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1 Q. All right. So the compliance department
2 would want to know if this is an unsolicited order, do
3 you have the waiver letter that we put together, is
4 that right?

5 MR. COATES: Object to the form.

6 You may answer.

7 A. This doesn't necessarily mean that if a
8 client came to us and in a circumstance where
9 Fairfield Sentry was on our recommended list, okay, if
10 a client came to us and said, I want to buy Fairfield
11 Sentry, okay, and it's in our recommended list, we
12 would not necessarily mark that as an unsolicited
13 trade, just -- and the rest that it says there for
14 purposes of this ticket.

15 Q. You wouldn't get the waiver letter in that
16 circumstance.

17 A. We wouldn't get -- we would get the Hedge
18 Fund Consent Form, okay, but that doesn't necessarily
19 mean that when you go to this ticket here, sir, which
20 is the electronic ticket, which is the new version of
21 this ticket, that that ticket would have been marked
22 unsolicited -- I mean, solicited in that circumstance.

23 Q. The waiver letter, the policy requiring a
24 waiver letter for trades that were not on the
25 recommended or approved list, when did that policy

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1 says, I want you to buy me this, you know -- I'm going
2 to use an example -- a hedge fund that trades small
3 cap Brazilian equities and no one's heard about it or
4 no one -- I mean, just -- I thought that it was
5 appropriate for the client to acknowledge, for us and
6 for any potential audit from anybody, that that was
7 not a fund that we should either have a file for, that
8 we were ever going to have a file for possibly, or
9 that we ever recommended or solicited.

10 (The referred-to document was marked for
11 identification as Plaintiff's Exhibit 106.)

12 Q. (By Mr. Lawrence Kellogg) Let me mark as
13 Exhibit 106 a copy of your affidavit.

14 A. This is my whole affidavit, sir?

15 Q. Yes.

16 I'm going to turn to paragraph 32.

17 A. Page 8?

18 Q. Yes. Paragraph 32 talks about the fact that
19 Fairfield investors subscribed for Fairfield Sentry
20 shares through EFG Capital on 642 different occasions.
21 And of those occasions, you found trade confirmations
22 evidencing that 186 of those occasions were solicited
23 and 296 were unsolicited; is that right?

24 A. (No verbal response.)

25 Q. Of the 642 subscriptions, did those include

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1 begin?

2 A. Probably when I got to EFG.

3 Q. Okay. Do you know if there was such a
4 policy prior to that, that a waiver letter would be
5 required?

6 A. I don't think that a policy was in place,
7 and I honestly don't know if there were too many
8 circumstances before my arrival where that happened.

9 Q. All right. So are you the person who
10 instituted this policy?

11 A. Yes.

12 Q. Why did you do it? Why was it important to
13 have this policy in place?

14 MR. COATES: I'm going to object. And we
15 did testify about it this morning, but you can --

16 A. Do you want to go over it again?

17 Q. Well, I don't know if I got the purpose. I
18 don't want to go over the details, but why was it
19 important? What were you -- why was it important?
20 Why did you institute it?

21 A. Because if we have a client coming in,
22 particularly with a hedge fund investment, knowing
23 that hedge funds normally carry different risks to
24 other types of securities and maybe added risks to
25 other types of securities, and a client comes and

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1 all subscriptions or only initial subscriptions?

2 A. All subscriptions.

3 Q. If a -- was it the policy of EFG Capital
4 that if an initial subscription was solicited and then
5 added to in the future, would that trade be marked
6 solicited or unsolicited?

7 A. Depends on the circumstances.

8 Q. What would -- what would it depend on?

9 A. If the client called and said, hey, I'm
10 sending you \$100,000 next week, what I want you to buy
11 for me is more of Fairfield Sentry, that would likely
12 be an unsolicited mark. If the client sent in
13 \$100,000 and didn't say anything and then we say, why
14 don't we buy more Fairfield Sentry, we'd probably mark
15 it as solicited.

16 Q. Was there -- was there a policy, or is that
17 what you're summarizing happened?

18 MR. COATES: Object to the form.

19 You may answer.

20 Q. (By Mr. Lawrence Kellogg) Was there --
21 was there a policy that, look, if --

22 A. There was no written policy about that.

23 That is just what would make sense.

24 Q. Okay. That's just what you're surmising?

25 MR. COATES: Object to the form.

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1 A. I don't know -- I don't know if surmising.
2 That is what I think would be the right thing to do.
3 Q. So your position is that if the initial
4 trade was solicited and recommend, if that position
5 was added to later on because the client liked the
6 investment, not because the broker said, I suggest you
7 increase it, that the adding on would be an
8 unsolicited trade and an unrecommended trade; is that
9 right?
10 A. It would be an unsolicited trade of a
11 recommended fund.
12 Q. You mentioned before that you had up to 12
13 people working on some of these projects relating to
14 this. Did you have anybody in particular analyzing
15 the information that's contained in Exhibit-- in
16 paragraph 32, which is, you know, we looked at all the
17 confirmations we could find and this is what we found?
18 A. In order to answer that question --
19 Q. Yeah.
20 A. -- not only did we look at all of our
21 electronic records available, but we also pulled
22 probably 300 boxes from storage, brought them to our
23 premises, and had probably three people pour through
24 every single one of the boxes.
25 Q. Did you pull out the confirmations that you

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1 And possibly from looking at some client
2 files, if you have copies of a ticket in the file and
3 then you see that there's two or three tickets of the
4 same security, you could also do that.
5 Q. If you looked at -- does the company keep
6 statements sent to clients? Are there monthly
7 statements generated on this --
8 A. Yes. Yes.
9 Q. Well --
10 A. Clients -- yeah. No less than quarterly.
11 Q. Okay. Say there's quarterly statements,
12 there's periodic statements --
13 A. There's periodic statements.
14 Q. Do those statements reflect all trades that
15 were made during the period of time?
16 A. Yes.
17 Q. And do they reflect whether they're
18 solicited or unsolicited, those trades?
19 A. The confirmations would. The records in the
20 system -- I'm trying to think, because we have more
21 than one system in the period. We've had two
22 different systems in the period. And the system that
23 we currently have, which started -- I think it's
24 in '05, early '05, which is the system that if you go
25 back to this, would generate this type -- this shows

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1 could find?
2 A. Pulling them out and separating them?
3 Q. Yeah. Did you make copies of them, or
4 compile them on a schedule, or anything like that?
5 A. I think they were compiled on a schedule.
6 Q. All right.
7 A. I think.
8 Q. So is it possible to find out, from looking
9 at your records, of the 642 subscriptions, how many of
10 those were initial subscriptions and how many of those
11 were additions to a position?
12 A. Not from looking at a trade ticket by
13 itself. And not -- this is one of those requests
14 potentially in discovery that I don't think any system
15 is geared to simply you hit a button and it tells you,
16 you already have this, you're adding to that.
17 I think with time and being able to look at
18 the dates from a trade blotter of when a trade was
19 done and one way, for example, of looking at a trade
20 blotter, and then being able to look at the valuation
21 of the client prior to, you could possibly do that.
22 Now, that would only show you if the client
23 is adding to an existing position. It would not show
24 you, for example, if I had something, I sold it, and
25 then six months later I buy it again. Okay?

