 Q. (By Mr. Kellogg) Are you aware that EFG
8 Bank has been sued by the liquidator of Fairfield
9 Sentry to recover redemptions made from the
10 Fairfield Sentry fund over a period of time?
11 A. I am aware.
12 Q. What is the status of -- has there actually
13 been a lawsuit filed?
14 A. I don't know the specifics, if the lawsuit
15 has been filed. I know the bank was -- I don't know
16 the legal -- the process, because I know that there
17 is -- in Europe the process of serving -- what do you
18 call that?
19 Q. Jurisdiction?
20 A. No, it's not jurisdiction.
21 Q. Summons? Process?
22 A. I know the bank was notified that there was
23 a lawsuit. I don't know if, in fact, that has been
24 effectively served -- I'm sorry.
25 Q. Served.

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Pages 213-216

00217

1 A. -- on EFG Bank according to the proper
2 channels.

3 Q. Is it your understanding that -- that the
4 liquidator of Fairfield Sentry is seeking not only
5 money back from EFG Bank, but money back from the
6 beneficial owners of the securities in the custodial
7 account?

8 A. Well, EFG Bank -- I have not read the
9 lawsuit.

10 Q. Okay. Do you know what EFG Bank's position
11 is with respect to the lawsuit, generally speaking?
12 Does it agree with it? Disagree with it? It is going
13 to defend it? Has it hired lawyers?

14 A. I'm sure they have lawyers, but I don't know
15 what the strategy specifically is right now.

16 Q. Okay. I'm not sure that's one of the topics
17 we designated, but is that about the extent of your
18 knowledge on it?

19 A. Yes.

20 (The referred-to document was marked for
21 identification as Plaintiff's Exhibit 153.)

22 Q. (By Mr. Kellogg) Okay. Let me show you
23 what I'll mark as Exhibit 153, which is an EFG
24 Capital Hedge Fund Risk Monitoring Committee Ad Hoc
25 Report, dated October 6, 2008. It's EFG Cap

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00219

1 particular, some of these questions were addressing
2 some of the issues that were going on around the time.
3 The markets in the world, as you will recall, were in
4 tremendous disarray. And post Lehman, in particular,
5 there was a lot of things going on in the investment
6 world.

7 Some of the questions that were being posed
8 here, if you look at the bottom, what is your exposure
9 to Lehman, what exposure to AIG, what is your exposure
10 to credit default swaps, those are questions that were
11 timely, were questions that you wanted to ask at the
12 time and not -- I mean, you wouldn't -- in -- in May
13 of 2005, you wouldn't necessarily ask what is your
14 exposure to AIG.

15 Q. Right.

16 A. So I -- I think that we, you know, did some
17 additional reports and we asked, you know, what were
18 some of the questions that we wanted to know given the
19 considerations of the time.

20 Q. So this, as you understand, is a project
21 that was unique to the -- to the financial crisis that
22 was going on in late 2008?

23 A. In particular, yeah, because some of the
24 questions, the way -- yeah.

25 Q. I see on page 20533, you know, you're asking

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00218

1 E-20525, and ask if you can identify that

2 It looks like this has already been marked.

3 MS. FRAZER: You went to mark it before and
4 then decided to introduce it later.

5 MR. KELLOGG: Okay.

6 A. Okay.

7 Q. Do you know what it is?

8 A. Yes. This is a report that we had a Hedge
9 Fund Risk Monitoring Committee that apparently met ad
10 hoc for this particular purpose. I'm -- I'm not sure
11 if this was prepared -- this report was prepared in
12 conjunction with Greenwich Alternative Investments or
13 from information that was from Greenwich.

14 But I think that what we were trying to do
15 was look at the -- no, actually, let me look -- let me
16 look farther back, if you don't mind, a second,
17 please.

18 I'm pretty sure that this was prepared with
19 the assistance of Greenwich.

20 Q. Earlier you said that Greenwich would post
21 questions to the fund managers and provide responses.
22 Is that what this contains? It seems to contain
23 questions for -- for several hedge funds. If you look
24 at 20533, that's the Fairfield Sentry page.

