

# EXHIBIT 3

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

3 CASE NO.: 10-20206-CIV-MARTINEZ  
4

5 LORRENE DA SILVA FERREIRA and  
6 ARLETE DA SILVA FERRERIA,  
7 individually and on behalf of  
8 all others similarly situated,  
9 Plaintiffs,

10 vs.

11 EFG CAPITAL INTERNATIONAL CORP.  
12 and EFG BANK f/k/a EFG PRIVATE  
13 BANK, SA,  
14

15 Defendants.  
16  
17

18  
19  
20 Friday, January 7, 2011  
21 201 South Biscayne Blvd.  
22 Miami, Florida  
23 9:46 a.m. - 5:04 p.m.  
24

25 VIDEOTAPED DEPOSITION OF SIXTO CAMPANO

26 Taken before Jody L. Warren, Registered  
27 Professional Reporter, Florida Professional Reporter  
28 and Notary Public in and for the State of Florida at  
29 Large, pursuant to Notice of Taking Deposition filed  
30 in the above cause.

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 17 Exhibit 101 9/16/02 E-mail, Bates No. EFG 57  
 Cap E-0006371  
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 ALSO PRESENT: ALEJANDRO MONTALVO, Videographer

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1 (Exhibit 107 not marked.)  
 2 Exhibit 108 Memorandum, Bates Nos. EFG 137  
 Capital-000905 - 000908  
 3  
 Exhibit 109 2/21/03 E-mail String, Bates 151  
 4 Nos. EFG Cap E-0007656 - 0007659  
 5 Exhibit 110 2/21/03 E-mail String, Bates 159  
 Nos. EFG Cap E-0007660 - 7661  
 6  
 Exhibit 111 2/24/03 E-mail String, Bates 160  
 7 Nos. EFG Cap E-0007669 - 0007671  
 8 Exhibit 112 2/25/03 E-mail String, Bates 167  
 Nos. EFG Cap E-0007704 - 7705  
 9  
 Exhibit 113 3/3/03 E-mail and Attachment, 177  
 10 Bates Nos. EFG Cap E-0007758 -  
 0007763  
 11  
 Exhibit 114 12/16/08 E-mail and Attachment 200  
 12  
 Exhibit 115 12/12/08 E-mail, Bates No. EFG 209  
 13 Cap E-0021205  
 14 Exhibit 116 2/6/09 E-mail String, Bates 231  
 Nos. EFG Cap E-0025174 - 25175  
 15

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1 PROCEEDINGS

2 - - -  
3 THE VIDEOGRAPHER: Good morning. We're now  
4 on the video record. This is the videotaped  
5 deposition of Sixto Campano in his individual  
6 capacity in the matter of the case Ferreira,  
7 Lorrene; Da Silva, Arlete versus EFG Capital.  
8 Today is Friday, January the 7th of 2011.  
9 The time is 9:46.  
10 At this time, counsel please introduce  
11 yourselves for the record and after this, the  
12 court reporter will swear in the witness.  
13 MR. LAWRENCE KELLOGG: Lawrence Kellogg and  
14 Jason Kellogg on behalf of the plaintiffs.  
15 MR. COATES: Joe Coates and Jon Jacobson on  
16 behalf of EFG Capital International.  
17 Thereupon:  
18 SIXTO CAMPANO  
19 having been first duly sworn, was examined and  
20 testified as follows:  
21 THE WITNESS: I do.  
22 DIRECT EXAMINATION  
23 BY MR. LAWRENCE KELLOGG:  
24 Q. State your name.  
25 A. Sixto Campano.

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1 representative of EFG Capital International  
2 Corporation. Do you see that?  
3 A. Yes, sir.  
4 Q. The -- the videographer said you were being  
5 taken today in your individual capacity.  
6 A. I noticed that.  
7 Q. I want to clear that up. Today -- we have  
8 you scheduled another day, but today, you're going to  
9 be speaking on behalf of EFG Capital International.  
10 Do you understand that?  
11 A. Yes, sir.  
12 Q. And are you prepared to testify about the  
13 topics listed on Exhibit 93?  
14 A. Yes, I am.  
15 Q. Have you reviewed it?  
16 MR. COATES: I want to state one -- one  
17 point. This is a re-notice that was sent to us  
18 two days ago. There are a couple of topics that  
19 were added and -- and, frankly, the Exhibit A was  
20 substantially changed from the earlier versions.  
21 I believe that all these matters Mr. Campano  
22 is prepared to testify to, but I want to note for  
23 the record that there were additional topics that  
24 were added just two days ago and substantial  
25 rewriting of this document.

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1 Q. And, Mr. Campano, you are the chief  
2 executive officer of EFG Capital International; is  
3 that right?  
4 A. I am.  
5 Q. And you've been the chief executive officer  
6 since 2002, I believe; is that right?  
7 A. No.  
8 Q. When did you become the chief executive  
9 officer?  
10 A. On or around September of 2005.  
11 Q. All right. You joined the organization in  
12 2002; is that right?  
13 A. Yes.  
14 Q. What was your initial job?  
15 A. I was president of EFG Capital International  
16 Corp.  
17 Q. And what month of 2002 did you join?  
18 A. Either it was the end of February,  
19 March 1st, around there. March 1st, I think.  
20 (The referred-to document was marked for  
21 identification as Plaintiff's Exhibit 93.)  
22 Q. (By Mr. Lawrence Kellogg) I've placed in  
23 front of you what I've marked as Exhibit 93, which  
24 is a Second Re-Notice of Taking Videotaped  
25 Deposition of you as a 30(b)(6) corporate

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1 I'd appreciate in the future we get more  
2 time, particularly when we're talking about a  
3 30(b)(6) representative.  
4 Q. (By Mr. Lawrence Kellogg) Well, is there  
5 anything on this list that you don't feel prepared  
6 to testify about today?  
7 A. Not generally.  
8 Q. Okay. Have you had your deposition taken  
9 before?  
10 A. I have.  
11 Q. How many times?  
12 A. Twice.  
13 Q. Twice. Were those in connect- -- what were  
14 they in connection with?  
15 A. One was in connection with a divorce  
16 proceeding of one of the ex-EFG Capital employees.  
17 Q. Okay. It must have been fun.  
18 And what was the other one?  
19 A. Fun and interesting.  
20 Q. I'll bet.  
21 What was the other one?  
22 A. The other one was in connection with a real  
23 estate transaction in Puerto Rico of a building that  
24 belonged to my family.  
25 Q. Belonged to your --

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1 A. Family. My mother.  
 2 Q. Well, what I'm going to do today is ask you  
 3 questions to the best of my ability, and all I ask  
 4 from you is that you tell me if you don't understand  
 5 the question and I'll try to rephrase it. Is that  
 6 okay?  
 7 A. That's fine.  
 8 Q. And with the understanding that when you're  
 9 speaking today, you're speaking on behalf of the  
 10 organization --  
 11 A. Mm-hmm.  
 12 Q. -- and it would be as though the  
 13 organization here is testifying. Do you understand  
 14 that?  
 15 A. Yes, sir.  
 16 Q. Is there any reason that you feel you cannot  
 17 give your full and best testimony today; either you  
 18 don't feel well, you're too tired, you're on  
 19 medication, anything?  
 20 A. No.  
 21 Q. Okay. When you joined in 2002 and were  
 22 president, were your duties somewhat different than  
 23 they ultimately became when you became chief executive  
 24 officer, or were they pretty much the same?  
 25 A. Pretty much the same.

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1 given the different systems, the long time span that  
 2 had occurred and the number of years, the different  
 3 systems that EFG has gone -- had gone through, through  
 4 the years. So I reviewed, I believe, a lot of things.  
 5 Q. How many years did you go back in your  
 6 searches on the e-mails?  
 7 A. As far as we could. I believe that we went  
 8 back -- we tried to go back to the original e-mails on  
 9 the servers of EFG, which would have been, I believe,  
 10 close to the year '98, '99.  
 11 We did have a gap in some years because  
 12 there was some e-mails in the server in the year  
 13 that -- prior to the year 2003, that in the year 2003,  
 14 we had noticed that they had disappeared from our  
 15 servers by a error of an operator, but except for that  
 16 period, we looked back and we do -- did provide  
 17 e-mails, I guess, that go back to, I believe, '98 or  
 18 so and -- and then on to the agreed date of  
 19 production.  
 20 Q. So there was something that happened in 2003  
 21 that deleted e-mails from earlier years from the  
 22 server?  
 23 A. Yes.  
 24 Q. What happened?  
 25 A. It was an overwrite of a tape backup that

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1 Q. When you joined in 2002 -- well, let me step  
 2 back for a minute.  
 3 As best as you can tell us generally, what  
 4 did you look at to prepare for your testimony today?  
 5 A. I looked at the transcripts of the  
 6 depositions, except for the one from Juan Massens. I  
 7 looked at the affidavit, my affidavit, as presented.  
 8 I looked at the interrogatories. I looked at the -- I  
 9 guess you call this a 30(b)(6) notice, the -- I looked  
 10 at the previous one, and yesterday I looked at the new  
 11 one.  
 12 I looked at lots and lots and lots of  
 13 spreadsheets, documents, order tickets, files; spoke  
 14 to a number of CROs at EFG Capital; reviewed  
 15 extensively the databases of EFG Capital, that  
 16 included the activity going back 12 years; directed a  
 17 number of people, at times a dozen, within EFG Capital  
 18 for many days and many, many hours in providing the  
 19 discovery.  
 20 Q. These are the documents, you mean?  
 21 A. The documents that we provided, the  
 22 different searches, the different e-mail searches, the  
 23 documents that we've -- that led up to some of the  
 24 answers in the affidavit and in the interrogatory.  
 25 I'll just add that that was a Herculean task

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1 was inadvertently done by the person who was in charge  
 2 of the IT Department back then.  
 3 Q. Was any of that information ever recovered  
 4 by EFG?  
 5 A. Some.  
 6 Q. When you joined in 2002 -- well, let me ask  
 7 you: When did -- when did EFG Capital start selling  
 8 Fairfield Sentry?  
 9 A. I don't know the exact date, but I believe  
 10 it was around 1998 or so.  
 11 Q. Fairfield -- I mean, EFG Capital was formed,  
 12 I believe, in '97; is that right?  
 13 A. '96, I believe.  
 14 Q. 1996. So it started selling in 1998. And  
 15 did EFG Capital continue to sell Fairfield Sentry up  
 16 until December of 2008?  
 17 A. Yes.  
 18 Q. Now, during that period of time, did  
 19 Fairfield Sentry -- was Fairfield Sentry ever the  
 20 largest hedge fund sold by EFG Capital in terms of  
 21 assets?  
 22 That's a bad question.  
 23 MR. COATES: I was going to object to the  
 24 form.  
 25 Q. (By Mr. Lawrence Kellogg) It's a bad

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Pages 9-12

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1 question. It's a bad question.  
2 Was it the largest concentration of -- did  
3 you sell any other hedge funds more than you sold  
4 Fairfield Sentry during that period of time?  
5 A. Could I ask you for a clarification?  
6 Q. Sure.  
7 A. Frequency? Amounts?  
8 Q. Volume.  
9 A. Volume.  
10 MR. COATES: Well, you mean volume in terms  
11 of dollars?  
12 MR. LAWRENCE KELLOGG: Amounts. Amounts.  
13 MR. COATES: Yeah.  
14 A. And you're asking from the whole period --  
15 Q. Yes.  
16 A. -- that I -- that you asked me, '98  
17 through --  
18 Q. Yes.  
19 A. Probably, yes.  
20 Q. What other funds did you sell more in dollar  
21 volume?  
22 A. Hedge funds?  
23 Q. Hedge funds.  
24 A. Probably none. None in more volume,  
25 dollars.

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1 Q. Does that holdings -- did those holdings  
2 include EFG Capital customers?  
3 A. They would as -- they would have included  
4 the customers of EFG Capital.  
5 Q. How much of that would have been EFG  
6 Capital?  
7 A. I don't know exactly.  
8 Q. Was -- at this point in time, was Fairfield  
9 Sentry -- the Fairfield Sentry hedge fund have the --  
10 have the most -- the largest in dollar volume at EFG  
11 Capital?  
12 A. I believe so.  
13 Q. What was the next closest?  
14 A. At this time?  
15 Q. That you know of.  
16 A. I don't recall exactly, sir.  
17 Q. What would be the dollar volume in market  
18 value of the next highest hedge fund, next largest  
19 sold hedge fund?  
20 A. It would be speculation.  
21 Q. Do you have any idea?  
22 A. No.  
23 Q. Let me show you what's been marked as  
24 Exhibit 57.  
25 A. What am I supposed to do with these?

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1 (The referred-to document was marked for  
2 identification as Plaintiff's Exhibit 94.)  
3 Q. (By Mr. Lawrence Kellogg) Okay. Let me  
4 show you what I'll mark as Exhibit 94. Exhibit 94  
5 is Bates-labeled EFG Capital E-6084, and it's an  
6 e-mail from Romy Cabrera to you in -- on June 3,  
7 2002, with attached a Summary of Holdings for EFG  
8 Private Bank, SA, for the Fairfield and other funds.  
9 Do you see this?  
10 A. One second. You're -- which page are you  
11 on?  
12 Q. I'm describing the document. It's --  
13 A. Oh, okay. On the top. I'm sorry. Summary  
14 of Holdings. Okay.  
15 Q. Who's Romy Cabrera?  
16 A. Romy Cabrera was a girl that sat in our  
17 dealing room, in our trading room, at EFG Capital at  
18 the time.  
19 Q. And what was her job?  
20 A. Her job was to execute trades.  
21 Q. Now, if you notice on Bates No. 6087,  
22 there's -- it lists EFG Private Bank, SA, as holding a  
23 number of shares in Fairfield Sentry with a market  
24 value of over \$150 million. Do you see that?  
25 A. Yes, sir.

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1 Q. Just put them in a pile.  
2 MR. COATES: Just set them aside.  
3 A. Okay. Can -- could I ask you a question?  
4 When you refer to Bates something-something, is it the  
5 number on the bottom right?  
6 Q. Yes, it's the number down --  
7 A. And each page has a different number?  
8 Q. Yes, sir.  
9 A. Is this all the same?  
10 Q. It must be an extra copy, I guess.  
11 A. This is what you want me to have?  
12 Q. Yes. Exhibit 57, this is an August 18,  
13 2003, memo from Juan Massens to Romy Cabrera, EFG  
14 Bates No. 12325.  
15 A. Mm-hmm.  
16 Q. Now, in 2003, during this period of time,  
17 were -- were hedge funds a large part of EFG Capital's  
18 business?  
19 A. In what year, sir?  
20 Q. 2003.  
21 A. Were hedge funds a large part of EFG  
22 Capital's business?  
23 Q. Yeah.  
24 A. In terms of?  
25 Q. Selling.