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1 solicited and unsolicited. But the earlier system, if
2 you go and look at the client activity and pull it
3 out, I don't think would show you that. You would
4 have to look at the confirmation or the trade ticket.
5 That is why we went to the extent of pulling the 300
6 boxes from storage, to try and ascertain that, because
7 it was part of your discovery request.
8 Q. So I guess what I'm hearing from you is that
9 subsequent to some period of time in 2005, when you
10 went to the new system, you can tell whether -- from a
11 customer -- customer database, you can tell whether a
12 trade was solicited or unsolicited.
13 A. I believe so. I don't know exactly -- I
14 have not read Juan Massens' transcript of the
15 deposition. He would know the system a lot more than
16 I do, but I believe that that is a correct -- the
17 answer to your question is yes.
18 And if you want to make a note of it, the
19 system is called Globus. So after we implemented the
20 Globus, G-l-o-b-u-s, the Globus system, you would be
21 able to find that out.
22 Q. When the Globus -- maybe you're not the
23 person to ask, but I'll try. When the Globus system
24 was created, was the -- what was the prior system
25 called?

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1 A. BIS, B as in boy, I-S, Brokers -- I think it
2 stood for Brokers Information System or something like
3 that.

4 Q. Was the data from the BIS system imported
5 into Globus?

6 A. Many -- most of it. I cannot tell you with
7 certainty that all of it was. Two completely
8 different databases in their format.

9 Q. Your last sentence in paragraph 32 here says
10 that you looked at confirmations. Are the
11 confirmations you looked at those predating the Globus
12 system?

13 Better question: Were those trades
14 predating the Globus system, that's why you looked at
15 the confirmations?

16 A. The confirmations that we looked at predated
17 the Globus system. I'm only -- there was 642 trades,
18 and my affidavit says that of those trade
19 confirmations -- wait. Let me -- let me read the
20 prior sentence.

21 Q. Yeah, go ahead.

22 A. Due to the passage of time, need to review
23 every single transaction...

24 What I'm trying to ascertain from my
25 statement is, if the sum of 186 plus 296 trades

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1 A. It was not which entity was in charge. EFG
2 Capital had an obligation to do due diligence, and
3 therefore, we did the initial due diligence for the
4 clients of EF- -- well, for the clients of EFG Capital
5 to be able to invest in Fairfield Sentry.

6 Q. I know you weren't there, but what is your
7 understanding, as the corporate representative, of
8 what due diligence was initially done and when it was
9 done?

10 A. The -- obviously, the offering mem- -- well,
11 not obviously. The offering memorandum was reviewed.
12 The -- there were several visits from EFG Capital
13 staff to Fairfield Greenwich by different people.
14 There was review of the contracts between Fairfield
15 Sentry, the fund, and its administrator, its -- I
16 believe its accountant, Pricewaterhouse, and a review
17 of the custodian agreement.

18 We -- people from EFG Capital spoke to
19 different people in the street to get references about
20 Fairfield Sentry or Fairfield Greenwich and -- and I
21 believe that at some point somebody also visited the
22 offices of Madoff.

23 Q. What are your -- on what do you base your
24 knowledge of the initial due diligence? What can I
25 look at that's going -- if anything, to show you --

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1 includes our review of the trade conference of all the
2 trades that are in Globus and not those that are prior
3 to Globus.

4 Q. And that's what I'm asking you. I mean, in
5 Globus you can -- if I understand your testimony, in
6 Globus you could look at it and tell whether a trade
7 was solicited or unsolicited.

8 A. I'm -- I said I'm pretty certain that you
9 can, yes.

10 Q. Okay. So -- and the reason you had to pull
11 the 300 boxes is because you couldn't do it B --

12 A. Yeah, pre-Globus.

13 Q. And this sentence says, of the confirmations
14 you reviewed, you know, 186 were solicited and 296
15 were unsolicited. My question to you: Does that
16 include Globus or not?

17 A. I don't know the answer to that. I'll be
18 happy to clarify that in our next --

19 Q. Okay. Maybe we can redress that next week.

20 A. Can we -- I mean, I'll be happy to answer
21 that exactly. My secretary here will make a note.

22 Q. Okay. Let's talk about due diligence of
23 Fairfield Sentry. Which entity in the EFG world was
24 in charge of the initial due diligence of Fairfield
25 Sentry?

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1 for me to see what you just said is true?

2 A. There is -- well, there's the transcript of
3 Mr. Echevarria's --

4 Q. Okay.

5 A. -- deposition in which I think you all spent
6 some time --

7 Q. Sure.

8 A. -- looking at that.

9 Q. Were there any due diligence reports that
10 you looked at --

11 A. There was --

12 Q. -- from that period?

13 A. There was a memorandum written by Dart
14 Montgomery --

15 MR. LAWRENCE KELLOGG: Where is that?

16 That's not in -- is there a bigger one?

17 Q. (By Mr. Lawrence Kellogg) Yeah.

18 A. -- which I think was dated sometime around
19 the year 2000.

20 Q. Okay.

21 A. I think we have produced everything or
22 anything we might have had from Mark McCluskey, also.
23 I think Mike Donnell in his 2005 due diligence
24 memorandum, I think also summarized some of the due
25 diligence activities that occurred originally in the

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1 fund.

2 MR. LAWRENCE KELLOGG: This is Donnell.

3 Okay. This is the only one?

4 MR. COATES: And while we're on this topic,
5 just for the record, we had followed up on the
6 Dart Montgomery memorandum and had spoken to
7 Mr. Montgomery as part of our efforts to
8 understand whether the attorney-client privilege
9 attaches to that document.

10 After consultation with him, we -- we have
11 concluded that the remainder of that memorandum
12 is -- is not attorney-client. He was not acting
13 in his capacity as a lawyer.

14 So you have the document unredacted, Jason.
15 So, Mr. Campano can testify to it, if you have it
16 in a redacted format.

17 Q. (By Mr. Lawrence Kellogg) Okay. Well,
18 let me mark it anew as Exhibit 108. This is EFG
19 Capital 905. It's a memorandum from Dart Montgomery
20 to Lawrence Howell, Marcelo Alvarez, Victor
21 Echevarria, and Mark McCluskey.

22 (The referred-to document was marked for
23 identification as Plaintiff's Exhibit 108.)

24 Q. (By Mr. Lawrence Kellogg) Is this the
25 memorandum you were just referring to?

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1 and Fairfield Sentry?

2 A. I'm -- is there a memo from Marcello

3 Alvarez?

4 Q. I haven't seen it.

5 A. Well --

6 Q. That doesn't mean there isn't one. I just
7 don't know.

8 A. I don't -- I don't recall clearly. I don't
9 know if there might be -- might have been something
10 from Marcelo Alvarez.

11 Q. When you joined as president in 2002, at
12 that time did you personally conduct any due diligence
13 of the Fairfield Sentry fund?