25 A. But I think that this was done -- in

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00220

1 what's the assets under management, and pending
2 redemptions, but at the bottom you're asking what's
3 the exposure to Lehman, AIG, and credit default swaps.
4 Do you recall -- are you on the Hedge Fund
5 Risk Monitoring Committee?

6 A. Yes.

7 Q. Who else is on it?

8 A. Noemi Schaffer was. At the time she was
9 head of compliance.

10 Q. When -- when was she head of compliance?

11 A. She was head of compliance from, I believe,
12 the beginning of '08 through September of last year.

13 Q. Okay. When was this committee formed?

14 A. This committee was formed after we hired
15 Greenwich. At some point in -- probably in '07 or
16 early '08, we formalized a committee that would review
17 some of the quarterly reports that would come out of
18 Greenwich.

19 Q. Okay. So Noemi Schaffer was --

20 A. Juan Massens was on this committee. Noemi
21 Schaffer was on this committee. Mike Donnell was not
22 a part of the committee, but he assisted in preparing
23 the -- the packages and in some cases made
24 presentations to the committee.

25 Q. You were on the committee.

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Pages 217-220

00221

1 A. Yeah.

2 Q. Anyone else?

3 A. And at one point we invited a couple of

4 other people to participate in the committee in a

5 couple of meetings.

6 Q. What was the purpose of the committee?

7 A. What was the purpose of the committee?

8 Q. Yeah.

9 A. Mostly to review the quarterly reports and

10 the risk dashboard that Greenwich was supplying to us

11 and to, you know, have a forum for discussion.

12 Q. During the -- and how often would the

13 committee meet?

14 A. It was our intention to meet quarterly.

15 Q. How often did it actually meet?

16 A. I think for some quarters we -- we met and

17 we did so probably through the beginning of '09 and

18 then, frankly, a lot of the funds went into being

19 locked and gated and everything else. So we,

20 unfortunately, reviewed some of those things.

21 Q. Are there minutes of any of the meetings?

22 A. Noemi Schaffer, I think, intended to take

23 some meetings and --

24 Q. Some minutes, you mean?

25 A. Sorry?

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00223

1 MR. KELLOGG: In Fairfield, right.

2 THE WITNESS: Thank you.

3 Q. (By Mr. Kellogg) No, generally speaking.

4 A. I think -- I think that -- I don't know

5 exactly, but I think that the amounts were around, you

6 know, 100,000 or so each, 100 to 200,000.

7 Q. 100,000 or so each?

8 A. I believe so. One of them might have been a

9 little bit more.

10 Q. So this is -- these are customers of EFG

11 Asset Management, you said?

12 A. EFG -- these are customers --

13 Q. EFG Capital.

14 A. -- of EFG Capital Asset Management.

15 Q. Is that a separate entity, or is that part

16 of EFG Capital International?

17 A. It is a separate entity owned by EFG Capital

18 Holdings, which owns both the broker-dealer and the

19 investment advisor.

20 Q. Does it operate out of EFG Capital's

21 offices?

22 A. EFG Capital Asset Management?

23 Q. Yes.

24 A. Yes.

25 Q. Does it have separate employees?

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00222

1 Q. Some minutes?

2 A. Some minutes of the meetings and I think

3 that she did once or twice, or I think she intended to

4 at one point record a meeting and then -- as a tool

5 for her to make a transcript of the minutes. I don't

6 think that, frankly, she ever did.

7 Q. In producing documents, have you run across

8 any minutes of meetings of the Ad Hoc Monitoring

9 Committee?

10 A. If we would have had, we would have produced

11 them.

12 Q. I don't doubt that.

13 A. Hmm?

14 Q. I don't doubt that. Got a few things

15 produced.

16 In some of your -- either your affidavit or

17 your interrogatory responses or both, you refer to EFG

18 Capital having two investors who had discretionary

19 accounts, meaning that EFG Capital would make the

20 decisions on the trades. Is that right?