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Pages 13-16

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- 1 A. Of?  
2 Q. Selling to its customers.  
3 A. Probably less than 25 percent, I think.  
4 Q. Well, let's look at page 12330.  
5 A. One two --  
6 Q. 12330.  
7 A. 12330.  
8 I was close.  
9 MR. COATES: 12325?  
10 THE WITNESS: No, 12330 is this page.  
11 MR. COATES: Got it.  
12 MR. LAWRENCE KELLOGG: Yes.  
13 THE WITNESS: 29 percent. I was close.  
14 Q. (By Mr. Lawrence Kellogg) 29 percent. So  
15 what this means is that 29 percent of the assets  
16 under management at EFG Capital for customers of EFG  
17 Capital was 29 percent hedge funds; is that right?  
18 A. That's correct.  
19 Q. Now, do you have any -- well, let's turn to  
20 the next page. Of that 29 percent --  
21 A. There we go.  
22 Q. That 29 percent is \$247 million worth of  
23 assets; is that right?  
24 A. It looks like it.  
25 Q. And of that, is -- 110 million is Fairfield

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- 1 A. In terms of hedge funds?  
2 Q. Yes.  
3 A. Yes.  
4 Q. And was that true in 2005?  
5 A. To a lesser degree, as I mentioned before,  
6 but yes.  
7 Q. Still the largest?  
8 A. Mm-hmm.  
9 Q. Was that true in 2006?  
10 A. As a single hedge fund, yes, probably.  
11 Q. Is that true in 2007?  
12 A. Yes.  
13 Q. And was it true when the fraud was revealed  
14 in 2008?  
15 A. Yes.  
16 Q. Now, as I understand it, on sales of  
17 Fairfield Sentry to customers, EFG Capital was  
18 compensated in a number of ways. Is that right?  
19 A. By who?  
20 Q. Well, first it was compensated by its own  
21 customers in terms of their commission.  
22 A. Correct.  
23 Q. Is that right?  
24 So when you -- when EFG Capital either  
25 bought or sold, they would charge a commission to

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- 1 Greenwich Group; is that true?  
2 A. From the information you're providing here,  
3 I would say that it has to be true.  
4 Q. Of the Fairfield Greenwich Group assets, was  
5 Fairfield Sentry by far the largest that EFG Capital  
6 sold in terms of volume of assets under management?  
7 A. Yes, at the time.  
8 Q. Okay. And did that ever change?  
9 A. It was probably always the largest, but the  
10 percentage asset relates to the percentage of  
11 Fairfield Greenwich Group that Sentry comprised of  
12 diminished significantly.  
13 Q. According to the next page, the Fairfield  
14 Greenwich Group is -- at this time in 2003, was  
15 46 percent of all hedge funds sold by EFG Capital at  
16 that time.  
17 A. Mm-hmm.  
18 Q. Is that right?  
19 A. That is correct. As of June 2003.  
20 Are we done with this exhibit, sir?  
21 Q. Yes, sir.  
22 During this period of time, 2002, '3, 2004,  
23 would you say that EFG -- Fairfield Sentry was the  
24 largest exposure that EFG Capital had in terms of  
25 hedge funds?

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- 1 their customer.  
2 A. Mostly when we bought.  
3 Q. Mostly when you bought.  
4 Were there occasions when you sold that  
5 there would be a commission charged?  
6 A. Rarely.  
7 Q. Or redeemed, I should say.  
8 A. Rarely.  
9 Q. And the other way that you were compensated  
10 were -- were you would be rebated some of the  
11 performance fee and some of the management fee that  
12 Fairfield Sentry was charging your clients, right?  
13 A. Fairfield Greenwich, the advisor --  
14 Q. Yes.  
15 A. -- was charging a incentive compensation  
16 and, later on, a management fee, and we were  
17 rebating -- we were rebated a portion of that.  
18 Q. So as I understand, what happened was that a  
19 customer would buy a share of a Fairfield Sentry fund.  
20 The Fairfield Greenwich Group would charge a  
21 performance or incentive fee from that customer. Is  
22 that right?  
23 A. No.  
24 MR. COATES: I want to object to the form of  
25 the question.

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Pages 17-20

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1 You can answer, sir.  
2 A. The answer is not to the customer.  
3 Q. Well, if the customer bought, say, \$100  
4 worth of Fairfield, and during the year the value of  
5 Fairfield went up to \$120, that \$20, a percentage of  
6 that, 20 percent, would be taken by Fairfield Group as  
7 a -- as an incentive or performance fee, right?  
8 A. But not from the client.  
9 Q. Well, the client's -- the client would be  
10 charged, wouldn't they? Clients -- the value of  
11 the --  
12 A. Not directly.  
13 Q. -- client's fund would be less.  
14 A. Not -- Not --  
15 MR. COATES: Excuse me. Mr. Campano and  
16 Mr. Kellogg, please let each other finish. Let  
17 Mr. Kellogg finish his question and then,  
18 Mr. Campano, please respond.  
19 It's difficult for the court reporter, who's  
20 obligated to take down every word, and when two  
21 people are talking at the same time, it's very  
22 difficult for her to perform her task. So I  
23 would ask both of you, please, let each other  
24 finish before you respond. Thank you.  
25 THE WITNESS: They still haven't figured out

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1 Q. Okay.  
2 A. -- in my answer that the incentive  
3 compensation was charged to the fund as a vehicle, as  
4 the client of Fairfield Greenwich Group, and then the  
5 customers by default, their shares -- the value of  
6 their shares would be net of the incentive.  
7 Q. So the value of their shares would be --  
8 would be reduced --  
9 A. That's correct.  
10 Q. -- by the amount of whatever the fee was.  
11 A. That's correct.  
12 Q. And of that fee that was charged by  
13 Fairfield Greenwich Group, EFG Capital would get  
14 20 percent of that; is that right?  
15 MR. COATES: Object to the form.  
16 You may answer.  
17 Q. (By Mr. Lawrence Kellogg) It would be  
18 rebated.  
19 A. There were, I believe, three different  
20 agreements, distribution agreements between Fairfield  
21 Greenwich Group and EFG Capital.  
22 Q. Having to do with different funds or the  
23 same funds?  
24 A. Having to do -- there were agreements that  
25 incorporated different funds, but, in particular,

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00022

1 how to do that, no? Sorry.  
2 Q. (By Mr. Lawrence Kellogg) It's hard to  
3 take down natural conversation.  
4 A. I apologize.  
5 Q. You don't need to, I -- I understood you.  
6 What we were talking about is, if there was  
7 a what you call -- what they called in the Prospectus  
8 a performance fee or performance charge, would be 20  
9 percent of the increase in the value of the  
10 investment; is that right?  
11 A. That is right.  
12 Q. So the customer would have an investment  
13 that would increase by 20 percent, part of that he'd  
14 paid to Fairfield Greenwich, 20 percent of it, right?  
15 A. But I don't think that that statement is  
16 correct.  
17 Q. Why not?  
18 A. Because Fairfield Greenwich would charge the  
19 fund --  
20 Q. Yes.  
21 A. -- that it was administering. Clients were  
22 shareholders of the fund, and therefore, the way I  
23 understood your question, would indicate that there  
24 was a direct charge to the client. And I just wanted  
25 to clarify --

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1 you're asking about Fairfield Sentry --  
2 Q. Yes.  
3 A. -- and the rebate percentage varied --  
4 Q. Okay.  
5 A. -- I believe, three times, to my  
6 recollection.  
7 Q. What is -- what is your recollection?  
8 A. My recollection is that of that 20 percent  
9 incentive fee that you were describing, initially, at  
10 the beginning of the relationship, I believe that it  
11 was closer to 15 percent that was rebated to EFG  
12 Capital; however, I'm not 100 percent certain on that  
13 number. That number later went up to 25 percent.  
14 Q. Yes.  
15 A. And later it went down to 20 percent.  
16 Q. Do you know when these changes occurred?  
17 A. From the lower to 25 was prior to my joining  
18 EFG. So, I believe, Mr. Echevarria's testimony or  
19 deposition transcripts would give you a more precise  
20 of that, because it was prior to -- to me joining.  
21 And then going down to 20 percent was -- I'd have to  
22 remember exactly, but I believe it was sometime in  
23 close to '04.  
24 Q. When you joined in 2002 and Fairfield Sentry  
25 was sold, was there a rebate or retrocession paid by

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Pages 21-24



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1 Fairfield?  
2 A. Was there a retrocession in place?  
3 Q. Yes.  
4 A. There was a distribution agreement in place  
5 when I joined EFG Capital.  
6 Q. And did it cover Fairfield Sentry?  
7 A. It covered Fairfield Sentry.  
8 Q. Was that -- when you joined, was it 15, 25,  
9 or some other percent?  
10 A. It was 25.  
11 Q. I want to go -- great. I just want to be  
12 clear on this.  
13 A. If you have the agreement --  
14 Q. Yeah, I just want to make it clear.  
15 A. -- we could --  
16 Q. Let me show you what has been marked  
17 previously as Exhibit 15.  
18 A. Exhibit?  
19 Q. Exhibit 15.  
20 MR. COATES: Is this from Victor's  
21 deposition?  
22 MR. LAWRENCE KELLOGG: Yes.  
23 MR. COATES: Okay. Great.  
24 Thank you.  
25 Q. (By Mr. Lawrence Kellogg) This is a

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1 Q. But there was an agreement in place for  
2 Fairfield Sentry Limited predating this 2004 letter  
3 agreement; is that right?  
4 A. Yes, sir.  
5 Q. And your recollection is that -- and we look  
6 at the 2004, it's 20 percent. If we look at the 2004  
7 letter, it says 20 percent for Fairfield Sentry. Do  
8 you see that?  
9 A. Yes, sir.  
10 Q. Your understanding is that before this  
11 November 1, 2004, Letter Agreement, at some point in  
12 time Fairfield Sentry was a 15 percent rebate or  
13 retrocession and at other times it was 25 percent?  
14 A. That's correct. But when it was 25 and when  
15 it was 15, it did not include the 20 basis point of  
16 the management fee.  
17 Q. Okay.  
18 A. So the change that I recall was from  
19 25 percent of the management fee in the case of  
20 Fairfield Sentry. In 2004, it went to 20 basis points  
21 of the management fee and plus 20 percent of the  
22 incentive fee.  
23 Q. All right. So at some point in time, as I  
24 understand it, Fairfield Greenwich imposed a  
25 management fee of 1 percent.

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00026

1 February 21, 2001, Letter of Understanding between  
2 EFG Capital International and Fairfield Greenwich  
3 Limited. Have you ever seen a written agreement  
4 prior to this one?  
5 A. I believe there might be an earlier one.  
6 Q. Okay. Have you ever -- have you seen it in  
7 your preparation for this testimony today?  
8 A. The reason I believe I've seen one is  
9 because I think I've seen one.  
10 Q. Okay.  
11 A. I cannot give you more certainty than that  
12 at this point, sir.  
13 Q. Let me show you Exhibit 16, which is a  
14 November 1, 2004, Letter Agreement between Fairfield  
15 Greenwich Limited and EFG Capital International.  
16 And I'll just tell you, this, in 2004,  
17 modifies Exhibit 15 to add Fairfield Sentry Limited at  
18 a arrangement of 20 basis points management fee, plus  
19 20 percent of the incentive fee per annum. Do you see  
20 that?  
21 A. I see that.  
22 Q. Okay. And if you look at the first exhibit,  
23 Exhibit 15, it does not mention Fairfield Sentry  
24 Limited. It mentions some other funds.  
25 A. Correct.

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1 A. That's correct.  
2 Q. And at that time, EFG Capital was given 20  
3 basis points of that 1 percent, right?  
4 A. Correct.  
5 Q. Which means it would get 20 percent of that  
6 1 percent.  
7 A. Correct.  
8 Q. And before the management fee was  
9 instituted, it would get a percentage of the incentive  
10 compensation or the performance basis.  
11 A. Only, because there wasn't the management  
12 fee.  
13 Q. And what I'm trying to understand is, before  
14 2004 and this Letter Agreement, your recollection is  
15 or your understanding is that there was sometimes a  
16 15 percent and sometimes a 25 percent.  
17 A. I believe it was 15 in the early years. I  
18 know that at one point it increased prior to my  
19 joining -- sorry, I keep on hitting the microphone --  
20 prior to my joining EFG. By the time that I joined  
21 EFG, I'm almost certain that it was 25 percent.  
22 Q. All right. We started this discussion  
23 because I was trying to isolate the ways in which EFG  
24 Capital would be compensated for selling Fairfield  
25 Sentry. So far we have a commission to the customer

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Pages 25-28

00029

1 that we paid on the purchase ordinarily, correct?

2 A. Correct.

3 Q. And we would have a rebate in some

4 percentage from Fairfield Greenwich, true?

5 A. Correct.

6 Q. There was also compensation paid by EFG Bank

7 for Fairfield trades that used EFG Bank as a

8 custodial; is that right?

9 MR. COATES: I'm going to object to the form

10 of the question.

11 You can answer.

12 A. There was a revenue sharing agreement that

13 was instituted between EFG Capital and EFG Bank that

14 EFG Bank shared some of the custodial revenues on the

15 assets in general, the securities, which included

16 those assets of Fairfield Sentry held in custody.

17 However, that revenue sharing agreement, I believe,

18 only began in 2002 or -- or so.

19 Q. Okay.

20 A. Not -- not before.

21 Q. And did it stay in effect from 2002 until

22 the fraud was revealed in 2008?

23 A. Yes. So, to be specific, you mentioned

24 three sources of revenue there.

25 Q. Yes.

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1 Q. Were customers of EFG Private Bank and not

2 EFG Capital, were those customers -- were rebates paid

3 on those customers?

4 A. Rebates were paid on those customers.

5 Q. And would EFG Capital share in the revenue

6 from those rebates?

7 A. No.

8 Q. If -- would the rebates be paid for EFG

9 Capital customers who had not been solicited for this

10 investment?

11 A. Yes.

12 Q. So if somebody came to EFG Capital and said,

13 we're buying Fairfield Sentry, and wasn't introduced

14 by EFG Capital, EFG Capital nevertheless would get

15 paid a rebate; is that right?

16 A. That's correct.

17 Q. If funds were transferred in from some other

18 source, not purchased at EFG Capital, but a customer

19 transferred an account over to EFG Capital, and it

20 included Fairfield Sentry, would rebates be paid on

21 those?

22 A. Would you mind --

23 Q. Yes. There are instances where a customer

24 might close an account somewhere else and transfer his

25 or her assets over to EFG Capital, right?

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1 A. Prior to 2002, there were two sources of  
2 revenue.

3 Q. Okay.

4 A. When the revenue sharing agreement was  
5 instituted, there were three sources of revenue.

6 Q. Other than the three sources we've  
7 mentioned, were there any other sources of revenue for  
8 sales of Fairfield Sentry?

9 A. No.

10 Q. Now, when -- the retrocessions or rebates,  
11 how -- how often were they paid?

12 A. I believe quarterly.

13 Q. So every quarter there would be a  
14 determination of what the performance of the fund was;

15 is that right? And then there'd be a 20 percent  
16 charge made, payment made to Fairfield Group, and EFG

17 Capital would be paid 20 percent of that, right?

18 A. The performance was calculated --

19 Q. Yeah.

20 A. -- a lot more frequently. But for purposes  
21 of the rebate, the performance of the quarter was  
22 calculated at the end of each quarter.

23 Q. Okay. And it would be paid shortly after  
24 that?

25 A. I believe so.

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1 A. Okay.

2 Q. And EFG Capital -- and those assets might  
3 include Fairfield Sentry. Would -- is that -- would  
4 EFG Capital get paid on those assets?

5 A. For the most part, yes. There might have  
6 been an instance or two where the client had an  
7 individual relationship with Fairfield Greenwich Group  
8 directly and where Fairfield Greenwich Group might  
9 have argued that all -- all we were doing was  
10 custodial and that that client was theirs, but that's  
11 few and far between. For the most part, the answer to  
12 your question is generally yes.

13 Q. What about if an EFG customer closed his EFG  
14 Capital account and moved it to another broker and  
15 took the Fairfield Sentry investment to the other  
16 broker, would EFG Capital be paid on that?

17 A. No.

18 (The referred-to document was marked for  
19 identification as Plaintiff's Exhibit 98.)

20 Q. (By Mr. Lawrence Kellogg) Let me show you  
21 what I'm going to mark as Exhibit 98, which is a  
22 December 16, 2002, e-mail from Victor Echevarria to  
23 Lourdes Barreneche, copying you. This is Bates  
24 No. 7151.

25 It says, Lourdes, further to our

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Pages 29-32

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1 conversation last week, you will recall that EFG  
2 Private Bank transferred out in 2001 a number of  
3 Fairfield Sentry shares that were originally purchased  
4 by our clients through EFG Capital. When this  
5 transfer took place in June of 2001, we spoke at that  
6 time and you indicated that if the entity receiving  
7 the shares did not have a retrocession agreement or  
8 distribution agreement with FGG, that FGG would  
9 continue paying EFG the corresponding rebate on those  
10 shares.