14 A. I asked some questions. I remember
15 receiving the people from Fairfield in our offices
16 more than once. I had numerous conversations on the
17 phone with people from Fairfield Greenwich. I
18 remember reviewing the offering memo, reviewing the
19 strategy, understanding the strategy, split spri- --
20 split-strike conversion strategy.

21 I remember talking to people in what we call
22 the street about Fairfield Sentry. Obviously had
23 conversations with Victor and Dart and Marcello. Mark
24 McCluskey, unfortunately, was not there anymore. I
25 personally knew Lourdes Barreneche.

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1 A. Yes, sir.

2 Q. And other than this memorandum from Dart
3 Montgomery to Mr. Howell, have you seen any other
4 written summaries of due diligence predating your
5 arrival as president in 2002, or does this pretty much
6 summarize what your knowledge is?

7 MR. COATES: Object to the form.

8 You may answer.

9 A. This summarizes Dart Montgomery's visit and
10 review. It does not, I believe -- let me see. It
11 does not, I believe, mean to summarize any other
12 discussion that somebody other than Dart might have
13 had with Fairfield.

14 Q. Have you seen any other summaries of any
15 other meetings that Dart Montgomery had with anybody
16 at Fairfield Sentry?

17 A. No.

18 That Dart Montgomery had?

19 Q. Yes.

20 A. No.

21 Q. Have you seen -- and this is -- I'm
22 trying -- for the period, let's say, predating your
23 arrival, before you arrived, have you -- other than
24 this memorandum, have you seen any other memoranda
25 summarizing meetings between anybody at EFG Capital

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1 Q. How did you personally know her?

2 A. We had worked together in Merrill Lynch in
3 New York in the period of 1986 through '88.

4 Q. Were you familiar with the fund before you
5 joined EFG?

6 A. Vaguely. I was in a different line of
7 business.

8 Q. In your initial review of Fairfield Sentry
9 that you just described, did you come across the
10 Barron's article from 2001 or the Hedge/MAR article
11 from 2001?

12 A. I don't recall having come across the
13 Hedge/MAR article. That wasn't widely circulated. I
14 have -- since this fraud was made public and everybody
15 started making reference to those articles, I have
16 read them again, and I recall having heard that there
17 had been a Barron's article. I cannot tell you that I
18 recall exactly reading all of the Barron's article
19 back around that time. I remember having
20 conversations with Victor about it, but not
21 necessarily the article.

22 Q. When did you hear about the Barron's article
23 and have these conversations with Victor?

24 A. It must have been early on, after I joined.

25 Q. What did you talk about? What did you

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1 I learn? What did he tell you?

2 A. That -- specifically about the article?

3 Q. Yes.

4 A. That at some point there had been some
5 articles or some press about Madoff and Fairfield
6 Sentry and how some people in the industry were
7 talking about the returns of Madoff and the stability
8 of returns over time, and people were wondering how
9 Madoff was able to do that.

10 And I remember Victor telling me that he had
11 discussed at length with people at Fairfield the
12 articles, and that they had been satisfactory answers
13 to him and to the rest of the people at EFG Capital.

14 Q. Did you talk to Dart Montgomery about those
15 articles?

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

17 Q. You don't think it happened, or you just
18 don't remember?

19 A. I really don't remember.

20 Q. Did you talk to Lawrence Howell about it?

21 A. No.

22 Q. Did you talk to Marcello Alvarez about it?

23 A. I may have.

24 Q. What did you talk about?

25 A. About the articles, and he mentioned that,

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1 tickets --

2 A. Yes, sir.

3 Q. -- with Madoff or at Fairfield Sentry?

4 A. I believe at Fairfield.

5 Q. And when did this happen?

6 A. I can't tell you exactly. Prior to my
7 arrival, but, you know, on or around -- I think it was
8 '99, 2000, around that time. I don't know exactly.

9 Q. Did they look at trade tickets after the
10 Barron's article came out?

11 A. I don't know.

12 Q. What was the policy of sharing due diligence
13 of Fairfield Sentry between EFG Capital and any other
14 affiliate of EFG?

15 A. I don't think there was a policy, but if
16 anybody from EFG would ask for information, documents,
17 reports that we had, we would have gladly supplied
18 them.

19 Q. Did anyone ever ask?

20 A. Yes.

21 Q. Who?

22 A. Some people from -- well, Jerome and Bassam
23 at some point might have asked.

24 Q. Well, did they or --

25 A. Well, it was not necessarily show me what

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1 also like Victor, they had received satisfactory
2 responses. I know that Marcello had visited with
3 Fairfield, and I think that maybe Marcello maybe even
4 visited with Madoff at some point. I'm not saying it
5 was before or after the article. But how they were
6 satisfied with the information and the transparency
7 that they had received from Fairfield.

8 Q. Did Victor tell you what answers he got that
9 were satisfactory?

10 A. Yes.

11 Q. What were they?

12 A. That Fairfield Greenwich received copies of
13 all of the trading activity of the fund; that they
14 were keeping track of the trades and the trading
15 ranges of the fund, of the transactions of the fund;
16 and how, I think, those were available for review by
17 Fairfield Greenwich at their premises.

18 Q. Did Victor tell you whether he or anybody at
19 EFG Capital ever reviewed those trade tickets?

20 A. I don't know if it was Victor or Marcello,
21 but one of them told me that somebody, whether it was
22 Mark McCluskey, Marcello, possibly not Victor, I think
23 it was either Mark McCluskey or Marcello at some point
24 reviewed trade tickets.

25 Q. They went to New York and reviewed trade

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1 you have, but it was also inquiries in terms of what
2 do you know. So some of them were verbal. Some of
3 the inquiries were, perhaps, in the form of that other
4 gentleman that was tied to the Markus Caduff e-mail
5 that you showed me, where they were asking some
6 questions. Some were -- I remember at some point
7 getting a question from one of the CROs in Asia who
8 wanted to know how we were compensated by the
9 Fairfield. There's a gentleman, CRO, who I know had
10 some clients, Mats Pehrsson, was a CRO in Switzerland,
11 who from time to time would ask a question. That's
12 off the top of my head.

13 Q. Does EFG Capital have possession of any
14 written due diligence analysis of Fairfield Sentry
15 that was done by EFG Bank or any of its affiliates?

16 A. I don't believe so.

17 Q. Did EFG Capital ever have possession of any
18 written due diligence analyses from any of its
19 affiliates?

20 A. Other than at some point receiving an e-mail
21 from Jerome saying, I visited, or something like that,
22 I'm not aware of another document.

23 Q. Did EFG Capital ever ask to review any
24 written due diligence analyses done by EFG Bank or any
25 of its other affiliates?

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- 1 A. On what?
2 Q. Hmm?
3 A. I'm sorry. Could --
4 Q. On Fairfield Sentry. Did -- did the company
5 ever ask EFG Bank, can I look at some written due
6 diligence of Fairfield Sentry?
7 A. Did we ever ask. I guess the only person we
8 would have asked would be Jerome, who was doing that,
9 and I think we did at some point.
10 Q. Did you receive it? Did you receive it?
11 A. I don't think so.
12 Q. Why?
13 A. I don't know how much Jerome had about
14 Fairfield Sentry in a format -- Jerome kept a lot of
15 notes in laptops and tablets.
16 Q. Well, are you testifying that EFG Bank
17 didn't do any written due diligence analysis?
18 A. I cannot testify for EFG Bank, sir.
19 Q. I'm not asking you to testify for them. I'm
20 saying, are you testifying they didn't do it, they
21 didn't do any due diligence?
22 A. I have no knowledge of that.
23 Q. Do you know whether they did or they didn't?
24 A. I don't know.
25 Q. You just never saw any.