21 A. EFG Capital Asset Management.

22 Q. How much did those two accounts lose?

23 A. How much did they lose?

24 Q. Yes.

25 MR. COATES: You mean in Fairfield?

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00224

1 A. Yes.

2 Q. Is there a licensed advisor who -- who runs

3 that operation?

4 A. The company itself is a registered

5 investment advisor.

6 Q. Okay. Is there -- who runs the company?

7 A. Who runs the company, in terms of who the

8 chief investment --

9 Q. Yes. Who's the chief investment officer?

10 A. Hans Abate.

11 Q. When did Mr. Gadala-Maria leave as president

12 of EFG Capital?

13 A. It was sometime in '07, I believe, when --

14 it was upon the acquisition by -- the finalization of

15 the acquisition by E -- by EFG International of PRS

16 International that Mr. Gadala-Maria left EFG Capital

17 and became CEO of PRS International.

18 Q. Does PRS also operate out of EFG Capital's

19 offices?

20 A. No.

21 Q. Is it -- where is it? In Europe?

22 A. No. PRS is at 801 Brickell.

23 Q. Oh, okay.

24 A. They have an office in Cayman. They have an

25 office in Grand Cayman with a couple of employees, but

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Pages 221-224

00225

1 the principal offices where the majority of the
 2 employees are in 801 Brickell.
 3 Q. All right. And while we usually start out
 4 with this, I didn't. Could you tell us your
 5 educational and work background?
 6 A. I was wondering why you never asked me.
 7 Q. Well, because I wanted to get to the
 8 corporate rep stuff. I might as well finish with
 9 that.
 10 A. I went to college in Boston College and I
 11 got a bachelor's of science in finance, graduating in
 12 1982.
 13 Then -- you want me to go through my work
 14 experience?
 15 Q. Yeah, if you could, please.
 16 A. I worked at Bank of Boston in Boston as a
 17 loan officer in the international department until --
 18 from 1982 through 1984.
 19 In 1984, I came down to Miami to work in
 20 Bank of Boston international's office in Miami as an
 21 international private banker. There through 1986.
 22 In 1986, I went to Merrill Lynch in New York
 23 to become a financial advisor in their international
 24 division.
 25 In 1988, I left Merrill Lynch and I formed a

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00227

1 MR. COATES: You need to articulate the
 2 response.
 3 A. It's a quiet "yes."
 4 Q. It was a good business right after the
 5 hurricane, I think.
 6 A. Well, if you didn't lose all your plants.
 7 Very difficult business.
 8 MR. KELLOGG: Okay. I don't have any other
 9 questions. Thank you very much.
 10 MR. COATES: We will read. Thank you.
 11 THE VIDEOGRAPHER: Stand by to go off video.
 12 This concludes Media Unit 3 and our deposition.
 13 The time off the record is 4:58 p.m.
 14 (Thereupon, the taking of the deposition
 15 was concluded at 4:58 p.m.)
 16
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 25

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1 broker-dealer and a registered investment advisor with
 2 some capital that I raised from some investors. That
 3 was called The Bec - Becstone, B-e-c-s-t-o-n-e,
 4 Group. And in -- that was 1988.
 5 And in 1990, I merged the broker-dealer -- I
 6 believe we dropped the investment advisor. I merged
 7 the broker-dealer with another broker-dealer called
 8 HenCorp. H-e-n-C-o-r-p. And I became a managing
 9 director of the merged company of HenCorp Becstone &
 10 Company, where I remained as managing director until
 11 1999.
 12 In 1999, I left HenCorp Becstone and pursued
 13 some personal investments. And in April of 2000,
 14 together with some family members, we bought a farm, a
 15 foliage business in Homestead, Florida, called First
 16 Foliage, where I remained for a couple of years as the
 17 CFO of the business, until February of 2002 when I
 18 joined EFG Capital initially as its president.
 19 And then in May -- I'm sorry. In August of
 20 2005, I believe I became CEO of EFG Capital. Same
 21 position that I hold today.
 22 Q. Still have the foliage business?
 23 A. (Nods head.)
 24 MR. COATES: You need to say "yes."
 25 A. Yes, sir.