11 Do you see that?

12 A. I see that.

13 Q. Was that the arrangement?

14 A. I -- now that you show me this, I vaguely  
15 remember this conversation. I do not know what the  
16 outcome of this was. I think that Victor was pitching  
17 to keep some of the revenue for these four named  
18 positions here. There was no written arrangement to  
19 indicate what he was trying to get from Lourdes here.

20 Q. You never saw a written agreement on that  
21 point?

22 A. I never saw a written agreement that said  
23 that if a client bought shares through EFG Capital and  
24 transferred to another entity that did not have a  
25 distribution agreement with FGG, they would continue

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1 May 18, 2006, Letter Agreement between Fairfield  
2 Greenwich Group and EFG Capital dated -- or it's Bates  
3 No. 1930.

4 This appears to modify the prior two  
5 agreements we've been talking about, or the prior  
6 agreement, the February 21, 2001, to say that the  
7 compensation, the rebates are going to be -- cover not  
8 only EFG Capital International Corp, but EFG Bank and  
9 any respective offices or branches. Do you see that?

10 MR. COATES: I'm going to object to the form  
11 of the question.

12 You may answer.

13 A. Yes, I see that.

14 Q. Now, were the rebates paid for -- by  
15 Fairfield Greenwich Group for Fairfield Sentry that  
16 are specified in the agreements we've seen so far?  
17 Did they cover any sales of Fairfield Sentry from any  
18 part of the EFG Group, or was it only EFG Capital and  
19 EFG Bank?

20 A. I don't think there was much more than EFG  
21 Capital and EFG Bank in the period in question, sir.  
22 So I would say that it is EFG Capital and EFG Bank.

23 Q. How would it work when -- when the quarter  
24 came to the end and EFG Bank might have some customers  
25 that they're entitled to a rebate on, and EFG Capital

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1 paying rebate on those shares.

2 Q. Whether or not there was a written  
3 agreement, do you know whether that was what happened?

4 A. I don't know for certain. I don't remember  
5 for certain.

6 Q. What would you -- what would you look at to  
7 try to find that out if you had to?

8 A. At the time, there could have been a  
9 reconciliation of the statement or the position showed  
10 by Citco, the administrator, for -- similar, I  
11 presume, to one of the first exhibits that you showed  
12 me.

13 Q. Okay.

14 A. And there could have been a -- a  
15 reconciliation of the number of shares that Citco was  
16 paying on, or the amount, you know, that Citco was  
17 paying on versus the number of shares in EFG's  
18 custodial master securities lists.

19 Q. So those might give us the answer to the  
20 question whether or not, potentially. That's where  
21 you'd look anyway.

22 A. They -- if you had access to all those  
23 records from back then, you could potentially find the  
24 answer to that. Or you could ask Victor.

25 Q. Let me show you Exhibit 17, which is a

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1 might have some customers, how -- how would that be  
2 divvied up or addressed?

3 MR. COATES: I object to the form of the  
4 question.

5 You may answer.

6 A. Do you mind repeating it?

7 Q. Yeah. What would -- you know, EFG Capital  
8 has a certain amount of money that it's entitled to;  
9 EFG Bank has a certain amount of money it's entitled  
10 to. Would the check come to or the wire come to EFG  
11 Capital and it would be divvied up? Would it go to  
12 the bank? Would there be separate wires?

13 A. The div --

14 MR. COATES: Object to the form.

15 You may answer.

16 A. The calculations for the divvying up were  
17 done in Switzerland.

18 Q. When you say "in Switzerland" --

19 A. With the -- with the -- well, with the  
20 agreement or oversight of Juan Massens.

21 Q. So the money would go to Switzerland --

22 A. No.

23 Q. All right. Then repeat your -- what would  
24 happen?

25 A. You asked me about the calculations.

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Pages 33-36

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1 Q. Sure.  
2 A. Okay. So the money would come to EFG  
3 Capital.  
4 Q. Okay. But the calculations would come from  
5 Switzerland.  
6 A. Juan Massens would review the calculations  
7 versus information received from Switzerland on the  
8 number of shares. Actually, I believe that the -- I  
9 believe the payments came with a copy of a statement  
10 or some sort of a report from Citco, and then --  
11 because Citco made the payments. And Juan would  
12 review the payment versus the report, and then would  
13 inform Switzerland of the receipt of the money; and  
14 then in Switzerland, they did some internal  
15 reallocations.  
16 Q. What sorts of allocations would be done in  
17 Switzerland?  
18 A. Looking at the shares that didn't belong to  
19 CROs of EFG Capital and then extracting the portion of  
20 the payment that, in essence, didn't belong to EFG  
21 Capital.  
22 Q. What department in Switzerland and what  
23 entity would do that?  
24 A. The accounting department in Switzerland.  
25 Q. Of which entity?

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1 agreements and the understandings had to be updated.  
2 Q. On the second page of this, at the very top,  
3 it says, This agreement is -- very first paragraph --  
4 This agreement is non-exclusive except in relation to  
5 those clients introduced by the agency directly or  
6 indirectly. An indirect client of the agency is one  
7 that has been introduced to Fairfield Greenwich  
8 Limited by a directly introduced client of the agency.  
9 Do you see that?  
10 A. Yes.  
11 Q. So, as I understand that, if EFG Capital  
12 introduces somebody to Fairfield Greenwich and that  
13 person introduces somebody else to Fairfield  
14 Greenwich, EFG Capital gets paid. Was that the  
15 arrangement?  
16 A. It seems so.  
17 Q. Okay. You can set that aside.  
18 I'll show you what's been marked as  
19 Exhibit 20, which is a June 20, 2008, Letter Agreement  
20 between Fairfield Greenwich Group and -- I'm sorry --  
21 between Fairfield Greenwich Limited and EFG Capital  
22 International.  
23 This seems to amend the agreement we just  
24 looked at to say that no fees will be payable for a  
25 quarter unless the -- unless the assets equal or

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1 A. Of EFG Bank. EFG Private Bank first and  
2 then EFG Bank.  
3 Q. All right. I want to show you what's been  
4 marked as Exhibit 19, which is a November 29, 2007,  
5 Letter of Understanding between Fairfield Group and  
6 EFG Capital International. If you look at page 1937,  
7 this appears to have been signed by you in December of  
8 2007. Is that correct?  
9 A. Give me a second, would you, please?  
10 You're asking me if it was signed by me. I  
11 will jump to that page and tell you that I am one of  
12 the two signatories on it.  
13 Q. Okay. How did it come about that in 2007 a  
14 new Letter of Understanding was entered into?  
15 A. Let me review the document for a second.  
16 Well, as you can see, the list of funds now  
17 is a lot broader. There is an entity here called  
18 Chester Management, which is another company of the  
19 Fairfield Greenwich Group of companies. Chester  
20 managed in particular, I believe, one fund called  
21 Chester Horizons and Chester Global Strategy.  
22 So, I think that this was in the evolution  
23 of time as the relationship kept on evolving and new  
24 funds were being added as Fairfield Greenwich Group  
25 would start offering new funds, and the distribution

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1 exceed \$3 million.  
2 A. Mm-hmm.  
3 Q. Do you see that?  
4 A. Yes.  
5 Q. Did -- did that -- was it always the case  
6 that the assets under management introduced by EFG  
7 Capital exceeded \$3 million? You always reached that  
8 threshold, didn't you?  
9 A. In what vehicle?  
10 Q. In Fairfield Sentry.  
11 A. In Fairfield Sentry, yes.  
12 Q. So if -- this really relates to other funds,  
13 if you didn't have a \$3 million position collectively  
14 with your customers?  
15 A. In one of these funds listed here, yes,  
16 that's correct.  
17 Q. Okay. Was there a minimum assets under  
18 management that was, in your knowledge, was required  
19 by Fairfield Greenwich Group in order to pay Fairfield  
20 Sentry?  
21 A. I believe that limitation of 3 million would  
22 have encompassed any of the funds on the list.  
23 Q. Other than the agreements I've just shown  
24 you now, which were the ones I showed Mr. Echevarria,  
25 that you gave to me, do you know of any other

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Pages 37-40

00041

1 agreements between EFG Capital and Fairfield Greenwich  
2 Group that covered Fairfield Sentry?  
3 A. I mentioned --  
4 Q. Other than the oral one, I guess, or an  
5 earlier one.  
6 A. The earlier ones.  
7 Q. Right. And if I understand what you said,  
8 you just remembered. You don't remember seeing it as  
9 part of this search that we've just gone through?  
10 A. I know there were e-mails that -- originally  
11 that were discussing the -- the amount of -- or the  
12 increase. There was a negotiation from 15 to  
13 25 percent. So, I presume there was an agreement that  
14 covered that.  
15 Q. Were there any agreements, to your  
16 knowledge, written agreements, between EFG Bank and  
17 Fairfield Greenwich Group, other than what we've seen  
18 here?  
19 A. I don't --  
20 MR. COATES: Object to the form of that  
21 question.  
22 You may answer, sir.  
23 A. I don't know.  
24 Q. The other hedge funds -- and we'll get into  
25 this --

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1 most of the times, expressed as basis points.  
2 Q. All right. Now, if you took -- was there an  
3 analysis done at EFG Capital as to essentially what  
4 the overall rebate was going to be for a particular  
5 dollar that was introduced? In other words, you got  
6 20 percent of a management fee and 20 percent of a  
7 percentage fee, was there an overall percentage that  
8 was -- that was calculated from those two numbers?  
9 MR. COATES: Object to the form.  
10 You may answer.  
11 A. I have to answer no, but --  
12 Q. Okay.  
13 A. -- I might ask you to clarify the question.  
14 Q. Yeah. I -- you know, I saw something --  
15 MR. COATES: I don't understand what you're  
16 trying to ask, Larry.  
17 MR. LAWRENCE KELLOGG: Fine. That's fine.  
18 Q. (By Mr. Lawrence Kellogg) I saw somewhere  
19 that the target or the analysis of this particular  
20 relationship meant that there was overall 4 percent  
21 fee, 4 percent of assets under management that  
22 would --  
23 A. 4 percent?  
24 Q. Is that right?  
25 A. I don't know, sir, where you would have ever

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1 A. Sorry about that.  
2 MR. COATES: Do you need to take a break or  
3 are you okay?  
4 THE WITNESS: I just --  
5 Q. (By Mr. Lawrence Kellogg) He's tangled up  
6 in his wires.  
7 A. I just stepped on the microphone. Sorry.  
8 Are we back on? Sorry.  
9 Q. Yeah. Okay. In the -- we'll get to this in  
10 a little while, but there were hedge funds that were  
11 on a recommended list at EFG Capital; is that right?  
12 A. That's right.  
13 Q. To be on a recommended list, did there have  
14 to be a retrocession or rebate agreement in place --  
15 A. No.  
16 Q. -- with the hedge fund?  
17 A. No.  
18 Q. Were there other hedge funds that EFG  
19 Capital sold that had rebate agreements with EFG  
20 Capital?  
21 A. Yes.  
22 Q. And were those -- were any of those  
23 agreements more than 20 percent of performance and  
24 20 percent of management?  
25 A. They were expressed differently. They were,

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1 found that, no.  
2 Q. Okay. Well, maybe we'll come across it.  
3 Maybe I'm just misreading whatever I saw.  
4 So with respect to the other hedge funds, it  
5 would be -- this was the only one that EFG Capital  
6 sold that was expressed in terms of 20 percent of a  
7 performance bonus and 20 percent of incentive fee --  
8 management fee?  
9 A. Specifically if it was 20 percent, probably.  
10 I mean, there were others with other percentages. I  
11 don't recall exactly if it was 20.  
12 Q. Okay. From EFG Capital's perspective in  
13 terms of revenue dollars, was -- was Fairfield Sentry  
14 the most lucrative fund to sell during this period of  
15 time?  
16 A. Lucrative in what sense?  
17 Q. Money paid to EFG Capital from -- from  
18 rebates.  
19 A. Not from 2002 on.  
20 Q. Okay. What funds were more lucrative from  
21 2002 on?  
22 A. I don't recall all of them, but at least  
23 the -- there's a family of funds called Permal.  
24 Q. Permal.  
25 Prior to 2002, was Fairfield Sentry the most

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Pages 41-44

00045

1 lucrative fund to sell from EFG Capital's perspective?  
2 A. Because the number of funds was -- hedge  
3 funds -- you're talking hedge funds, sir?  
4 Q. Yes, sir.  
5 A. Because the number of hedge funds in the  
6 universe available for sale, et cetera, was much  
7 smaller prior to 2002, the rebate that EFG received  
8 from Fairfield Sentry was likely the highest of the  
9 other funds that were being sold.  
10 Q. What was the rebate for Permal?  
11 A. 75 basis points, flat.  
12 Q. So if somebody invested a dollar, EFG  
13 Capital would get .75 percent of that?  
14 A. .75 of 1 percent.  
15 Q. Of 1 percent.  
16 And that would be paid every year or just  
17 initially?  
18 A. No. That was quarterly, regardless of  
19 performance.  
20 Q. Other than Permal, were there any others  
21 that were higher than Fairfield?  
22 A. Fairfield Sentry?  
23 Q. Yes, sir.  
24 A. There were other Fairfield Greenwich funds  
25 which, I believe, were similar and perhaps higher.

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1 Q. And Kingate was a Madoff feeder fund.  
2 A. Kingate was a Madoff feeder fund.  
3 Q. What did Kros pay?  
4 A. I don't recall, but it was, again, a  
5 combination of a percentage of the asset -- of the  
6 management fee and a percentage of the incentive.  
7 Q. You don't know what the percentages are?  
8 A. Not offhand, sir.  
9 Q. But you think they're greater than  
10 Fairfield, or similar?  
11 A. Similar.  
12 Q. All right. Any others you can think of?  
13 A. What's the period, sir, again?  
14 Q. Well, you said up to 2002, Fairfield Sentry  
15 was probably the most lucrative. Start with that.  
16 A. Okay. But the numbers I'm giving you are  
17 post 2002.  
18 Q. Yes, exactly.  
19 A. I mean, the Kros Spectrum is post 2002.  
20 Q. Exactly. So I'm thinking post 2002, is  
21 there any other funds you can think of that were more  
22 lucrative than Fairfield?  
23 A. There is a fund called Hudson, which I  
24 believe is similar.  
25 May I use the word "similar," sir?

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1 Yes, the answer is yes.  
2 Q. All right. Other than other Fairfield  
3 Greenwich funds, were there any funds sold or on the  
4 recommended list, I should say, of EFG Capital that  
5 were -- paid higher rebates than Permal?  
6 A. I believe so.  
7 Q. Do you remember any of them?  
8 A. The Kros Spectrum, K-r-o-s, Spectrum, for  
9 one.  
10 Q. Okay. How about Kingate?  
11 A. We do not have a retrocession with Kingate.  
12 Q. But you had a retrocession with Kros  
13 Spectrum; is that right?  
14 A. Yes.  
15 Q. And Kros Spectrum had Madoff in their fund,  
16 didn't they?  
17 A. Kros Spectrum was a fund of funds.  
18 Q. Yes.  
19 A. And for most of its duration had an  
20 allocation to Madoff exposure, not Fairfield Sentry.  
21 I actually believe it was Kingate.  
22 Q. So Kros had Kingate in it; is that right?  
23 A. (No verbal response.)  
24 Q. You have to say "yes" for --  
25 A. Yes, I'm sorry.