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- 1 of due diligence other than him? How about Mr. Salem;
2 did he do a report?
3 A. I don't think so. We weren't relying on
4 their reports, so I wasn't necessarily -- you know, we
5 were doing our own due diligence, our own ongoing due
6 diligence.
7 Q. If EFG Bank, Mr. Salem, or Mr. Schonbachler
8 had found out something negative about Fairfield
9 Sentry, would you have wanted them to tell you?
10 A. Yes.
11 Q. And did they ever tell you anything negative
12 about Fairfield Sentry?
13 A. No.
14 Q. Did they tell you anything -- if -- if they
15 had done due diligence of Madoff Securities, would you
16 have --
17 A. No.
18 Q. -- wanted that information?
19 MR. COATES: Excuse me. I'm sorry.
20 THE WITNESS: That's two questions.
21 MR. COATES: Can you repeat the question?
22 THE WITNESS: That was two questions. I'm
23 sorry.
24 Q. (By Mr. Lawrence Kellogg) Did you ever
25 ask for -- well, do you know whether EFG Bank ever

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- 1 A. I just never saw it.
2 Q. And you never asked for any, or you did?
3 A. We -- I'm sure that we asked Jerome.
4 Q. But you never got anything.
5 A. No.
6 Q. And you don't know why, or you do know why?
7 Why not? Why didn't you get it?
8 A. Again, Jerome kept a lot of notes and
9 information in a format that was in laptops and things
10 like that.
11 Q. Did he give it to you?
12 A. I don't think he ever wrote a due diligence
13 report to send to us.
14 Q. Did he give you his notes?
15 A. No.
16 Q. Why?
17 A. I don't recall.
18 Q. Well, is it something you would have liked
19 to see if you asked for it?
20 A. I think Jerome verbally would have told me
21 and -- as he did in some e-mails, and you have the
22 e-mails so you can probably look at them and see what
23 there was. I don't think he ever wrote a report, per
24 se, on Fairfield Sentry.
25 Q. Was there anybody else at EFG Bank in charge

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- 1 did any written due diligence of Bernard Madoff?
2 A. I don't know.
3 Q. Did they do any written analysis of Kingate?
4 A. I don't know.
5 Q. Did they do any analysis of any other feeder
6 fund to Madoff?
7 A. Did they do any analysis. I know that
8 Jerome and Bassam looked at other feeders of Madoff.
9 Q. Did they share that information with you?
10 A. I did not get a report. I know that
11 verbally they looked at other -- I know verbally
12 because they told me that they looked at other Madoff
13 feeders.
14 Q. What is the Focus fund?
15 A. The Focus fund is a fund that was put
16 together by Bassam and Jerome.
17 Q. It's an EF --
18 A. It's an EFG fund.
19 Q. EFG-sponsored fund?
20 A. It was an EFG-sponsored fund.
21 Q. And it had Bernard Madoff in it; is that
22 right?
23 A. I think that Focus fund was a fund that had
24 two or three different strategies in it. I believe
25 that one of them was a Madoff feeder. I don't think

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1 it was Fairfield Sentry, from -- from recollection.
2 Q. And did -- was any of the due diligence done
3 by Focus of whatever fund that was, was that ever
4 shared with you?
5 A. The funds that were in Focus, except for
6 the -- for the particular Madoff feeder into the same
7 strategy that Fairfield Sentry had, I think were funds
8 that were known to us. I believe one of them was
9 Westside Investments, I believe, and I forget what the
10 other one was. I think it was three and then it might
11 have become four funds in it.
12 Of the particular fund, the Madoff feeder, I
13 think that that came from a company called Access
14 International, which was a third-party marketer of
15 funds that had or sponsored another feeder into
16 Madoff.
17 Q. Was any of the due diligence on the Access
18 International fund shared with you?
19 A. No.
20 Q. Did you ever ask for it?
21 A. No.
22 MR. COATES: Larry, is it a good time to
23 take a break? We've been at it for about an
24 hour.
25 MR. LAWRENCE KELLOGG: Yeah, okay.

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1 very, very old, or in some cases some trade tickets
2 that were just not marked either solicited or
3 unsolicited.
4 Q. Who did you talk to?
5 A. Juan Massens.
6 Q. Okay. In February of 2003, do you recall
7 there being concern among the GIS people as to the
8 transparency of Fairfield Sentry?
9 A. Not specifically, no.
10 Q. Okay. When I say "transparency," what does
11 that term mean in your field?
12 A. Transparency --
13 Q. With respect to a hedge fund.
14 A. Transparency means that you have an
15 understanding and an ability to understand and maybe,
16 in some cases, even verify the trading activity of a
17 manager, what they do, how they do it, when they do
18 it.
19 Q. Do you remember Mr. Schonbachler being
20 concerned about the performance of the Fairfield
21 Sentry in early 2003 and --
22 A. The performance of Fairfield Sentry at some
23 point was flat or down. And whenever we had funds
24 that were down for more than two or three consecutive
25 months, we would talk about it. So I don't recall

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1 THE VIDEOGRAPHER: Off the record; the time
2 is 2:32.
3 (Thereupon, a recess was taken from
4 2:32 p.m. until 2:47 p.m., after which the
5 following proceedings were held.)
6 THE VIDEOGRAPHER: We're now back on the
7 record; the time is 2:47.
8 Q. (By Mr. Lawrence Kellogg) All right.
9 While we were off the record, Mr. Campano, your
10 attorney told me that you've had an opportunity to
11 inquire somewhere about paragraph 32 in your
12 affidavit, Exhibit 106; is that right?
13 A. Correct.
14 Q. What do you have to tell me?
15 A. That the numbers there of 642 confirmations,
16 I think that's the -- let me refer to it, so I
17 don't -- that the number of 642 trades is the total
18 sum between both BIS and Globus system trades. And
19 the numbers at the bottom that indicate that there
20 were 186 confirmations that were solicited and 296 of
21 them were unsolicited is what we were able to find
22 from both the BIS and the Globus system.
23 What remains is that the difference between
24 the 642 and the sum of those two numbers are either
25 trade tickets that we could not find because they were