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1 RE: FERREIRA VS. EFG CAPITAL
 DEPO OF: Sixto Campano
 2 TAKEN: 1/19/11
 3
 4
 5 EXCEPT FOR ANY CORRECTIONS
 MADE ON THE ERRATA SHEET BY
 6 ME, I CERTIFY THIS IS A TRUE
 AND ACCURATE TRANSCRIPT.
 7 FURTHER DEPONENT SAYETH NOT.
 8

 9 Sixto Campano
 10
 11
 STATE OF FLORIDA)
 12 COUNTY OF MIAMI-DADE)
 13 Sworn and subscribed to before me this ____ day of
 14 _____, 2011.
 15 PERSONALLY KNOWN _____ OR I.D. _____
 16
 17 _____
 Notary Public in and for the
 18 State of Florida at Large.
 19

Page 228
Pages 225-228

00229

1
 2 CERTIFICATE OF OATH
 3
 4 STATE OF FLORIDA)
)SS
 5 COUNTY OF MIAMI-DADE)
 6
 7
 8 I, JODY L. WARREN, Registered
 9 Professional Reporter, Florida Professional
 10 Reporter, Notary Public in and for the State of
 11 Florida at Large, certify that the witness, SIXTO
 12 CAMPANO, personally appeared before me on 1/19/11
 13 and was duly sworn by me.
 14 WITNESS my hand and official seal this
 15 24th day of January, 2011.
 16
 17
 18 _____
 19 JODY L. WARREN, RPR, FPR
 Notary Public, State of Florida at Large
 My Commission Expires 2/28/11
 My Commission No. DD618340
 20
 21
 22

00231

1 ERRATA SHEET
 2 RE: FERREIRA VS. BFG CAPITAL
 DEPO OF: Sixto Campano
 3 TAKEN: 1/19/11
 REPORTER: JODY L. WARREN, RPR
 4
 5 DO NOT WRITE ON TRANSCRIPT, ENTER ANY CHANGES HERE
 6 PAGE # | LINE # | CHANGE | REASON
 7 _____
 8 _____
 9 _____
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 _____
 21 State of Florida
 County of Miami-Dade
 22

00230

1 CERTIFICATE OF REPORTER
 2
 3 I, JODY L. WARREN, Registered Professional
 4 Reporter, Florida Professional Reporter, certify
 5 that I was authorized to and did stenographically
 6 report the deposition of SIXTO CAMPANO, the witness
 7 herein on 1/19/11; that a review of the transcript
 8 was requested; that the foregoing pages are a true
 9 and complete record of my stenographic notes of the
 10 deposition by said witness; and that this
 11 computer-aided transcript was prepared under my
 12 supervision.
 13 I further certify that I am not a relative,
 14 employee, attorney, or counsel of any of the
 15 parties, nor am I a relative or employee of any of
 16 the parties' attorney or counsel connected with the
 17 action, nor am I financially interested in the
 18 action.
 19 DATED this 24th day of January, 2011.
 20
 21 _____
 22 JODY L. WARREN, RPR
 23
 24

00232

1 VERITEXT FLORIDA REPORTING CO.
 19 West Flagler Street, Suite 1020
 2 Miami, FL 33130
 Phone: 305.376.8800
 3
 4 January 24, 2011
 5 Sixto Campano
 c/o Joseph Coates, III, Esq.
 6 Greenberg Traurig
 777 South Flagler Drive
 7 Third Floor East
 West Palm Beach, Florida 33401
 8
 9 RE: Ferreira vs. EFG Capital
 10 DEPO OF: Sixto Campano
 TAKEN: 1/19/11
 11 READ & SIGN BY: 2/24/11
 12 Dear Mr. Campano:
 13 This letter is to advise you that the transcript of
 the deposition listed above is completed and is
 14 awaiting reading and signing.
 15 Please arrange to stop by our office in Suite 1020,
 19 West Flagler Street, Miami, Florida, to read and
 16 sign the transcript. Our office hours are from 8:00
 a.m. to 4:00 p.m. Monday through Friday. Depending on