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1 Q. Yes.  
2 A. Because I don't know exactly. Similar.  
3 Q. Okay.  
4 A. Hudson. There is a fund managed by an  
5 affiliate of EFG that is a fund of funds, which is --  
6 Q. What's the name of that one?  
7 A. It's -- it's managed by PRS. PRS something.  
8 I don't recall exactly. It's a fund of funds.  
9 There were some funds from CMA, which was a  
10 company that was acquired by EFG International at the  
11 end of '06, I believe, that had a similar rebate.  
12 Q. And those would be CMA-sponsored funds?  
13 A. Yes. Those are the ones that I recall  
14 offhand, but I'm sure that if I saw a list I could  
15 name one or two more.  
16 Q. How many funds were on EFG Capital's  
17 recommended list after 2002?  
18 A. That's a number that increased.  
19 Q. Okay.  
20 A. But somewhere between 15 and 20 on the  
21 recommended list, I believe. I would say around 20.  
22 Q. And is that total or at any one time there'd  
23 be 20?  
24 A. At any one time.  
25 Q. If a -- when an EFG Capital customer would

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Pages 45-48

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1 purchase Fairfield Sentry -- as I understand it, by  
2 the time you joined EFG Capital, Fairfield Sentry was  
3 fully subscribed; is that right? In other words, they  
4 weren't issuing brand-new shares.  
5 A. That was a situation that changed from month  
6 to month.  
7 Q. I see. So some months you'd be full --  
8 they would be fully subscribed, meaning we don't have  
9 any shares to sell, and other months they would have  
10 received enough redemptions to resell them?  
11 A. Correct.  
12 Q. Now, internally, when a -- when an EFG  
13 Capital customer decided to redeem their shares, was  
14 there an effort made to internally resell those shares  
15 to other EFG Capital customers?  
16 A. We would advise CROs that there was a  
17 redemption, and before the actual redemption would go  
18 back to the fund, we would advise other CROs and EFG  
19 Capital that the redemption was available.  
20 Q. And why did you do that?  
21 A. Because since it was a closed fund and we  
22 knew that there were CROs that had clients that had an  
23 interest in getting into the fund from time to time,  
24 and as you well pointed out, from time to time the  
25 fund was closed, we thought it was a good opportunity

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1 A. Fairfield Greenwich Group dealt with EFG  
2 Capital as a distributor of the funds.  
3 Q. Yes.  
4 A. And Fairfield Sentry fund had a shareholder,  
5 nominee shareholder called EFG Bank.  
6 Q. Okay. So if somebody wanted to sell or  
7 redeem their shares at EFG Capital and somebody else  
8 at EFG Capital was willing to buy that, there'd just  
9 be an internal sale that would not -- that would be  
10 reflected on the books of EFG Bank; is that right?  
11 A. There would be no notification of that  
12 redemption to the administrator of the fund; and  
13 yes --  
14 Q. Okay.  
15 A. -- the reallocation would happen internally.  
16 Q. Were there instances where EFG Capital  
17 customers wanted to redeem -- wanted to redeem their  
18 shares and actually did it?  
19 A. Yes.  
20 Q. Actually weren't able to buy -- to sell to  
21 other EFG customers?  
22 A. Yes.  
23 Q. In that instance, what would happen?  
24 A. There would be a notice of redemption  
25 submitted within the redemption period. There would

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1 to apprise the CROs and the customers that were  
2 interested in getting into the fund that there was  
3 availability.  
4 Q. And so if somebody -- some CRO said, yes,  
5 I've got a customer that I can sell these to, would  
6 the redemption actually take place or would there be  
7 an internal sale somehow among -- between the two  
8 customers?  
9 A. There was an internal sale, because the  
10 nominee shareholder was always EFG Bank in the records  
11 of the administrator. So if you had a reallocation  
12 within, nothing needed to change at the administrator.  
13 Q. So EFG Bank was actually the Fairfield  
14 shareholder, the nominee shareholder, correct?  
15 MR. COATES: Well, I want to object to the  
16 form of the question.  
17 You may answer.  
18 A. EFG Bank was the nominee shareholder of  
19 record of the shares of Fairfield Sentry.  
20 Q. So in -- from Fairfield -- from Fairfield  
21 Greenwich's perspective, or Fairfield Sentry, it was  
22 dealing with EFG Bank, and EFG Bank would have various  
23 customers, either from EFG Capital or elsewhere, that  
24 had accounts with EFG Bank and -- and would have  
25 shares held in the name of EFG Bank. Is that right?

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1 be a notice of redemption to the administrator, and  
2 then the administrator would do the necessary to  
3 redeem the shares and then pay the proceeds of the  
4 redemption at the appropriate time.  
5 (The referred-to document was marked for  
6 identification as Plaintiff's Exhibit 99.)  
7 Q. (By Mr. Lawrence Kellogg) Let me mark as  
8 Exhibit 99 an e-mail string, which is Bates-labeled  
9 EFG Capital 8809. The first -- top of this e-mail  
10 appears to be an e-mail from Romy Cabrera to Sixto  
11 Campano dated December 22, 2003.  
12 On the bottom of 8809 --  
13 MR. COATES: Just give him a minute to read  
14 it. It's a four-page document.  
15 Q. (By Mr. Lawrence Kellogg) I'm only going  
16 to talk to you about number one. You -- the first  
17 page. You can read the whole thing if you want, but  
18 I'm only asking about the first page.  
19 A. Well, but I think the first page starts --  
20 can I have a second to read?  
21 Q. Sure. Go ahead.  
22 A. Yes, sir, I'm ready.  
23 Q. All right. At the bottom of page 8809,  
24 there's an e-mail from Elisa Rossi, R-o-s-s-i, to  
25 Charles Lu, L-u, which copies you. Who are those

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1 people?

2 A. Elisa Rossi was a CRO at EFG Capital; and  
3 Charles Lu was a member of the credit department at  
4 EFG Bank.

5 Q. All right. So Miss Rossi says she has a  
6 customer who's selling over \$3.4 million of Fairfield  
7 and repaying a loan. Is that right?

8 A. That's correct.

9 Q. And you respond by saying, Elisa, are you  
10 selling this now? We have requests for Sentry here.

11 A. Yes.

12 Q. She says, Yes, right now, and I'm crying on  
13 my way to the trading room.

14 A. Yes.

15 Q. And you say, Let's announce this so we do  
16 not lose the allocation.

17 A. Yes.

18 Q. What did you mean? What does that mean?

19 A. Well, at the time, generally Fairfield  
20 Sentry was, as you indicated, closed for new  
21 subscriptions. And because it was closed for new  
22 subscriptions and it was very hard sometimes to buy  
23 into the fund whenever you wanted to, this amount of  
24 3.4 million of Fairfield Sentry would have been  
25 available then to offer it to other clients that had

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1 redeeming. And in that effort, you didn't sell only  
2 to those who were asking for it; is that right? I  
3 mean, you made efforts to market it to those who may  
4 not have been asking for it.

5 MR. COATES: Object to the form.

6 You may answer.

7 A. Can you be more specific in your question,  
8 sir?

9 Q. Yeah. You know, I-- from your -- when you  
10 answered my question before, you said yes, sometimes  
11 customers would want it so we would make an effort to  
12 not lose the allocation, but reallocate it to another  
13 customer who was looking for it.

14 And my question to you is: Even if a  
15 customer wasn't looking for it, no customer is looking  
16 for it, you tried to reallocate that internally; is  
17 that right?

18 MR. COATES: Object to form.

19 A. Not necessarily.

20 Q. Well, for example, if -- if a customer was  
21 redeeming, it would be announced to all CROs that that  
22 customer was redeeming before the redemption was made,  
23 true?

24 A. Unless there could have been some orders  
25 expressed into the trading room --

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1 wanted to get into the fund that perhaps had not been  
2 able to.

3 So rather than redeem and then have a client  
4 come back later and say, I want to get in, and then  
5 the Fairfield position would have been offered to, I  
6 don't know, some other distributor or some other  
7 broker-dealer, bank, entity, investor, then we would  
8 not be able to get back in at a later time.

9 Q. So at this point in time, December of 2003,  
10 at least your view was, you didn't want to lose  
11 whatever allocation was available at Fairfield Sentry.

12 A. That's right.

13 MR. LAWRENCE KELLOGG: All right. Why don't  
14 we take a break. We've been going about an hour  
15 and 15 or 20.

16 THE VIDEOGRAPHER: Going off the record; the  
17 time is 11:01.

18 (Thereupon, a recess was taken from  
19 a.m. until 11:18 a.m., after which the  
20 following proceedings were held:)

21 THE VIDEOGRAPHER: We're now back on the  
22 record; the time is 11:18.

23 Q. (By Mr. Lawrence Kellogg) Before we  
24 broke, we were talking about efforts to reallocate  
25 among EFG customers in the event if somebody was

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1 Q. I see.

2 A. -- that were there, the trading room would  
3 know about it, and then sort of first-come,  
4 first-serve.

5 Q. So if there weren't existing trade orders,  
6 then there would be a semination to all the CROs to  
7 see if they could sell it, right?

8 A. To see if any clients were interested and  
9 suitable for the investment.

10 (The referred-to document was marked for  
11 identification as Plaintiff's Exhibit 100.)

12 Q. (By Mr. Lawrence Kellogg) Let me show you  
13 what I'll mark as Exhibit 100. This is an e-mail  
14 from October 31, 2002, from Susan Disdier, I guess,  
15 to you.

16 A. Mm-hmm.

17 Q. It's Bates-labeled 6692. Who is  
18 Ms. Disdier?

19 A. CRO.

20 Q. In this e-mail string, it says that Romy  
21 Cabrera -- this is the person who's executing trades;  
22 is that right?

23 A. She's in the trading room.

24 Q. She sends out to all CROs that she just sold  
25 \$50,000 worth of Fairfield, correct?

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- 1 A. Of the available 92.  
2 Q. All right. So there was 92,000 available,  
3 she just sold 50. So is this -- all right. So is  
4 this an availability that's coming from a sale or is  
5 this availability coming from Fairfield, saying we've  
6 got more shares to sell you?  
7 A. This is probably coming from a sale.  
8 Q. All right. And so she says, I just sold  
9 50,000.  
10 So there's 42,000 left, correct?  
11 A. Mm-hmm.  
12 Q. And you say to everybody, Someone please buy  
13 this.  
14 A. Yes.  
15 Q. And you have a dozen exclamation points.  
16 A. Mm-hmm.  
17 Q. What were you trying to convey there?  
18 A. Well, again, this fund was a fund that many  
19 people in the industry wanted to have in their  
20 portfolios. This was a fund that a lot of clients  
21 liked, and it's supply and demand. If you have a  
22 commodity of something that people want and you have  
23 control over something such as the allocation of what  
24 you have, you don't want to lose it.  
25 So what I meant is, you know, someone please

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- 1 me in a conversation that she had clients who were  
2 interested in buying, and I probably was telling her,  
3 hey, you've been asking for it, get going.  
4 Q. What was the recommended list or what is the  
5 recommended list?  
6 MR. COATES: I'm going to object to the form  
7 of the question.  
8 A. Can you be more specific?  
9 Q. Is there such a thing as a recommended list  
10 of hedge funds that EFG Capital maintained during the  
11 years 1998 until the fraud was revealed in 2008?  
12 A. I don't know if there was a -- such a clear  
13 list, per se, but certainly from 2002 on, it was more  
14 in the form of a list of recommended funds, funds that  
15 had been approved for sale by EFG Capital.  
16 Q. Well, what was the purpose of having the  
17 list?  
18 A. It was a list of funds on which EFG Capital  
19 had done due diligence, from which the CROs could  
20 pick, according to the customer's suitability and  
21 interest and risk profile, to buy hedge funds from.  
22 Q. Okay. Was there also something called an  
23 approved list?  
24 A. A what? Sorry.  
25 Q. An approved list.

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- 1 buy this because it's \$42,000 and there must be a  
2 client out there or some CRO that might be interested.  
3 Q. Okay. So what you wanted, the CROs is to --  
4 is to get off the dime and find some customers to buy  
5 this, right?  
6 A. Yes.  
7 (The referred-to document was marked for  
8 identification as Plaintiff's Exhibit 101.)  
9 Q. (By Mr. Lawrence Kellogg) Okay. I'll  
10 show you what I'm going to mark as Exhibit 101,  
11 which is a September 16, 2002, e-mail from you to  
12 Grace Santos, Bates-labeled 6371.  
13 This again, Romy Cabrera says to all the  
14 CROs that there's availability of \$583,511 worth of  
15 Fairfield. Do you see that?  
16 A. Mm-hmm.  
17 Q. You have to say "yes" or "no."  
18 A. Yes. I'm sorry.  
19 Q. And you say to Grace Santos, Get going.  
20 Who's Grace --  
21 A. Yes.  
22 Q. Who's Grace Santos?  
23 A. Another CRO.  
24 Q. Why were you telling her to get going?  
25 A. Because I suppose that she had indicated to

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- 1 A. There was an approved list.  
2 Q. What's the difference between an approved  
3 list and a recommended list?  
4 A. A recommended list was a list -- was a  
5 subset of the approved list, and it had in it funds  
6 that we thought --  
7 THE WITNESS: Is it working?  
8 THE VIDEOGRAPHER: Yes, sir.  
9 THE WITNESS: Okay.  
10 A. It was funds that we thought, given the risk  
11 return characteristics of the fund, were more suitable  
12 for the types of clients that EFG generally had, and  
13 also, they included investment strategies. The  
14 recommended as opposed to the approved were strategies  
15 that we thought generally were favorable given the  
16 particular market environment of the particular time.  
17 Q. You said this was the case from 2002 on.  
18 Was there a recommended list or some process by which  
19 EFG Capital made the same sorts of analyses of hedge  
20 funds predating 2002?  
21 A. Yes.  
22 Q. What was that process?  
23 A. There was the due diligence process.  
24 Q. Same thing?  
25 A. Sorry?

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1 Q. Was it the same?  
2 A. Yes. I mean, the process evolved and was  
3 enhanced over time, but generally, yes.  
4 Q. So, was there a recommended list from 1998  
5 on, or was there a group of funds that were approved  
6 to be recommended by CROs to their customers?  
7 MR. COATES: Just to clear up, we're talking  
8 about hedge funds specifically?  
9 MR. LAWRENCE KELLOGG: We are.  
10 MR. COATES: With that clarification, you  
11 can --  
12 A. I was going to -- there were -- I don't  
13 recall exactly as far back as '98 how many, but there  
14 were very few in that time because, in essence, there  
15 were very few hedge funds in the world to begin with.  
16 But yes, there was funds -- hedge funds that were  
17 approved for distribution and sale by CROs.  
18 Q. If a -- if a fund wasn't approved for  
19 distribution, and either on a recommended list or  
20 otherwise approved for distribution, could a CRO at  
21 EFG Capital sell it?  
22 A. No.  
23 Q. If the list -- if a fund was on an approved  
24 list but not on the recommended list, could a CRO sell  
25 it?