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1 exactly if that was the period in which Fairfield
2 Sentry had either gone down or -- or flatlined.
3 (The referred-to document was marked for
4 identification as Plaintiff's Exhibit 109.)
5 Q. (By Mr. Lawrence Kellogg) Let me show you
6 what I've marked as Exhibit 109, which is
7 Bates-labeled 7656, and is an e-mail -- starts with
8 an e-mail from you to Jerome Schonbachler in
9 February, February 21 of 2003. Take a moment and
10 read this.
11 A. You're referring about the memo -- the
12 e-mail in the -- in the middle of the page?
13 Q. I'm referring --
14 A. It starts --
15 Q. -- to Exhibit 109.
16 A. Okay. Let me --
17 Q. Yes. You can see in the middle of the page,
18 it says -- Mr. Schonbachler is saying, We're talking
19 about two flat months and two down months. I would
20 not have a concern if we had more transparency or EFG
21 would not have lent so much money on this specific
22 fund. Do you think it would be a good time to ask
23 Fairfield for more transparency? I think so.
24 Does this refresh your memory that
25 Mr. Schonbachler and GIS was concerned about EFG's --

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1 I mean, of Fairfield Sentry's transparency in February
2 of 2003?
3 A. Okay.
4 Q. Does that refresh your memory?
5 A. I suppose. Yes.
6 Q. Was it an issue at EFG Capital that
7 Fairfield Sentry was a bit of a black box, didn't have
8 as much transparency as other funds?
9 A. No.
10 Q. Was there a concern at EFG Bank or the GIS
11 group that it was a bit of a black box, it's not as
12 transparent as other funds?
13 A. I couldn't tell you all the people at EFG
14 Bank. I was not made aware that they had a concern.
15 They never took it off of their lists.
16 Q. Well, when you look at this e-mail here,
17 would you agree that this shows some concern by
18 Mr. Schonbachler on that issue?
19 A. Well, he's using the word "I would not have
20 a concern if we had more transparency," here, "or if
21 EFG would not have lent so much money on this specific
22 fund."
23 So --
24 Q. What was --
25 A. -- these are -- these are his words.

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1 performance of the fund over time had also started to
2 be lackluster.
3 Q. Was that the only discomfort you were
4 referring to there?
5 A. Yes.
6 Q. Was there any discomfort with respect to the
7 concentration levels of your customers in Fairfield
8 Sentry at this point in time?
9 A. I don't think that we had a discomfort with
10 the concentration at this time. I think later on we
11 looked at the concentration levels, but not at -- not
12 at this time. I think we also -- somebody made a
13 reference here to having lent --
14 Q. Sorry.
15 A. Sorry?
16 Q. Go ahead.
17 MR. COATES: No, no. You can --
18 MR. LAWRENCE KELLOGG: I'm sorry.
19 MR. COATES: Excuse me. Just so you
20 understand, Sixto. I know Mr. Kellogg turned
21 away and he wasn't looking at you --
22 MR. LAWRENCE KELLOGG: I was listening.
23 MR. COATES: He was distracted, but you --
24 but, for the record, you need to continue your
25 response. If you need the question re--

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1 Q. -- what was his concern; do you know?
2 A. His concern -- this follows a chain of
3 e-mails because the fund had been down, I believe, two
4 months in a row, and Jerome wanted to understand why
5 the fund was down two months in a row. I believe it
6 was two months in a row. Flat two months and down two
7 months, as he said.
8 Q. Yes.
9 A. So he wanted to understand why.
10 Q. And was it communicated to you at this
11 general period of time that the feeling at least of
12 GIS was, we're not able to get the information we need
13 to understand this, because it's not transparent
14 enough?
15 MR. COATES: Object to the form.
16 You may answer.
17 A. I didn't take it as that being a formal
18 position or communication from them.
19 Q. Okay. Moving up to your response, you say
20 in the middle of it, I understand we have all had some
21 sort of discomfort with Fairfield for long.
22 Do you see that?
23 A. Mm-hmm.
24 Q. What did you mean?
25 A. Four months of performance and the

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00156

1 reasked by Mr. Kellogg, he'll be happy to do
2 that. I know it's human nature for your reaction
3 to do that --
4 THE WITNESS: Okay. I'm sorry.
5 MR. COATES: -- but this is -- this is an
6 artificial environment. You're at a deposition,
7 so --
8 MR. LAWRENCE KELLOGG: I'm trying to deal
9 with 50,000 documents as well. I'm listening to
10 you.
11 A. I apologize if I -- what I'm saying here is
12 that I also read here from Jerome about having lent
13 money. So I am not really sure if in the context of
14 the discomfort -- because EFG Bank lent money with
15 Fairfield Sentry as collateral.
16 Q. That's right. They lent money and there was
17 a limit on what they would lend; is that right?
18 A. From time to time, like I said. There's a
19 limit with everything, except U.S. Treasuries.
20 Q. Okay. So the only discomfort that you were
21 dealing with here was the discomfort of two down
22 months and two flat months.
23 A. Mm-hmm.
24 Q. Is that what you're saying?
25 A. Well, and again, I don't know if there

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00157

1 was -- outside of the performance of the flat down two
2 months and the down two months, if there was also some
3 discussion around this time of the level of credit
4 exposure that EFG Bank had towards Fairfield Sentry.
5 Q. I'm going to show you what's been marked as
6 Plaintiff's Exhibit 36, which is a February 28, 2003,
7 letter to Fairfield Sentry clients from
8 Mr. Echevarria, and ask if this refreshes your
9 recollection about a concern as to the concentration
10 levels in the accounts of your customers at this
11 various time.
12 A. I recall this letter.
13 Q. Does this refresh your memory that in
14 February of 2003, concentration levels was also a
15 concern?
16 A. The context of this letter was that in
17 February of 2003, we had reviewed the particular
18 individual exposure levels of individual client
19 accounts to Fairfield Sentry. In some accounts prior
20 to this date, some accounts had invested in Fairfield
21 Sentry in '98, '99, and the performance of the fund
22 around that time had been quite high. And on a
23 compounding basis, it's not difficult for the fund --
24 an investment to grow exponentially in comparison to
25 another investment that has grown at a much less rate.

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00159

1 deposition --
2 Q. Over \$100 million?
3 A. About \$100 million.
4 Q. Is there any other discomfort that was
5 expressed at this point in time with Fairfield other
6 than the amount of money that had been lent on it,
7 concentration levels on it, and the fact that it's
8 down two months and flat two months?
9 A. No. And this is -- this letter was my
10 initiative.
11 Q. Now, in this e-mail, Exhibit 109, you say,
12 Let's find out what we need to find out, but let's not
13 get worked up yet. Let me know your questions.
14 You were asking Mr. Schonbachler to tell you
15 what he wants to know about Fairfield Sentry; is that
16 right?
17 A. Are you referring to an earlier exhibit?
18 Q. Exhibit 109. It says, Seems we're all going
19 into a bit of a frenzy over this. Let's find out what
20 we need to find out, but let's not get too worked up
21 yet. Let me know your questions.
22 A. Mm-hmm.
23 Q. You were trying to find out from
24 Mr. Schonbachler what do you want to know from
25 Fairfield Sentry so that he would feel more comfort.

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1 So the same way that we would look at
2 diversification for any fund or any investment, we
3 were looking -- we said we want to look at the
4 accounts because it seems to us that looking at some
5 accounts, that the particular concentration in some
6 accounts of Fairfield Sentry in the accounts was too
7 high.
8 Q. And in February of 2003, that was something
9 you were looking at; isn't that right, sir?
10 A. We were looking at what I just responded in
11 my answer.
12 Q. And you were concerned that if -- as you say
13 in your e-mail here, If all goes to hell, we would
14 only be hit like \$3 million. Do you see that?
15 When you're talking about "we," you're
16 talking about EFG Capital?
17 A. No. I think I was talking about EFG, the
18 parent company.
19 Q. And if the customers had all went to hell at
20 that point in time, how much would the customers lose,
21 the clients were holding?
22 A. If it went to zero?
23 Q. Yeah.
24 A. Whatever -- I think at the time you showed
25 me some reports earlier at the beginning of the

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00160

1 A. Yes.
2 Q. Did he give you the questions he wanted
3 answered?
4 A. I don't recall.
5 (The referred-to document was marked for
6 identification as Plaintiff's Exhibit 110.)
7 Q. (By Mr. Lawrence Kellogg) All right. I'm
8 going to show you Exhibit 110. This is a
9 February 21, 2003, e-mail string, Bates Number 7760,
10 and starting with the last e-mail on the exhibit,
11 Mr. Schonbachler responds --
12 A. Mm-hmm.
13 Q. -- to you --
14 A. Okay.
15 Q. -- and says, In a nutshell, I would like to
16 ask the following questions: Explanation of the
17 losses in December, January and February; on which
18 trades did they lose money; what about stop losses;
19 what about leverage; did they suffer because of
20 extreme market volatilities; what is the current
21 allocation in the portfolio; did they have a lot of
22 redemptions in December, what about now; and then
23 it -- then he refers to a conference call that he'd
24 like to have with them. And if possible, copies of
25 the most recent trades done by the fund in electronic

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00161

1 format.
2 A. Mm-hmm.
3 Q. Were these questions answered, and did the
4 conference call take place, and were the trades
5 provided?
6 A. The last comment here from them is saying,
7 We will reply to you today. I presume that they did.
8 They were very diligent in responding.
9 Q. Do you have a recollection, or are you just
10 basing it on what you're reading here?
11 A. I don't have a recollection, sir.
12 (The referred-to document was marked for
13 identification as Plaintiff's Exhibit 111.)
14 Q. (By Mr. Lawrence Kellogg) Let me show you
15 what I'll mark as Exhibit 111, which is an e-mail
16 string dated February 24, 2003, starting with Bates
17 Number 7669.
18 A. Mm-hmm.
19 Q. Now, you'll see -- have you reviewed this
20 document recently?
21 A. No.
22 Q. All right. So if you look at the last
23 e-mail --
24 A. Mm-hmm.
25 Q. -- the -- Dan Lipton of Fairfield Greenwich

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00163

1 normally around the S&P 100 basket of stocks. So if
2 you're indicating in your opinion about whether this
3 answers or not, whether they're answering saying,
4 well, we bought Ford and we lost money, no, it's not
5 answering that.
6 But the basket of stocks which normally
7 Sentry was supposed to buy, they were invested, and
8 he's talking about how the options kicked in and
9 mitigated the losses of the portfolio because,
10 obviously, I think from reading this, that this was a
11 very volatile market.
12 Question 5 talks about volatilities in the
13 40s. And that's a very high level of volatility in
14 the market.
15 Q. Does reading this e-mail refresh your memory
16 about this whole situation?
17 A. Not really.
18 Q. As you look at this now, are you satisfied
19 with the answer, on which trade did they lose money,
20 saying, we lost money on our strategy without
21 identifying any trades? Is that a satisfactory answer
22 to you today?
23 A. Yes, it is.
24 Q. At the end of this, he says that he will be
25 happy to have a conference call next week, just let me

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00162

1 Group has answered or -- answered some of the
2 questions or maybe all the questions that
3 Mr. Schonbachler had asked; is that right?
4 MR. COATES: If you need a minute to read
5 it --
6 Q. Yeah, take a look.
7 MR. COATES: Give him a moment, please.
8 MR. LAWRENCE KELLOGG: Sure.
9 A. It seems that every question is answered.
10 Q. Well, let's talk about that for a second.
11 The first question is, he wants to know the
12 explanations of the losses in December, January and
13 February, and then there's an answer.
14 A. Mm-hmm.
15 Q. Second question is, on which trade did they
16 lose money, and the answer is see the response in the
17 question 1.
18 A. Yeah.
19 Q. Now, would you agree with me that question 1
20 does not identify the trades on which Fairfield Sentry
21 lost money, does it?
22 A. I think that question 1 says that the fund
23 is still fully invested, indicating that it was fully
24 invested before this time. So if you're fully
25 invested, the trades that they used to make were

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00164

1 know what days and times are convenient for you.
2 Did that happen? Do you remember a
3 conference call in February of 2003, around the time
4 you were looking into doing that concentration letter
5 to the clients?
6 A. I don't, sir.
7 Q. Do you remember sending out the
8 concentration letter to the clients? Do you remember
9 that event?
10 A. Yes.
11 Q. Okay. So putting that point in time in your
12 mind doesn't -- you don't remember having a conference
13 call around the time you sent out the concentration
14 letter?
15 A. Sorry, I don't.
16 Q. Okay. Just -- just asking.
17 A. Okay. Yeah.
18 Q. Not criticizing, just asking.
19 A. No, I know.
20 Q. It also says here, You're welcome to come to
21 the New York office or the London office and review
22 the last several months of most recent trades, but
23 unfortunately, we are not able to send out the
24 brokerage statements.
25 A. Mm-hmm.

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00165

1 Q. Do you know whether EFG Capital ever got --
2 received copies of either trade confirmations of
3 Fairfield with Madoff or brokerage statements from
4 Fairfield -- from Madoff to Fairfield?
5 A. I don't think Fairfield ever sent them out.
6 They would -- I think they -- more than once they said
7 that they were available if you wanted to go to their
8 office and sit there and review them.
9 Q. And this is one that says you can look at at
10 least the brokerage statements. That's what it says,
11 brokerage statements.
12 A. Okay.
13 Q. Okay. Do you know whether you did that,
14 either you or anybody else, at this point in time?
15 A. At this point in time, no. I didn't.
16 Q. You go to the first page of this e-mail
17 string, Exhibit 111 --
18 A. Mm-hmm.
19 Q. -- you'll see that you say to
20 Mr. Schonbachler that you will go yourself, and Mats
21 Pehrsson is there today.
22 A. Mm-hmm.
23 Q. Do you recall going there yourself?
24 A. Not at this time. I went to Fairfield
25 Greenwich several times.