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1 diligence and would not.  
2 Q. Would that be kept in a file somewhere in  
3 the records?  
4 A. Yes.  
5 Q. What was the purpose of having a client sign  
6 such a document, acknowledging we're not going to do  
7 any due diligence on this fund and this is your  
8 volition, or words to that effect?  
9 A. The purpose was to record the fact.  
10 Q. Why did you want to record it?  
11 A. Because we wanted to make sure that it was  
12 clear for the records; it was clear for the  
13 regulators, if they came in and said, why does this  
14 client have this fund; and it was clear in case  
15 anything were to happen in the future as to how that  
16 came about.  
17 Q. Take us through the process of how a fund  
18 would make it from -- make it onto the recommended  
19 list.  
20 A. We have, in the ordinary course of business,  
21 sometimes by a manager, sometimes by a marketer of  
22 funds, which are known in the industry as third-party  
23 marketers, or a fund such -- a company such as a  
24 Permal or, actually, a Fairfield Greenwich Group at  
25 the time, they would come and pitch their product,

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1 A. Could sell it.  
2 Q. Could sell it.  
3 A. Yes.  
4 Q. So -- but could a CRO recommend it?  
5 A. A CRO could recommend it.  
6 Q. If some -- if a customer came to a CRO and  
7 said, I want to buy a hedge fund that's not on the  
8 recommended list, would that sale be made?  
9 MR. COATES: I'm sorry, object to the form.  
10 You said on the recommended list or the  
11 approved list?  
12 A. Just repeat, if you don't mind.  
13 Q. If a -- good -- good point.  
14 If a customer came to a CRO and said, I want  
15 to purchase a hedge fund that's not either on the  
16 approved list or the recommended list, what would  
17 happen? Would the trade be made?  
18 A. After discussions with the client as to why  
19 he wanted to buy -- he or she, sorry, wanted to buy  
20 the particular fund, and the client insisted for any  
21 reason that they wanted to buy a particular fund that  
22 was not on our lists, we would have the client sign an  
23 acknowledgment that this was out of their own volition  
24 and that we -- an acknowledgment that we did not  
25 recommend it and that we had not done any due

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1 their fund, to EFG Capital was one way that we would  
2 become apprised of a fund.  
3 Q. You'd learn about it somehow.  
4 A. Well, sometimes we didn't, and that's the  
5 process that we would --  
6 Q. Okay.  
7 A. -- find out about it.  
8 Q. Okay.  
9 A. There were other circumstances by which a  
10 client would sometimes come and say, hey, this -- I  
11 want to buy this fund, and sometimes we'd look into  
12 what the client wanted to buy in the situation that  
13 you were describing before, and sometimes we would  
14 find out about a fund that way. And sometimes was  
15 from the industry peer. I mean, talking to people on  
16 the street.  
17 Q. All right. So once it gets -- once you  
18 learn about the fund, how does it -- how does it get  
19 on the list, the recommended list?  
20 A. Then we would have a -- start a due  
21 diligence process on -- on the fund.  
22 Q. What does that mean?  
23 A. It means that we would look at both the  
24 quantitative and the qualitative aspects of the fund.  
25 By the way, I think this was also covered by

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1 Mr. Donnell in his deposition. But we would look at  
2 the quantitative and qualitative aspects of the fund,  
3 and after we made an analysis of both and all that is  
4 comprised in those two aspects, we would then make a  
5 determination if we would put it on an approved list.

6 Q. What do you mean by "the quantitative and  
7 qualitative"?

8 A. Quantitative is -- looks primarily at  
9 measures which are quantifiable in the form of returns  
10 and risks. Performance, essentially. Performance,  
11 returns, risk characteristics, volatility  
12 characteristics over time.

13 And qualitative was more aspects that were  
14 not quantifiable in that form, such as the background  
15 of the managers, the type of company that the  
16 investment manager was, who were the custodian  
17 administrators, auditors of the fund, the strategy of  
18 the fund, that kind of thing.

19 Q. Go ahead.

20 Who would do this analysis? When I say  
21 "who," I mean would it be EFG Capital or some other  
22 EFG entity?

23 A. EFG Capital.

24 Q. Was any other EFG entity involved in the  
25 process of doing the initial due diligence?

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1 Q. We have here something that says March of  
2 2005, revised in May of 2005.

3 A. Yes.

4 Q. First question: Were these the written  
5 procedures that were in place at that time?

6 A. Yes.

7 Q. And prior to that time, were there other  
8 written procedures relating to, you know, hedge fund  
9 procedures?

10 A. Hedge fund procedures such as this?

11 Q. Yes.

12 A. Not in such an organized fashion.

13 Q. Well, in any other -- in disorganized  
14 fashion, were there -- were there written procedures?

15 MR. COATES: I'm going to object to the form  
16 of that question.

17 You may answer.

18 Q. (By Mr. Lawrence Kellogg) Were there --  
19 were there other -- what are you saying, that there  
20 were different pieces in different documents, or  
21 what?

22 A. There were different pieces in different  
23 documents, but -- which could have been construed  
24 altogether to become procedures, but not in a formal  
25 document such as this.

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1 A. At times we took funds from a list of EFG  
2 Bank, but the initial due diligence was done by EFG  
3 Capital.

4 Q. What's -- what is the list at EFG Bank that  
5 you would look at?

6 A. They had their own list.

7 (The referred-to document was marked for  
8 identification as Plaintiff's Exhibit 102.)

9 Q. (By Mr. Lawrence Kellogg) I'm going to  
10 show you what I have marked as Exhibit 102, an  
11 e-mail from Michael Donnell to Juan Massens, which  
12 attaches a document entitled "EFG Capital  
13 International Hedge Fund Procedures, date of issue  
14 March 2005, last revision May 2005," and it begins  
15 at Bates No. 43181.

16 A. Mm-hmm.

17 Q. Prior to May of 2005, Mr. Donnell being  
18 hired, was there any written procedures such as what  
19 we're looking at here in Exhibit 102 used by EFG  
20 Capital?

21 MR. COATES: Object to the form.

22 A. There were -- prior to -- I'm sorry.

23 Q. Let me ask you --

24 A. Did you say prior to 2005 or prior to  
25 Mr. Donnell? What was the first part?

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1 Q. If you look at page 43184, there is a  
2 section on recommended hedge funds. And it says here  
3 that EFG Capital International maintains a listing of  
4 hedge funds approved for recommendation to its  
5 customers by its CROs commonly referred to as the  
6 Miami approved list. Is that true?

7 A. Yes.

8 Q. Prior to 2005, was there also a Miami  
9 approved list?

10 A. I don't know if it was called -- yeah.

11 Actually, yes.

12 Prior to 2005, you said?

13 Q. Yes.

14 A. Yes.

15 Q. All right. And it goes on to say, The hedge  
16 funds included in the Miami approved list are derived  
17 from a universe of funds known as the Hedge Fund  
18 Navigator Recommended List, maintained by the  
19 Alternative Investments team of EFG Bank's Global  
20 Investment Services group, (EFG GIS). Is that true?

21 A. Yes.

22 Q. So what I heard you say before is that some  
23 of the funds might have been drawn from EFG Bank's  
24 list, but there might be some that weren't. Is that  
25 the case? Or were all of the funds that were on the

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1 Miami approved -- Miami recommended list drawn from  
2 EFG Global Investment Services group's list?  
3 A. Some funds might have started as funds  
4 approved by Miami that perhaps later got into the  
5 Hedge Fund Navigator Recommended List. So what I'm  
6 tell -- what I'm trying to respond to you is that not  
7 all funds on the approved list were born as a subset  
8 of the HFN list.  
9 Q. They may not have been born there, but at  
10 some point they resided there. Is that right?  
11 Generally.  
12 A. Generally, yes, but there could have been  
13 one or two instances where we had a fund which was not  
14 part of the HFN list, but probably yes, in due course.  
15 Q. Was Fairfield Sentry born in Miami, on the  
16 Miami list, or was it drawn from the GIS, Global  
17 Investment Services Navigator list?  
18 A. It was born in Miami.  
19 Q. Okay. Did it ever make it to the Global  
20 Investment Services group list?  
21 A. Yes.  
22 Q. When did that happen?  
23 A. This list, the HFN, Hedge Fund Navigator,  
24 list was probably born itself sometime in '02, I  
25 believe.

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1 Recommended List itself as such, I believe -- EFG GIS  
2 morphed, and I think that there's probably a later  
3 procedure which makes reference to a list, but coming  
4 out of EFG Asset Management, I believe.  
5 So there was a period there in time between  
6 2005, when this was produced, and 2008 that we could  
7 have added some funds that were not coming from the  
8 HFN list.  
9 Q. According to -- according to the 2005  
10 procedures, looking at the same section here, the last  
11 paragraph, and it says, In order to be included on the  
12 recommended list --  
13 A. I'm sorry, what page are you on, sir?  
14 Q. Same page.  
15 A. Okay.  
16 Q. The last paragraph in the section on  
17 recommended hedge funds, it says, In order to be  
18 included on the recommended list, a hedge fund and its  
19 investment manager must meet the following minimum  
20 criteria, and then it lists a number of things. Do  
21 you see that?  
22 A. Mm-hmm.  
23 Q. You have to say "yes."  
24 A. I -- I see that.  
25 Q. The last bullet point of what has to be a

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1 Q. Is that before you joined or after?  
2 A. I would probably say a little after, but not  
3 too far. Just maybe concurrently or a few months  
4 difference.  
5 Q. By 2005, though, by the time these written  
6 procedures were implemented, all of the recommended  
7 list in Miami had to also be recommended by EFG Bank's  
8 Global Investment Services group; is that right?  
9 A. No.  
10 Q. So there were some Miami approved or Miami  
11 recommended funds that were not approved by the  
12 Global -- by the EFG Bank's division?  
13 A. There could have been one or two.  
14 Q. Do you know whether there were?  
15 A. Don't recall exactly.  
16 Q. All right. New ones from this point  
17 forward, from 2005 forward, would they all be drawn  
18 from the EFG Bank list?  
19 A. No.  
20 Q. There still could be some born in Miami?  
21 A. Yes.  
22 Q. Notwithstanding these written procedures; is  
23 that right?  
24 A. These written procedures were probably  
25 amended later because the Hedge Fund Navigator

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1 minimum criteria to be included in the list, it says,  
2 is that the manager must have invested proprietary  
3 funds and claim at least 20 percent of the reported  
4 net worth of the fund. Do you see that?  
5 A. Yes.  
6 Q. Does that mean that the investment manager  
7 of a fund that's going to be on the recommended list  
8 must have 20 percent of its own money in the fund?  
9 A. That's what that would mean.  
10 Q. All right. Did Fairfield Greenwich have  
11 20 percent of the Fairfield Sentry fund, to your  
12 knowledge?  
13 A. I don't think that's necessarily, the way  
14 it's written, what it meant. I think we were also  
15 looking at the manager's money. So if you were a  
16 manager, we wanted to see so-called skin in the game.  
17 So of your net worth, okay, we wanted to see  
18 20 percent of your net worth in the fund.  
19 Q. Well, in the Fairfield Sentry situation, the  
20 investment manager was who?  
21 A. Sorry?  
22 Q. Who was the investment manager?  
23 A. Fairfield Greenwich (Bermuda), I think was  
24 the --  
25 Q. Did it have 20 percent skin in the game?

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- 1 A. The principals, we understood, did.  
2 Q. Okay. Who did you understand had 20 percent  
3 in the fund of their own net worth?  
4 A. Jeffrey Tucker, Andres Piedrahita, Walter  
5 Noel, Lourdes Barreneche. Andrew -- what was his last  
6 name. I forget Andrew's last name. Was one of the  
7 portfolio managers. At least those people.  
8 Q. Okay. This procedure goes on to say that  
9 there is a due diligence performed on any fund that's  
10 going to be on the recommended hedge fund list. Is  
11 that right?  
12 A. Mm-hmm. Yes.  
13 Q. And the due diligence consists of a number  
14 of things, including, as it says here, a quantitative  
15 and qualitative review of the hedge funds, as well as  
16 an on-site meeting prior to appearing on the  
17 recommended list.  
18 A. Correct.  
19 Q. Is that right? Okay.  
20 It says that the Alternative Investment team  
21 of EFG GIS does these quantitative and qualitative  
22 reviews and on-site meetings. Is that the way the  
23 procedure worked?  
24 MR. COATES: Object to the form of the  
25 question.

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00075

- 1 A. Maybe not in the form of a report, per se.  
2 Q. Well, in what form did you -- did you  
3 understand what happened at those meetings?  
4 A. Orally, some conversations.  
5 Q. Who would you talk to? Who did you talk to?  
6 A. Jerome Schonbachler.  
7 Q. Who is he?  
8 A. Do you want the spelling?  
9 Q. Yes, please.  
10 A. Jerome is with an "e" at the end.  
11 Schonbachler is S-c-h-o-n-b-a-c-h-l-e-r.  
12 Got that?  
13 Q. Who was he employed by and what was his job  
14 function?  
15 A. He was employed by EFG Bank, and he was a  
16 member of the EFG GIS, EFG GIS Bank team.  
17 Q. Okay. It says here that the -- you know,  
18 this due diligence -- why -- is it important to have a  
19 due diligence before a fund makes it to the  
20 recommended list?  
21 A. Absolutely.  
22 Q. Why?  
23 A. In order for you to be able to make a  
24 reasonable basis for a recommendation to a client, you  
25 are expected to do some due diligence that would

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00074

- 1 A. Where are you reading, sir?  
2 Q. It says, EFG Capital utilizes the services  
3 of the Alternative Investment team of EFG GIS.  
4 Is that what happened?  
5 A. When?  
6 Q. As of the time this was written, at least,  
7 and forward.  
8 A. Not exclusively.  
9 Q. Okay. Do you know whether the Alternative  
10 Investment team of EFG GIS ever did any due diligence  
11 of Fairfield Sentry?  
12 A. Yes.  
13 Q. What did they do?  
14 A. I'm not sure the extent. I know that they  
15 visited, at the very least, with the manager and had  
16 contact.  
17 Q. Do you know when that occurred? What year?  
18 A. Between '02, which is when I joined, and  
19 between '06 -- '02 and '06, '02 and '07.  
20 Q. Did you ever see any reports from the  
21 Alternative Investment team?  
22 A. Regarding?  
23 Q. Regarding those visits.  
24 A. To Fairfield Greenwich?  
25 Q. Yes.

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00076

- 1 establish a reasonableness.  
2 Q. What do you mean by "reasonableness"?  
3 A. You have to base your recommendation on what  
4 is a reasonable amount of review of an investment.  
5 Q. It goes on to say here that there is  
6 monitoring that goes on for those funds that make it  
7 to the recommended list. Do you see that?  
8 Section III.  
9 A. Yes.  
10 Q. What is the purpose of the monitoring?  
11 A. The monitoring is to review periodically, to  
12 see if the funds that are on the recommended list  
13 continue to be suitable to be recommended.  
14 Q. And if there's a determination made that  
15 they're no longer suitable to be recommended, what  
16 would happen?  
17 A. They would be taken off the recommended  
18 list.  
19 Q. What was the effect of being taken off the  
20 recommended list?  
21 A. You couldn't sell it anymore.  
22 Q. And if somebody wanted to buy it, they would  
23 have to then sign one of these acknowledgments saying  
24 you're not --  
25 A. Yes.

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Pages 73-76

00077

- 1 Q. -- doing any due diligence?  
2 A. Correct.  
3 Q. Were there instances in which funds were  
4 taken off the recommended list after --  
5 A. Say again, please.  
6 Q. Were there instances in which the fund --  
7 certain funds were taken off the recommended list?  
8 A. Yes.  
9 Q. If a fund had been on a recommended list and  
10 then taken off, would the fact that it would have been  
11 taken off be communicated to persons who owned it?  
12 Customers.  
13 A. There was no obligation to do so.  
14 Q. As a practice, did you do it?  
15 A. Some CROs might have, some might have not.  
16 Q. There was no policy to say if I sold a  
17 customer a fund, I've learned that it's no longer  
18 suitable to be sold by anybody in my organization, is  
19 there a policy not to tell customers?  
20 MR. COATES: Object to the form.  
21 You may answer.  
22 A. I'm sorry, sir. Could you -- that's a big  
23 question. Would you mind asking it again?  
24 Q. Well, you know, if you had -- did you have  
25 any customers?

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00079

- 1 A. I expect the CROs to constantly review the  
2 asset allocation of their clients' portfolios given  
3 any circumstance.  
4 Q. If a fund had been on the approved list and  
5 was taken off the approved list, would you expect your  
6 CROs to tell their customers that?  
7 MR. COATES: Object to the form.  
8 A. Did you say "expect"?  
9 Q. Yeah.  
10 A. I expect the clients to review the  
11 circumstances by which a fund was taken off the list  
12 and to review -- in light of the nature of the client,  
13 to make the appropriate decision whether to make an  
14 alternate recommendation.  
15 Q. Well, if -- if a fund had been taken off the  
16 recommended list, that meant, did it not, that it was,  
17 in EFG Capital's view, it was not suitable for sale to  
18 any EFG Capital client?  
19 MR. COATES: Object to the form.  
20 A. Was that a question?  
21 Q. Yes. Is that true?  
22 A. Can you rephrase it as a question, please?  
23 Q. Yeah. That's what you're --  
24 A. You made a statement, sir.  
25 Q. Well, you know, the reason to put them on

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00078

- 1 A. Did I have any customers?  
2 Q. Yes, or were you simply a supervisor?  
3 A. From time to time I had a couple of  
4 customers.  
5 Q. If you had recommended an investment to a  
6 customer based on the recommended list and then it was  
7 delisted, taken off the list, you would tell your  
8 client, wouldn't you?  
9 MR. COATES: Object to the form.  
10 A. It's a speculative question.  
11 Q. Well, not really. Would -- would you think  
12 it would be a good practice to tell your client that  
13 something you recommended to them was no longer  
14 suitable?  
15 MR. COATES: Object to the form.  
16 A. There is different circumstances by which a  
17 fund would be taken off the list, and not always were  
18 those the same, but I would discuss with the client  
19 the facts.  
20 Q. Would you expect your other CROs to do the  
21 same thing?  
22 MR. COATES: Object to the form.  
23 A. To do what?  
24 Q. Discuss the reasons with their customers as  
25 to why a fund might be taken off the list.