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00167

1 Pehrsson situation, but I cannot tell you specifically
2 who of the CROs in Miami would have visited.
3 Q. Do you know of any CROs in New York that
4 might have gone?
5 A. We're only two.
6 Q. Did either of them go, to your knowledge?
7 A. I don't know.
8 Q. Any other CROs from Zurich or anywhere else
9 in the EFG system who you know went and met with
10 Fairfield Sentry?
11 A. Specifically, no. I know that there were a
12 couple of other CROs that regularly used Fairfield
13 products in their -- in their investments, but I don't
14 know for a fact if anybody else went.
15 Q. Do you know a person by the name of John
16 Read?
17 A. That's the one I was referring to, yeah.
18 Q. Who is John Read?
19 A. John Read is a CRO, I believe in Zurich, for
20 EFG.
21 Q. Do you recall him having contact with
22 Fairfield Sentry?
23 A. I think he might have. John Read had
24 clients of his investing in hedge funds, and John Read
25 had like a little spreadsheet that he kept information

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00166

1 Q. Who is Mats Pehrsson?
2 A. Mats Pehrsson was the CRO in the Zurich
3 office.
4 Q. Do you recall, reading this, what he was
5 doing there?
6 A. I think Mats had a client who was interested
7 in investing in Fairfield Sentry, and I think that
8 Mats might have taken the client to Fairfield
9 Greenwich.
10 Q. Did you have anything to do with setting up
11 that meeting or -- I mean, how did you know about it?
12 A. I don't recall, but I don't doubt that Mats
13 would have called and said that he was going.
14 Q. Why?
15 A. Maybe he just wanted to know who the contact
16 was. I don't know. I don't -- don't recall.
17 Q. Okay. When a -- when a -- did any of EFG
18 Capital's CROs go meet with Fairfield directly, or was
19 that done through management?
20 A. On a regular basis, we, management, were the
21 ones who would go. Fairfield Greenwich visited Miami
22 very often and had contact with the CROs when they
23 came down here. I couldn't tell you if a particular
24 CRO went. From time to time there was a case when
25 somebody had a client and wanted to go, like that Mats

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1 on the different hedge funds that he had his clients
2 in. Just performance information and whatnot, but I
3 wouldn't doubt that John Read might have gone too.
4 (The referred-to document was marked for
5 identification as Plaintiff's Exhibit 112.)
6 Q. (By Mr. Lawrence Kellogg) Let me show
7 what you I'll mark as Exhibit 112, which is an
8 e-mail string from February 25, 2003, Bates
9 Number 7704. This string -- have you seen this one
10 lately?
11 A. Lately?
12 Q. Yeah.
13 A. John Read.
14 Mm-hmm.
15 Q. This refers -- you say that -- you suggested
16 a conference call be scheduled for all interested EFG
17 people around the world. Did that happen?
18 A. I don't think so.
19 Q. Why did you think it was --
20 A. I don't -- I don't -- I'm sorry. I don't
21 recall.
22 Q. I don't -- why did -- why did you think it
23 was a good idea for all the interested EFG people
24 around the world to have a conference call about
25 Fairfield Sentry in February of 2003?

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00169

1 A. Because we had had Jerome asking, John Read
2 asking, you know, maybe two or three people asking
3 about the performance. And rather than 25 people,
4 managers -- managers don't like it when a ton of
5 people from the same institution call with the same
6 questions and they have to repeat themselves over and
7 over and over again. So it is customary to channel
8 the questions through one entity, one party, one
9 person, or alternatively to have something in one
10 shot.

11 Q. Also on this e-mail there's an e-mail from
12 Mr. Echevarria to you saying, Sixto, I just got off
13 the phone with Lonnie. We must send out the letter
14 for Miami clients by Monday the 24th. We need to go
15 over all the production implications today.

16 Who's Lonnie?

17 A. Sorry?

18 Q. Who's Lonnie?

19 A. Lonnie Howell.

20 Q. What was his position at this time?

21 A. He was CEO of EFG Private Bank. And
22 Victor's --

23 Q. This letter that they're referring to,
24 that's the letter that went out to clients a few days
25 later saying we suggest if you're concentrated to

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00171

1 Q. And didn't Mr. Howell -- isn't he the one
2 that directed you to send the diversification letter
3 out to clients?

4 A. No.

5 Q. This is your decision and not his?

6 A. The decision to create the letter started
7 with me.

8 Q. Did he -- did he participate in the drafting
9 of the letter?

10 A. He -- he viewed a draft.

11 Q. Did he make changes to the draft?

12 A. We had a discussion as to what constituted a
13 concentration, what number, what percentage.

14 Q. Did he make changes to the draft of the
15 letter, sir?

16 A. I don't recall him making changes to the
17 draft.

18 Q. What was Jim Lee's position at that time?

19 A. Hmm. February 2003. Jim Lee, I believe,
20 was head of the credit department. And Jim Lee at
21 some point became the deputy CEO of EFG Bank. I don't
22 recall exactly if by this particular date he was
23 already the deputy CEO.

24 Q. Okay. Did he participate at all in drafting
25 the diversification letter or revising it?

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1 diversify?

2 A. I would suspect.

3 Q. Was Mr. Howell involved in that process?

4 A. We had some discussions with Mr. Howell as
5 to what the definition of concentration was.

6 Q. Isn't it a fact that Miami was in charge of
7 not only sending out letters to its own clients, but
8 also to clients of the private bank who were invested
9 and concentrated in Fairfield?

10 A. No.

11 Q. Okay. Isn't it a fact that Mr. Howell is
12 the person who wanted this to be done, because he was
13 not comfortable with Fairfield Sentry?

14 A. No.

15 Q. Isn't it a fact that Fairfield Sentry --
16 that Mr. Howell and EFG -- let me strike that.

17 Isn't it a fact that Mr. -- that EFG Bank
18 was not comfortable with lending money at this point
19 in time secured by Fairfield Sentry?

20 A. Beyond a certain limit.

21 Q. Isn't it a fact that at that point in time
22 you were getting pressure from EFG Bank to reduce the
23 levels of lending that had been in place on Fairfield
24 Sentry, secured by Fairfield Sentry?

25 A. No.

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00172

1 A. I don't recall him doing any --

2 Q. Did he review it?

3 A. I don't recall. I don't think so.

4 Q. Was he involved in the decision to send it
5 out?

6 A. No. Not that I recall.

7 Q. Now, let me show you what I already marked,
8 and you have it there, Exhibit 103. I showed it to
9 you earlier this morning.

10 A. Sorry. Give me a second.

11 It's an e-mail, right?

12 Q. Yes, it's an e-mail. It's Bates

13 Number 7675. This is the e-mail where Mr. Caduff
14 says, I think you should take Fairfield Sentry off the
15 recommended list, and you say, it still makes all --
16 meets all the quantitative and qualitative
17 requirements that we have set in the past.

18 A. Mm-hmm.

19 Q. Having seen this series of e-mails, does
20 this refresh your memory at all about this situation,
21 that is, Mr. Caduff saying, I think you should take it
22 off the recommended list, Mr. Salem saying, it creates
23 psychological issues in Miami; and you say, no, we're
24 not taking it off the list --

25 A. Mm-hmm.

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Pages 169-172

00173

- 1 Q. -- because it still meets our requirements?
2 Does this refresh your memory about that it's in the
3 same period of time?
4 MR. COATES: Object to the form.
5 You may answer, sir.
6 A. Does it reflect my memory about what?
7 Q. About -- about this e-mail. I mean, and
8 having put it in context of other e-mails, do you now
9 remember it?
10 MR. COATES: Object to the form.
11 You may answer, sir.
12 A. I don't -- we've been talking about --
13 Q. Yeah.
14 A. -- lots of different things. This e-mail
15 doesn't assist me in putting into context the
16 situation. And if you're referring to the letter that
17 we sent out, it does not. I know why we wrote the
18 letter.
19 Q. When the letter went out, it went out to
20 those customers who had concentrations in their
21 accounts of Fairfield Sentry above a certain level.
22 A. I believe it was 20 percent.
23 Q. And recommended that they reduce it to 5 to
24 10 percent?
25 A. You gave me a copy, right?