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00080

- 1 the list is you've made a reasonable basis --  
2 determination that it's a reasonable basis for it to  
3 be sold to your customers, right?  
4 A. That's right.  
5 Q. And when you take it off the list, then  
6 you're making the decision that it no longer has a  
7 reasonable basis to be sold to any of your customers,  
8 right?  
9 A. Yes.  
10 Q. Now, if you have customers who you sold it  
11 to, was it EFG Group's policy to tell them that it's  
12 no longer suitable for any of our customers, including  
13 you?  
14 MR. COATES: Object to the form.  
15 You may answer, sir.  
16 A. I don't think that that describes the nature  
17 of a fund being taken off the list. The issue of  
18 suitability is very client specific, and the reasons  
19 by which a fund was taken off the list, which as you  
20 correctly state that we did not want a CRO to sell any  
21 more of, doesn't necessarily mean that the  
22 circumstances that the fund was taken off the list  
23 made the fund necessarily unsuitable for a client.  
24 And also, our suitability standard is that we are  
25 supposed to make sure that at the time of sale, the

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00081

1 fund is suitable for the particular client.  
2 Q. Would you want to get one of these  
3 acknowledgments signed by the client for anybody who  
4 stayed into a fund that had been taken off the  
5 recommended list?  
6 MR. COATES: Object to form.  
7 A. It depends on the circumstance.  
8 Q. And what does it depend on?  
9 A. The reason or the nature -- the reason why  
10 the fund got taken off the list.  
11 Q. What would -- what would be a different  
12 re -- what would be a reason to say, even though  
13 we've taken it off the list, we don't need one of  
14 these acknowledgments, if you want to keep it?  
15 MR. COATES: I'm going to object to the form  
16 of the question.  
17 Q. (By Mr. Lawrence Kellogg) You can answer.  
18 A. Do you mind rereading it or restating it?  
19 Q. Yeah. What would be -- what reason for  
20 delisting would be such that you wouldn't want a  
21 client who's keeping it to acknowledge that this is on  
22 our dime, this is our decision and not based on any  
23 recommendation?  
24 MR. COATES: Object to form.  
25 A. We would probably recall in a call report

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00083

1 A. I'm sorry, say again.  
2 Q. That's something the company would want, but  
3 didn't have a written pol- -- or it didn't have a  
4 policy about?  
5 MR. COATES: I'm going to object to form.  
6 Object to this entire line of questioning, so the  
7 record is clear.  
8 You may answer, sir.  
9 A. It depends on the circumstance.  
10 Q. Well, you just -- you just set forth a  
11 situation in which you delisted a company because  
12 their strategy has completely changed and you might  
13 want the client to acknowledge that they're keeping  
14 that investment anyway. And I asked you, is that a  
15 policy, in that situation, a policy of the company, to  
16 require that, and you said, no, it's not a policy. So  
17 I asked you, is it something you would want --  
18 something you wanted, but didn't have as a policy.  
19 MR. COATES: Object to the form.  
20 Q. (By Mr. Lawrence Kellogg) I was using  
21 your example.  
22 A. But I've got to respond again, it depends on  
23 the -- on the circumstance, sir.  
24 Q. Do you know of a fund called DKR funds?  
25 A. Yes.

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00082

1 that a recommendation -- that a conversation ensued  
2 between a CRO and a client. And if there was a  
3 recommendation by that CRO to switch securities and  
4 the client would not agree to it, we would probably  
5 record it in a call report.  
6 However, if there were a circumstance, and  
7 you're asking me to surmise or come up with a  
8 situation, but if you ask me for a situation and we  
9 found that every single manager and trader of a fund  
10 company left and except for, I don't know, somebody  
11 there, we didn't feel that that fund was capable of  
12 continuing to operate in the same form and with the  
13 same trading strategy, or if the trading strategy  
14 completely shifted from one trading strategy to  
15 another, we might want the client to acknowledge that  
16 they understand that.  
17 Q. Was that a policy that the company had to  
18 get the client --  
19 A. No.  
20 Q. -- to acknowledge it?  
21 A. No.  
22 Q. It's something the company would want, but  
23 didn't have a policy about; is that what you're  
24 saying?  
25 MR. COATES: Object to the form.

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00084

1 Q. And DKR funds were delisted, weren't they,  
2 at some point in time?  
3 A. I think so.  
4 Q. And at that time, a letter went out to all  
5 the customers, didn't it, saying we've taken it off  
6 the recommended list? Is that right?  
7 A. Maybe. I presume you're going to show me a  
8 letter.  
9 Q. I'm asking if you know.  
10 A. Not specifically, but, you know, it's from  
11 memory.  
12 Q. Okay. So you remember that happening?  
13 A. What?  
14 Q. That a letter went out to all the customers  
15 who were holding that stock, saying it's been taken  
16 off our recommended list.  
17 A. Not very specifically, but --  
18 Q. Okay.  
19 A. -- it could have happened, yes.  
20 Q. Okay. And Mr. -- why was that fund taken  
21 off the recommended list, if you remember?  
22 A. DKR was a family of funds.  
23 Q. Okay. Why were they taken off the list?  
24 A. You're asking me a question about a specific  
25 DKR fund?

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00085

1 Q. If you remember. If you don't --  
2 A. But do you know the specific --  
3 Q. No.  
4 A. I don't recall specifically.  
5 MR. LAWRENCE KELLOGG: All right. We need  
6 to change the tape.  
7 MR. COATES: Excuse me?  
8 MR. LAWRENCE KELLOGG: We need to change the  
9 tape.  
10 THE VIDEOGRAPHER: Going off the record; the  
11 time is 12:02.  
12 MR. COATES: Let's go off the record.  
13 MR. LAWRENCE KELLOGG: Okay.  
14 (Thereupon, a recess was taken from  
15 p.m. until 12:06 p.m., after which the  
16 following proceedings were held.)  
17 THE VIDEOGRAPHER: Okay. We're now back on  
18 the record; the time is 12:06.  
19 Q. (By Mr. Lawrence Kellogg) Okay. I just  
20 want to make sure I understand the difference  
21 between recommended list and approved list. I know  
22 you said the recommended is a subset of the approved  
23 list.  
24 A. That's right.  
25 Q. Is that right?

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00087

1 correct?  
2 A. Correct.  
3 Q. The approved list is a larger list, right?  
4 A. Slightly.  
5 Q. And those contain funds that not necessarily  
6 can be recommended unless they're on the recommended  
7 list, but can be sold; is that true?  
8 A. No.  
9 Q. What's the difference then?  
10 A. That internally at EFG, for example, because  
11 the strategy of a particular fund at the particular  
12 point in time given market conditions, we thought it  
13 was a better time to own this type of a fund as  
14 opposed to this fund is approved from a due diligence  
15 point of view, but we don't necessarily, for example,  
16 think that this is the most opportune time to have  
17 that strategy in your portfolio, but you still like  
18 that fund, okay, you could then recommend something  
19 off the approved fund.  
20 Q. Okay.  
21 A. List. I'm sorry.  
22 Q. So another way of looking at it is,  
23 recommended funds, from EFG Capital's perspective, are  
24 those that you're telling the CROs, at this point in  
25 time, these are the funds we prefer you to recommend

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00086

1 An approved list is a list that -- of hedge  
2 funds that can be sold without getting one of these  
3 acknowledgment forms; is that right?  
4 A. Which acknowledgment form, sir?  
5 Q. I acknowledge -- where the client says, I  
6 acknowledge that no due diligence has been done on  
7 this fund.  
8 A. Okay. Yeah.  
9 Q. So you can -- you can sell from the approved  
10 list without getting an acknowledgment; is that right?  
11 A. With other -- the answer is yes, you can  
12 sell -- that acknowledgment that I referred to, which  
13 was a special acknowledgment when a -- when a client  
14 came to you and said, buy me this, because I want this  
15 and I don't care what you say, you did not need that  
16 acknowledgment if you were going to buy something that  
17 was in our recommended list. And I believe I've  
18 answered your question.  
19 Q. No.  
20 A. No.  
21 Q. Because if -- on the recommended list,  
22 that's a list of hedge funds that the CROs can sell.  
23 You've done the due diligence, they can sell it.  
24 A. Correct.  
25 Q. They can recommend it to their clients,

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00088

1 for whatever reason, correct?  
2 A. I'll say yes.  
3 Q. And the approved list is --  
4 A. Given -- given the -- on a general basis,  
5 because, you know, there's differences in clients, but  
6 if you're saying -- if you're saying generally  
7 speaking --  
8 Q. Yes.  
9 A. -- the answer is yes.  
10 Q. So a CRO has a client and they've got to do  
11 their own suitability analysis on that client for any  
12 investment, and it's suitable for that client to have  
13 a hedge fund investment, and they -- there's a list of  
14 funds on the recommended list that EFG Capital says to  
15 the CROs, all things being equal, we prefer you  
16 recommend these. Is that right?  
17 A. Generally, yes.  
18 Q. There also is a broader list of funds on an  
19 approved list that EFG Capital as a company isn't  
20 saying to CROs, we recommend you approve these, but  
21 they're available for recommendation if the CRO thinks  
22 it's appropriate, right?  
23 A. Right.  
24 Q. To get on the recommended list, was it  
25 required that there be rebates paid by the hedge fund?

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00089

- 1 A. No.  
2 Q. Were there any funds on the recommended list  
3 where rebates weren't paid by hedge funds?  
4 A. Yes.  
5 Q. Okay. More than one?  
6 A. I would say yes.  
7 Q. All right. How many? If there's 20 on a  
8 list, how many would be no compensation to EFG Capital  
9 in the form of rebates?  
10 A. I cannot tell you exactly, but most likely  
11 more than a handful.  
12 Q. All right. Would you say that the majority  
13 of the funds on the recommended list at any point in  
14 time would pay rebates?  
15 A. No, sir, I cannot say that.  
16 Q. Does EFG Capital have, in its records, lists  
17 of -- various lists over point in time of what is  
18 recommended and what's not recommended?  
19 A. I'm sure we could find a list at different  
20 points in time. I don't think that we have a file  
21 necessarily with the progression of the list.  
22 Q. How would lists be communicated to the CROs?  
23 A. They were posted on the intranet of EFG.  
24 Q. Mm-hmm.  
25 A. And we also have meetings every week with

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00091

- 1 list are generally derived from a universe of funds  
2 known as Hedge Fund Advisory List maintained by the  
3 Alternative Investments team of EFG Capital -- or EFG  
4 Bank's Asset Management group in London (EFG AM).  
5 Do you see that?  
6 A. Yes, sir.  
7 Q. Now, previously, the overarching due  
8 diligence in the procedures was done by EFG Bank GIS,  
9 is that right, and now it's done by another group?  
10 A. I don't know what you mean by --  
11 MR. COATES: Object to the form.  
12 A. I don't know what you mean by "overarching."  
13 Q. Well, the last procedures we saw, which are  
14 Exhibit 102, say that for the recommended list, the  
15 Miami approved list is drawn from a universe of funds  
16 that is created by something called EFG Bank's Global  
17 Investment Services group, right?  
18 A. But that's very different from the  
19 overarching due diligence, as you put it.  
20 Q. Well, to get on their list, they have to do  
21 some due diligence. You said that before. Right?  
22 There has to be some due diligence done by them,  
23 correct?  
24 MR. COATES: Object to the form.  
25 You may answer.

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00090

- 1 the CROs in which a variety of things are reviewed and  
2 communicated. And from time to time in those  
3 meetings, a fund was covered, presented; and also  
4 specifically, from time to time, the fund sponsor,  
5 manager would come and make a presentation to the CROs  
6 after the fund was approved.  
7 Q. All right. Let me show you what's been  
8 marked as Exhibit 55 in a previous deposition. This  
9 is Bates-labeled beginning 8484 and it's EFG Capital  
10 International Hedge Fund Procedures.  
11 This appears to be a later version of the  
12 hedge fund procedures in place at EFG Capital. Is  
13 that right?  
14 A. That's right.  
15 Q. If you look at the third page of  
16 Exhibit 55 --  
17 A. Page?  
18 Q. The third page, which is Bates-labeled 8486.  
19 A. Yes.  
20 Q. Again, there's a discussion of the  
21 recommended hedge funds and the Miami approved list.  
22 Do you see that?  
23 A. Yes, sir.  
24 Q. Now, it says here in the second paragraph  
25 that the hedge funds included in the Miami approved

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00092

- 1 A. Who's "them," sir? I want to be very  
2 specific with you.  
3 Q. EFG Global Investment Services group. EFG  
4 Bank Global Investment Services group.  
5 A. So if -- I'm sorry to ask a question, but is  
6 your question -- or do you want me to --  
7 Q. No, that's -- go ahead.  
8 A. Is your question that in order for a fund to  
9 get on GIS's list, they had to do some due diligence?  
10 Q. Right.  
11 A. Yes.  
12 Q. Okay. Now we're looking in 2005, that  
13 universe of funds was created by EFG GIS. Now we're  
14 looking sometime later that the universe of funds is  
15 coming from something called the Alternative  
16 Investments team of EFG's Bank's Asset Management  
17 group in London. Is that a different group?  
18 A. It's a different group.  
19 Q. What happened there? What's -- how did it  
20 change from one to the other?  
21 A. The GIS group, as it was composed by the  
22 people that were in that group, disbanded. The group  
23 was no more. And then recently, the hedge fund of the  
24 Alternative Investments team of EFG Bank, which is  
25 really -- it should say EFG Private Bank, because

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00093

1 that's the name of the London entity, but the  
2 Alternative Investments team is a different team. The  
3 other one basically disappeared, GIS disappeared, and  
4 this is a new team that came about recently.  
5 Q. When did that happen?  
6 A. Which part? The disbanding, or this?  
7 Q. Well --  
8 A. Different times.  
9 Q. Different times. Okay. When did they  
10 disband?  
11 A. I cannot tell you specifically, but Bassam  
12 Salem, who was the head of the -- as you saw in the  
13 other document that you showed me a second ago --  
14 Q. Yes.  
15 A. -- was the head of the GIS team, he went on  
16 to open the EFG Bank offices in Dubai, and Jerome  
17 became a CRO. And some of the activities of the two  
18 of them were delegated to other people in Switzerland,  
19 and then, I believe, sometime in -- what year is it  
20 now? 2000- --  
21 Q. It's now 2011.  
22 A. You're right. I was going to say 2010  
23 almost. 2000- -- let me see.  
24 So probably sometime in '07, late '07,  
25 beginning of '08, that that's when I would call it

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00095

1 at least another gentleman, who, maybe during the  
2 course I will remember the name, and it's one of those  
3 names that will come to me.  
4 Q. You don't recall his name as you sit here  
5 right now?  
6 A. No. I remember what he looks like, but that  
7 doesn't help.  
8 Q. What was Romy Cabrera's experience and  
9 background?  
10 A. Romy had started at EFG Capital working in  
11 the operations department originally.  
12 Q. Do you know what her educational background  
13 is?  
14 A. I don't remember where she went to college,  
15 but she had a college education.  
16 Q. Okay. All right. So she worked in the back  
17 office.  
18 A. And then moved on to working in the trading  
19 room.  
20 Q. When you say, "working in the trading room,"  
21 she was executing trades?  
22 A. Executing trades.  
23 Q. Okay. Did she have any financial and due  
24 diligence analysis background?  
25 A. I believe she acquired that.

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00094

1 that group disappeared.  
2 Q. So if I understand what you're saying, the  
3 people who were -- who were performing the GIS  
4 function in Switzerland, Bassam Salem and Jerome  
5 Schonbachler, left to do other things.  
6 A. Other people -- they left to do other things  
7 probably in '06, I believe.  
8 Q. Okay.  
9 A. If you want to look at some point, you can  
10 probably find when the EFG Dubai offices were opened,  
11 but that would coincide with Bassam and Jerome leaving  
12 that responsibility, so to speak. There were other  
13 people in Switzerland that maintained that  
14 responsibility for a while and, to my best knowledge,  
15 even the people who took over stopped performing that  
16 activity on or around the end of '07, beginning  
17 of '08.  
18 Q. Who were the people who took over for  
19 a while?  
20 A. There were two people. One of them was  
21 actually Romy Cabrera, who was at some point  
22 transferred from Miami to work in Switzerland. That  
23 must have been in, I don't know, maybe '06 or so, that  
24 she transferred. I don't know exactly. I don't  
25 remember exactly the date. And there was another --

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1 Q. How did she acquire that?  
2 A. I can't say for certain, sir. I have a  
3 recollection that she took some courses at some point  
4 and got some sort of certifications --  
5 Q. Did she --  
6 A. -- after she left EFG Capital.  
7 Q. So what's the basis of that understanding?  
8 A. My best memory, recollection, sir.  
9 Q. Okay. When she worked in -- for EFG  
10 Capital, though, she didn't do any due diligence  
11 analysis or anything, did she?  
12 A. No.  
13 Q. All right. So from -- do you know when  
14 in '06? Early? Middle? Late?  
15 A. I -- I cannot tell you. I'll be happy to  
16 find that for you if you need to, but...  
17 Q. So would you say for at least a year or so,  
18 the GIS function of analyzing hedge funds and other --  
19 I guess other investments was in some of -- somewhat  
20 of a limbo or flux?  
21 MR. COATES: Object to the form.  
22 A. No.  
23 Are you asking me if GIS disappeared as a  
24 unit? Yes. And the other part of your question --  
25 Q. Well, GIS, at least from what we're talking

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00097

1 about here --  
2 A. Yeah.  
3 Q. -- GIS, its function from EFG Capital's  
4 perspective on this topic, is that it would review  
5 funds and create an advisory list from which EFG  
6 Capital could draw funds from its own recommended  
7 list, right?  
8 A. Yes.  
9 Q. And that function had been done for some  
10 time by Bassam Salem and Jerome Schonbachler, and then  
11 they left.  
12 A. Yes.  
13 Q. After they left, was that function, that is,  
14 to create this advisory list, in somewhat of a flux --  
15 A. No.  
16 Q. -- until Alternative Investments team --  
17 A. No.  
18 Q. -- came on the scene?  
19 A. No. It was other people -- actually, Jerome  
20 left the responsibility. Bassam went to Dubai,  
21 maintained a general oversight of the other couple of  
22 people in the team. The team also managed -- the team  
23 being Romy Cabrera and this other gentleman, and I  
24 forget if there was a third person -- they managed a  
25 one or two fund of funds, hedge fund of funds for the

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00099

1 responsibilities and our staff never changed, but the  
2 responsibilities of the -- of the so-called hedge fund  
3 list in Switzerland were taken over by not exactly  
4 this team as composed here, but by EFG in London.  
5 Q. When did that happen?  
6 A. I believe sometime in '08, early '08.  
7 Q. And were there any additional written  
8 procedures generated other than what we're looking at  
9 here?  
10 A. No. Not that I'm aware of, no.  
11 Q. Did either Switzerland or London have the  
12 ability to instruct EFG Capital to take a fund off the  
13 Miami approved list?  
14 A. Not technically.  
15 Q. As a practical matter, did they have the  
16 authority to do it?  
17 A. No.  
18 Q. Did it ever happen?  
19 A. No.  
20 Q. Did -- did they -- was there ever a  
21 suggestion that any fund be taken off the Miami  
22 approved list -- I mean, Miami recommended list?  
23 A. No. No, I don't think so.  
24 Q. Who's Markus Caduff?  
25 A. Markus Caduff.

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00098

1 bank. So they continued to perform reviews of the  
2 funds. And then I believe those responsibilities that  
3 the bank had were transferred over. We maintained our  
4 procedures, and we maintained our list, and we  
5 maintained our obligations in Miami regardless of  
6 what's hap -- what was happening in Switzerland.  
7 Q. Was Miami charged by EFG Bank for the  
8 services of GIS during this entire period of time?  
9 A. No.  
10 Q. Was it charged at any period of time for  
11 GIS's services?  
12 A. No.  
13 Q. All right. So looking back again at  
14 Exhibit 55, now you have Alternative Investments team  
15 in London is taking over this function that's run by a  
16 person named Mozamil Afzal, A-f-z-a-l; is that right?  
17 A. That's correct.  
18 Q. After '07 and '08, did anyone else take over  
19 the function of creating the advisory list for EFG  
20 Bank?  
21 A. The respons- --  
22 MR. COATES: Object to the form.  
23 You may answer.  
24 A. The responsibility, I understand, and I'm  
25 speaking not for EFG Capital because our

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00100

1 Q. Caduff.  
2 A. Yeah. Markus was originally a CRO in  
3 Zurich, EFG Bank Zurich. Actually, originally EFG  
4 Private Bank, then EFG Bank. Then after the  
5 reorganization in which EFG International was created  
6 and/or EFG International became a publicly traded  
7 company, which, I believe, was October of 2005, at  
8 that time Markus Caduff became the CEO of EFG Bank in  
9 Switzerland.  
10 Q. How long did he hold that position?  
11 A. He held that position until, I believe, this  
12 past summer. So summer of 2010.  
13 Q. What was his position in February of 2003?  
14 A. He was a CRO and I -- he might have been in  
15 charge of private banking in Zurich; but for the most  
16 part, he handled clients, had a book of clients.  
17 Q. Did he ever recommend that Fairfield Sentry  
18 be removed from the recommended list?  
19 A. I never had that conversation with him.  
20 Q. Do you know whether he ever suggested that  
21 Fairfield be removed from the recommended list?  
22 A. I don't recall, offhand.  
23 Q. I mean, whether or not you had a  
24 conversation with him, do you know whether it  
25 happened?

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Pages 97-100

00101

1 A. I don't, no.  
2 Q. Did he have any supervisory functions over  
3 Bassam Salem?  
4 A. I presume that after he became CEO of the  
5 bank, and Bassam worked for the bank in October of  
6 2005, maybe not directly, but being CEO of the bank  
7 and Bassam being an employee of the bank, I'm sure he  
8 did.

9 (The referred-to document was marked for  
10 identification as Plaintiff's Exhibit 103.)

11 Q. (By Mr. Lawrence Kellogg) All right. Let  
12 me show you what I'm marking as Exhibit 103, which  
13 is a February 24, 2003, e-mail string, Bates-labeled  
14 7675, and I'll give you a moment to look at it, but  
15 at the bottom of the first page, Mr. Caduff says to  
16 Salem -- Bassam Salem and Juerg Luescher, J-u-e-r-g  
17 L-u-e-s-c-h-e-r, that he thinks Fairfield should be  
18 removed from the recommended list and that we are  
19 currently working on another letter to encourage  
20 clients to sell Fairfield. Do you see that?

21 A. I see that entry.

22 Q. Does this refresh your memory at all that  
23 Mr. Caduff thought that it should -- Fairfield should  
24 be removed from the recommended list?

25 A. I don't recall this exchange until you

Page 101

00103

1 is custodian.

2 Q. So the fact that Madoff was the investment  
3 manager or -- essentially the investment manager and  
4 also had custody of the funds was the issue he was  
5 raising here?

6 A. Yes.

7 Q. And Mr. Bassam responds to him and says,  
8 we're aware of this, and has accepted this risk given  
9 the good relationship with Fairfield and their  
10 willingness to open the books as and when needed. And  
11 it says, This relationship has been managed out of our  
12 Miami office. Was that true?

13 A. Could I read it?

14 Q. Sure.

15 A. Give me a second.

16 So the specific question is, is what true,  
17 sir?

18 Q. That the relationship with Fairfield was  
19 managed out of the Miami office.

20 A. Well, I think out of the different EFG  
21 offices, we had the lead relationship with Fairfield  
22 Greenwich.

23 Q. When you say "we," meaning --

24 A. EFG Capital. I'm sorry.

25 Q. Okay. And so you wouldn't disagree with

Page 103

00102

1 showed me this, but --

2 Q. Okay.

3 A. -- I'm obviously reading it.

4 Q. All right. I mean, does this trigger any  
5 memory in your mind?

6 A. No.

7 Q. Well, let's -- let's go through this,  
8 starting with the first e-mail, you know, the bottom  
9 e-mail on the second page.

10 A. Of this sequence?

11 Q. Yes. The first one is from Mr. Luescher.  
12 Who is he?

13 A. I don't recall. I don't know.

14 Q. And it's to Bassam Saless -- Salem --

15 A. Salem.

16 Q. -- and he's discussing here the fact that  
17 the Fairfield Sentry does not separate its management  
18 from its depository. Do you know -- do you understand  
19 what that means?

20 A. In Swiss-speaking English --

21 Q. Yeah.

22 A. -- I suppose that what he's referring to is  
23 that -- what we all know about Fairfield Sentry and  
24 Madoff, that Madoff was the manager and the  
25 subcustodian of the fund. Depository in their speak

Page 102

00104

1 that statement?

2 A. I thought I'm speaking for the company.

3 Q. All right.

4 A. Yes.

5 Q. You wouldn't disagree with Mr. Salem's  
6 statement, would you?

7 A. No.

8 Q. You would agree with it.

9 A. I would -- well, I would agree to it, you  
10 know, manage, but that doesn't mean that nobody else  
11 had any contact with Fairfield.

12 Q. Was there any formal assignment in the EFG  
13 International or EFG Group world, assignment of this  
14 relationship to EFG Capital?

15 A. No.

16 MR. COATES: Object to the form.  
17 You may answer.

18 A. Was there any formal assignment --

19 Q. Somebody in upper management say, you know,  
20 EFG Capital, you manage this one.

21 A. No.

22 Q. It just evolved that way because it was born  
23 in Miami?

24 A. Yes.

25 Q. All right. Now, moving on here, it says --

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Pages 101-104

00105

1 A. Are you on the first page?  
2 Q. I'm now moving to the second page.  
3 I'm sorry. I'm sorry, the first --  
4 A. You reading off --  
5 Q. First --  
6 MR. COATES: Excuse me. Let's clear this  
7 up. What Bates number are you on?  
8 MR. LAWRENCE KELLOGG: 677 -- 7675.  
9 MR. COATES: The first page of the document.  
10 MR. LAWRENCE KELLOGG: Yes, exactly.  
11 THE WITNESS: Okay. Bassam.  
12 Q. (By Mr. Lawrence Kellogg) Okay.  
13 A. Do you want me to read this?  
14 Q. No, no. I'm -- he's suggesting that it be  
15 removed from the recommended list and Mr. Salem says,  
16 Markus, as you know, Fairfield relationship is managed  
17 out of Miami, and any changes in rating creates lots  
18 of psychological issues. Victor, Sixto, how about  
19 moving it from recommended list to approved list?  
20 Do you see that?  
21 A. Yes.  
22 Q. And you say -- respond to him in part by  
23 saying, The fund still meets all the quantitative and  
24 qualitative requirements that we have set in the past,  
25 and we would not wish to recommend any removal at this

Page 105

00107

1 positions in Fairfield that we would like to diversify  
2 away.  
3 And we then make a comment also about the  
4 strategy might not be -- given the market conditions,  
5 which is the kind of thing that I was alluding to  
6 before, it might not be the most advantageous at this  
7 point in time.  
8 And I do say, to answer your question, which  
9 I think is on the second part of my e-mail, yes, I did  
10 say, The fund still meets all the quantitative and  
11 qualitative requirements that we have set in the past  
12 and we do not wish to recommend any removal at this  
13 point.  
14 Q. What was -- what were the psychological  
15 issues involved here?  
16 A. Again, I must say that when Swiss French and  
17 Swiss German write and speak in English, sometimes  
18 they pick words which are -- sometimes sound a little  
19 funny to us. I do not know exactly what the  
20 psychological issues he is referring to in this  
21 letter, but he might be making a point that Fairfield  
22 Sentry and Fairfield Greenwich was an important  
23 relationship for EFG Capital given our marketplace.  
24 Q. And was it an important relationship?  
25 A. It was an important relationship.

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00106

1 point.  
2 Was that your position?  
3 MR. COATES: Hold on a second. I'm going to  
4 object to the form of the question. Let the  
5 witness read his answer -- read his te -- read  
6 his letter or e-mail from February, and I object  
7 to you picking parts -- picking parts of the  
8 response.  
9 MR. LAWRENCE KELLOGG: You can answer.  
10 MR. COATES: Take your time and read it,  
11 Mr. Campano, and you have the right to read a  
12 document before Mr. Kellogg asks you questions  
13 from it.  
14 A. Okay. I've read it. And my answer to  
15 Bassam's question and, actually, I believe I'm copying  
16 Mr. Caduff as well, in which I am clarifying the issue  
17 that he raises of we're work -- that Mr. Caduff says,  
18 We're currently working on another letter to encourage  
19 clients to sell Fairfield and have a feeling from the  
20 board, I'm clarifying to Mr. Caduff the reason why  
21 we're sending the letter to the client, which is not  
22 to encourage clients to sell.  
23 And I say that by saying the first part of  
24 the answer, which says, The reason we're sending a  
25 letter is because we have many clients with large

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00108

1 Q. After this -- so -- so it was you, I guess,  
2 who -- or EFG Capital that made the decision not to  
3 take Fairfield Sentry off the recommended list and  
4 transfer to the approved list. You made that  
5 decision.  
6 A. In Miami.  
7 Q. Yes.  
8 A. I have no ability to influence or to direct  
9 what GIS would do in Switzerland.  
10 Q. Now --  
11 A. But it was us here in Miami who made the  
12 decision --  
13 Q. Okay.  
14 A. -- to not take it off of the recommended  
15 list.  
16 Q. If GIS had made a decision in February of  
17 2003 to take it off the recommended list, their  
18 recommended list, would that have changed your -- your  
19 view as to whether it should be on the recommended  
20 list in Miami?  
21 A. Changed my view, not necessarily.  
22 Q. Was it -- was Fairfield Sentry on the GIS  
23 recommended list in 2003?  
24 A. Yes.  
25 Q. Was it ever taken off the list?

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Pages 105-108

00109

1 A. I almost volunteered that answer before you  
2 gave me that.  
3 Q. Well, you knew where I was going.  
4 A. Yeah.  
5 To my best recollection, I don't think that  
6 it was ever taken off. So if you ask me for a yes or  
7 a no, I would have to say no.  
8 Q. And was it ever put on the Alternative  
9 Investment group's list in London?  
10 A. I believe so.  
11 Q. And was it ever taken off that list before  
12 the fraud was revealed --  
13 A. Not until December 12, 2008.  
14 MR. LAWRENCE KELLOGG: Let's go off the  
15 record.  
16 THE VIDEOGRAPHER: Going off the record; the  
17 time is 12:40.  
18 (Thereupon, a recess was taken from  
19 p.m. until 1:30 p.m., after which the  
20 following proceedings were held:)  
21 THE VIDEOGRAPHER: Good afternoon. We are  
22 now back on the record; the time is 1:30.  
23 Q. (By Mr. Lawrence Kellogg) Mr. Campano,  
24 was it -- was it the policy during the period of,  
25 say, 2000 until 2008 for EFG Capital to -- whenever

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00111

1 than guidance that when we show a recommenda- -- when  
2 we make -- when we show an investment opportunity to a  
3 client or a prospect, there's other things that need  
4 to happen, but, you know, many times it is a  
5 recommendation.  
6 Q. And whenever an investment opportunity is  
7 shown to a client and then purchased by the client, it  
8 was the policy, was it not, the trade ticket would be  
9 marked solicited?  
10 A. When?  
11 Q. During 2002 through 2000.  
12 A. I'm sorry. I was trying to think of the  
13 term. Would you mind reading me the first part or  
14 telling me the first part of the question again?  
15 MR. LAWRENCE KELLOGG: Read it back, please.  
16 (Thereupon, the requested portion of the  
17 record was read back by the reporter.)  
18 A. Not exactly.  
19 Q. Did you tell CROs that's the policy, sir?  
20 A. Not exactly as you described it, I don't  
21 think.  
22 (The referred-to document was marked for  
23 identification as Plaintiff's Exhibit 104.)  
24 Q. (By Mr. Lawrence Kellogg) Let me show you  
25 Exhibit 104, which is an e-mail from Dart Montgomery

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00110

1 a CRO shows an investment opportunity like Fairfield  
2 Sentry to any customer, that CRO is making a  
3 recommendation to the customer?  
4 MR. COATES: I want to object to the form.  
5 Maybe I didn't hear the question.  
6 Q. All right. Was it -- was it EFG Capital's  
7 policy with respect to CROs, that if they showed any  
8 potential investment opportunity to someone, that  
9 would be a recommendation?  
10 A. Recommendation is a difficult thing to  
11 pinpoint exactly. And some people define it as a term  
12 of art. Others have other terms for it or  
13 explanations for it. If you're talking about a policy  
14 saying that whenever you show them -- I think you said  
15 any investment to the client -- were your words that?  
16 Any time you show --  
17 Q. An investment opportunity.  
18 A. Any time you show an investment opportunity.  
19 I don't think it's our policy, necessarily that. I  
20 think that I, myself, at times have given some  
21 guidance to the CROs as to when things are  
22 recommendations or not. But in terms of a policy and  
23 saying this is exactly what you have to do, you know,  
24 there's always leeway in it.  
25 So I'm hesitant to say the policy of, rather

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00112

1 to you, with the Bates No. 6872, which has a draft  
2 of an e-mail to be sent to all CROs, which says in  
3 part, Whenever you show a client an investment  
4 opportunity such as Fairfield Sentry or a range of  
5 investment choices such as, for example, a portfolio  
6 proposal or a list of investment ideas in an area a  
7 customer has expressed interest, such as U.S.  
8 equities or Mexican corporate bonds, you are making  
9 a recommendation to the client; and if the client  
10 decides to buy one or more of the investment choices  
11 shown to him, the trade ticket should be marked  
12 solicited.  
13 Do you see that?  
14 A. I see that.  
15 Q. Was that the policy on November 19, 2002,  
16 with the company?  
17 A. Again, I don't know if this was exactly sent  
18 out like this, and I don't know if this was exactly to  
19 be labeled the policy. I think it is the -- it  
20 expresses guidance because, I think, at the time of  
21 2002, there was -- because of the fact that  
22 recommendation or solicited or unsolicited -- one  
23 thing is a recommendation and the other thing is  
24 solicitation. Okay?  
25 And I think that there's always confusion

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Pages 109-112

00113

1 from people as to when to use one or the other. I  
2 thought at the time that CROs needed to be a little  
3 clearer that in times when you show an investment  
4 opportunity to a client, what is missing from here is  
5 the situation when a client guides a little bit what  
6 they want and tell you what they want rather than a  
7 situation where they say simply what do I do, I don't  
8 know what to do.  
9 In a situation where the client says, you  
10 know, blank, nothing, I mean, just -- and you -- and  
11 you show them investment opportunities and you, you  
12 know, show them investments and make a recommendation,  
13 then that is a solicited trade.  
14 Q. So, in your view, there's a difference  
15 between solicited -- well, no, let me step back.  
16 Dart Montgomery was the compliance person at  
17 EFG Capital in November of 2002; is that right?  
18 A. Yes.  
19 Q. And you were the president at that time?  
20 A. Yes.  
21 Q. And Mr. Montgomery, the compli- -- the  
22 compliance person is the person in charge at the  
23 company of making sure that the company complies with  
24 all the rules and regulations regarding a registered  
25 broker-dealer, true?

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00115

1 choices shown to him, the trade ticket should be  
2 marked solicited? Agree with him or disagree with  
3 him?  
4 A. I'm reading the second paragraph, because  
5 I'm making a clar- -- a distinction there, if you  
6 don't mind.  
7 Q. Please answer my question first and then you  
8 can say whatever it is you want.  
9 MR. COATES: Let him answer --  
10 Q. (By Mr. Lawrence Kellogg) Do you agree  
11 with him, or no?  
12 MR. COATES: Excuse me. Let him read what  
13 you're asking him to review.  
14 Q. (By Mr. Lawrence Kellogg) You can read  
15 whatever you want, but answer my question, please.  
16 A. Unless a client asks you for a particular  
17 security, particular investment, if you show the  
18 client something that the client has not asked for,  
19 then the trade should be marked solicited.  
20 Q. All right. If -- so in your -- it's not  
21 what this says, would you agree with me? It's not  
22 what this says, it's what you're saying.  
23 MR. COATES: I disagree.  
24 MR. LAWRENCE KELLOGG: I don't care what you  
25 think. I'm asking him the question.

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00114

1 A. Not only him, but I mean there's sales  
2 practices and there's sales principles and there's --  
3 Q. Everybody should try to comply with the law,  
4 but he's the person at the company whose job it is to  
5 guide the company in how to comply with the law,  
6 correct?  
7 MR. COATES: Object to the form.  
8 You may answer.  
9 A. To guide the company as to how to -- what  
10 was the word -- last word?  
11 Q. What do you think a compliance person is  
12 supposed to do at a registered broker-dealer, sir?  
13 A. The compliance person is supposed to make  
14 sure that the broker-dealer reports -- actually, the  
15 chief compliance officer reports to the CEO of the  
16 company, okay, on whether the company is complying  
17 with all of the FINRA and SEC rules and regulations,  
18 among other things.  
19 Q. Okay.  
20 A. Okay. So -- go ahead. I'm sorry.  
21 Q. And do you agree with what Mr. Montgomery is  
22 telling you here, that whenever a CRO shows a client  
23 an investment opportunity such as Fairfield Sentry,  
24 that person is making a recommendation to the client  
25 and if the client decides to buy one or more of the

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00116

1 MR. COATES: Excuse me. I object to the --  
2 I object to the form of the question.  
3 MR. LAWRENCE KELLOGG: Thank you.  
4 Q. (By Mr. Lawrence Kellogg) You can answer.  
5 A. Was there another question?  
6 Q. That's not what this says, is it? It  
7 doesn't say if a client comes to you with an  
8 opportun- -- with an investment and you show the  
9 client information about it, it's not solicited; it  
10 doesn't say that. It says whenever you show a client  
11 an investment opportunity, you're making a  
12 recommendation. That's what it says, doesn't it?  
13 MR. COATES: I object to the form of the  
14 question.  
15 A. If you want to ask me if, in my opinion,  
16 this paragraph says something different to what I  
17 said, the paragraph could be clearer in saying where  
18 the -- where it all began.  
19 Q. Okay. So you disagree with this paragraph  
20 is not complete.  
21 MR. COATES: Object to the form.  
22 Q. Is that what you're saying?  
23 A. I don't disagree that it's not complete, it  
24 says what it says.  
25 Q. Well, it's -- in terms of guiding the

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Pages 113-116

00117

1 CROs -- well, let me ask you this. If -- would you  
2 agree that a recommended investment should be marked  
3 solicited on the trade ticket?  
4 A. If I make a recommendation?  
5 Q. Should you mark it solicited, yes.  
6 A. Not always.  
7 Do you want me to tell you why?  
8 Q. Sure.  
9 A. A client comes and says, there's these four  
10 investments that I'm interested. Okay. This one,  
11 this one, this one and this one. Which ones do you  
12 think I should invest in, according to a number of  
13 things. And you say, well, I think this one. Then  
14 I'm making a recommendation, but it's in the spirit of  
15 not something that I solicited.  
16 Q. Could be recommended, but not solicited.  
17 A. Yes.  
18 Q. Are there any situations where a solicited  
19 investment is not a recommended one?  
20 A. Probably not.  
21 Q. Okay. Let me -- let me show you --  
22 MR. LAWRENCE KELLOGG: Was this our exhibit?  
23 I thought it was theirs.  
24 MR. JASON KELLOGG: 11/23, it's ours.  
25 Q. (By Mr. Lawrence Kellogg) Okay. Let me

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00119

1 discretionary. Do you see that?  
2 A. Mm-hmm.  
3 Q. This one appears to be marked solicited; is  
4 that right?  
5 A. This one appears to be marked solicited.  
6 Q. So Ms. Ferreira's investment was solicited,  
7 wasn't it?  
8 A. It is marked here as solicited.  
9 Q. Okay. Do you have any reason to believe it  
10 wasn't solicited?  
11 A. First of all, I wasn't there.  
12 Q. Okay.  
13 A. There's some initials here -- well, it says,  
14 approved by. So I don't -- I don't know exactly who  
15 wrote this trade ticket, because there's some initials  
16 here from another CRO.  
17 Q. So Ms. Ferreira's investment was  
18 recommended, wasn't it, by EFG Capital?  
19 A. Ms. Ferreira was shown several investment  
20 alternatives, and all of the investment alternatives  
21 that were presented to her were recommendations to  
22 her.  
23 Q. Okay.  
24 A. She selected from the recommendations what  
25 she wanted to invest in.

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00118

1 show you what's been marked as Plaintiff's  
2 Exhibit 41. Would you tell us what this is, please?  
3 A. This is an internal trade ticket to buy  
4 Fairfield Sentry for the trade of the plaintiff,  
5 Lorrene Ferreira, on June 24, 2005.  
6 Q. Who prepares -- who prepared this? Is this  
7 prepared by EFG Capital?  
8 A. Yes, this is prepared by the CRO.  
9 Q. All right. So --  
10 A. Or -- or his assistant. Or, actually, if  
11 the CRO is traveling and phoned the order in because  
12 the CRO is traveling, it could be prepared by an  
13 assoc-- -- somebody else, another CRO.  
14 Q. So somebody fills this form out, and then  
15 what happens to it?  
16 A. Then this -- at the time, because we've  
17 evolved from paper tickets to electronic tickets, but  
18 at this time, this would have been sent to the trading  
19 room.  
20 Q. And then the trade would have been executed?  
21 A. The trade would have been executed or input  
22 for -- for input into the system for execution if it's  
23 to be executed at a later date.  
24 Q. It says up in the right-hand corner, there's  
25 a box that says, solicited, unsolicited,

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00120

1 Q. And one of the recommendations was Fairfield  
2 Sentry.  
3 A. Correct.  
4 Q. Let me show you, while we're on the topic of  
5 trade tickets -- I'll mark this Exhibit 105.  
6 (The referred-to document was marked for  
7 identification as Plaintiff's Exhibit 105.)  
8 Q. (By Mr. Lawrence Kellogg) This is a form  
9 called Alternative Investment Trade Ticket.  
10 A. Yeah.  
11 Q. And it's dated September 26, 2008, signed  
12 October 6, 2008, Bates No. 82620. Is this the -- a  
13 printout of the electronic form? What is this?  
14 MR. JASON KELLOGG: It will be the same drill  
15 as last time.  
16 MR. LAWRENCE KELLOGG: I didn't even notice  
17 that.  
18 THE WITNESS: What are we -- I'm sorry.  
19 What are we doing?  
20 MR. JACOBSON: It's redacted. So in the  
21 record without the name --  
22 THE WITNESS: Because it has the name of --  
23 MR. COATES: For the record, the name of the  
24 customer needs to be redacted.  
25 MR. LAWRENCE KELLOGG: All right.

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00121

1 THE WITNESS: I'm sorry, sir. Would you --  
2 you asked me if this --  
3 Q. (By Mr. Lawrence Kellogg) Yeah. Could  
4 you tell us what is -- what is this?  
5 A. This is the ticket that has to be filled out  
6 by the CRO whenever they're buying an alternative  
7 investment for a client.  
8 Q. So if -- and when did this form come into  
9 existence, if you know?  
10 A. I believe on the lower left-hand corner it  
11 says, revised May of 2007. So probably before that  
12 and this was a revision.  
13 Q. So the trade ticket we just looked at for  
14 Ms. Ferreira --  
15 A. Yeah.  
16 Q. -- is that a different --  
17 A. This is not -- this is not a trade ticket.  
18 Q. Okay. What is it?  
19 A. This would have been -- this ticket that you  
20 referred to as your --  
21 Q. Exhibit 41?  
22 A. Is this the right exhibit, 41? We used  
23 this?  
24 Q. Yes.  
25 A. -- as your Exhibit 41, was the tickets that

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1 Q. -- has near the bottom the term "solicited."  
2 A. Okay.  
3 Q. Do you see that?  
4 That would mean that this particular order  
5 was a solicited order.  
6 A. That's correct, sir.  
7 Q. And then an Alternative Investment Trade  
8 Ticket would be filled out by the CRO that asked for  
9 certain information; is that right?  
10 A. You're looking back at this page -- first  
11 page of this 105?  
12 Q. Yes, sir.  
13 A. Yes. Here, this is another internal form in  
14 which the CRO, in particular for structured products,  
15 okay, is making a statement that the client has signed  
16 the client acknowledgment form which is the third --  
17 do you see?  
18 Q. Yes.  
19 A. -- fourth and fifth page of this Exhibit  
20 105.  
21 Now, in all honesty, the check should have  
22 been in the first box under --  
23 Q. Hedge fund investments?  
24 A. -- hedge fund investments and not -- I mean,  
25 it's still attesting that the client signed the

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1 were used prior to us going into an electronic form of  
2 order entry.  
3 What you see in your Exhibit 105, page 2,  
4 Bates 82621, which says, SEC Open Order -- are you  
5 with me?  
6 Q. Yes.  
7 A. Okay. That is the electronic version of  
8 this trade ticket, which was Exhibit 41.  
9 Q. All right.  
10 A. Okay. So even though you had this  
11 electronic order, which was that the order was put  
12 into the system and delivered into the trading room in  
13 electronic format rather than a paper format. It's  
14 just the order our procedures called for whenever an  
15 alternative investment was made, our procedures  
16 called -- not always, but later, later meaning  
17 sometime obviously before 2000 -- May -- May of  
18 2007 -- for the CRO to fill out an alternative  
19 investment ticket, in which obviously the CRO is  
20 making some statements in that ticket.  
21 Q. Okay. So the order, which is the second  
22 page, 82621 --  
23 A. Yes.  
24 Q. -- the electronic order, SEC Open Order --  
25 A. Yes.

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1 consent form, but the check should have been in the  
2 first box that says, The authorized signatory has  
3 executed the Hedge Fund Consent Form, which is what is  
4 on page 4 and 5.  
5 Q. Also, there's a section here that says,  
6 Unsolicited Order. It says, The CRO has received a  
7 waiver letter signed by the authorized signatory on  
8 behalf of this account for this investment and it has  
9 been submitted to compliance.  
10 Do you see that?  
11 A. Yes.  
12 Q. What does -- what does that mean?  
13 A. That is the waiver letter that we were  
14 talking earlier on in the deposition when you asked me  
15 if a client directed us to buy a hedge fund for them.  
16 Here, the CRO, in that circumstance of receiving that  
17 kind of an order, would mark this as an unsolicited  
18 trade in which the CRO has received the waiver letter  
19 and would, at that time, have to attest to the fact  
20 that -- I mean, attest, I'm sorry, not the fact --  
21 attest a copy of the waiver letter. Attach.  
22 Q. And so at least as of October of 2008 --  
23 what was the use of this form, the first page, 82620?  
24 Was that something for compliance to review?  
25 A. Yes.

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