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- 1 Sentry was over 20 percent, yes.
2 Q. And if it was under 20 percent, the customer
3 didn't get the letter?
4 A. That's right.
5 Q. But you looked at every customer account,
6 whether or not it was solicited, unsolicited,
7 recommended or unrecommended; is that right?
8 A. Yes.
9 Q. Had you -- had EFG Capital, to your
10 knowledge, ever done that with any other hedge fund
11 product, that is, analyze each customer's account to
12 see whether it was in a concentrated position, however
13 that's defined, or was that done more on a
14 case-by-case basis?
15 MR. COATES: Object to the form.
16 You can answer.
17 Q. (By Mr. Lawrence Kellogg) I should say
18 customer-by-customer basis.
19 A. I don't believe we had any other similar
20 situations of hedge funds representing more than X,
21 but from time to time, during our regular quarterly
22 suitability reviews of accounts that we're supposed to
23 do, that's one of the things that we would look at,
24 whether any security in particular.
25 Q. Sure. Was there a compliance program there

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- 1 Q. Yes. I'm wrong, it's 20 percent.
2 You recommended that they reduce under 20
3 percent.
4 A. Under 20. Okay.
5 Q. Was that letter sent out to all Fairfield
6 Sentry clients of EFG Capital who had more than
7 20 percent of Fairfield in their accounts?
8 A. Yes.
9 Q. Was there any analysis done at that point in
10 time as to whether or not those particular persons
11 receiving the letter had been solicited or
12 unsolicited, or did you send it to everybody?
13 A. We sent it to everybody.
14 Q. And was there any -- any analysis done at
15 that point in time whether or not the customer had
16 been recommended by a CRO or had brought the
17 investment -- had the idea himself?
18 A. (No verbal response.)
19 Q. You have to say "no."
20 A. I'm sorry. We did not discriminate that
21 way.
22 Q. And did you analyze or have somebody analyze
23 every EFG Capital account with Fairfield in it to
24 determine whether it was concentrated?
25 A. To determine if the position in Fairfield

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- 1 that would look for concentrations?
2 A. Again, we do quarterly suitability reviews
3 on the accounts, and one of the things that they need
4 to look at is concentrations.
5 Q. But was there ever any other situation that
6 you can recall where the company said, with this
7 particular hedge fund, we're going to go out and look
8 and see if they're concentrated, and whoever is
9 concentrated, we're going to advise them they should
10 reduce their concentrations?
11 A. Well, no. We knew our business very well
12 and, in particular, around these times when the
13 business was smaller, you have a gut feeling for where
14 you have exposures and where you don't. And every
15 once in a while, we would do the analysis like the one
16 you showed me at the very beginning of this, where we
17 looked at in that pie chart that you originally showed
18 me, as to what was where.
19 Q. At that point in time, the business was
20 small enough that you knew that Fairfield Sentry was a
21 big holding in many of your customers' accounts, just
22 knew that.
23 A. Yes.
24 Q. And you were concerned about that.
25 A. Yes.

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1 Q. And so you decided to take it upon yourself
2 to look, see where the concentrations are, and give
3 some advice to the client, right?
4 A. Yes.
5 Q. All right. Do you recall Mr. Pehrsson
6 giving you a report about his meeting that he had in
7 February of 2003 with representatives of Fairfield
8 Greenwich Group?
9 A. Mr.?
10 Q. Pehrsson.
11 A. Mats Pehrsson?
12 Q. Yes.
13 A. I don't know if he sent it to me; he might
14 have sent it to Victor.
15 Q. Do you recall it?
16 A. Yes.
17 Q. Have you viewed it recently?
18 A. I think I might have in one of the many
19 documents.
20 MR. LAWRENCE KELLOGG: This is how it's
21 spelled, by the way.
22 (The referred-to document was marked for
23 identification as Plaintiff's Exhibit 113.)
24 Q. (By Mr. Lawrence Kellogg) Let me show you
25 what I'm going to mark as Exhibits 113, which is an

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1 believe he was a portfolio manager.
2 Q. A portfolio manager of what?
3 A. Of portfolios of Swiss clients. Investment
4 portfolios.
5 Q. What's the difference -- investment
6 portfolios. Was he -- was he involved in the
7 EFG-sponsored funds or managed money? What is it --
8 what are you referring to by an investment portfolio?
9 A. There were clients who had discretionary
10 investment portfolios at the bank, and I believe that
11 Marco Ranieri was a discretionary portfolio manager of
12 the bank.
13 Q. Okay. Now, looking at the memo itself --
14 A. Mm-hmm.
15 Q. -- it says the purpose of the meeting is to
16 introduce Sandberg and Burn to EFG. Were those
17 Mr. Pehrsson's clients? Do you know who they are?
18 A. I don't know.
19 Q. It says the purpose of the meeting is to
20 find out more about Fairfield Sentry. Do you see
21 that?
22 A. One second, please.
23 Yes.
24 Q. And it talks about a planned offshore fund
25 that Sandberg and Burn are considering doing. They

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1 e-mail from Victor Echevarria to Sixto Campano dated
2 March 3, 2003, Bates No. 7758.
3 This appears that on February 24, 2003,
4 Mr. Pehrsson met with a group at Fairfield --
5 A. Mm-hmm.
6 Q. -- pardon -- Fairfield Greenwich Group, and
7 then this was forwarded to you on March 3, 2003.
8 A. Okay.
9 Q. Did you review it at the time?
10 A. Yes. Must have.
11 Q. It was also sent to Lawrence Howell, Markus
12 Caduff, Marco Ranieri, and Victor Echevarria. Do you
13 see that?
14 A. Yes.
15 Q. Do you know -- it was sent by Isabel Nussle,
16 N-u-s-s-l-e. Who is she?
17 A. I believe she was Mats' assistant,
18 secretary.
19 Q. At this point in time, what was Mr. Caduff's
20 position if you know?
21 A. He was a CRO.
22 Q. Still a CRO?
23 A. Yeah.
24 Q. And who was Marco Ranieri, R-a-n-i-e-r-i-?
25 A. Marco Ranieri worked in Zurich, and I

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1 want to use Fairfield Sentry 50 percent and two other
2 Fairfield Greenwich Group funds as feeder funds for a
3 new offshore fund to be administered by and custodized
4 with EFG Lux.
5 A. Mm-hmm.
6 Q. What is EFG Lux?
7 A. At the time, EFG Luxembourg was a -- I'm
8 trying to see if it was a branch or if it was a
9 separate bank. EFG Luxembourg is what Lux stands for.
10 And that entity, I believe, at the time was owned not
11 by EFG Bank Switzerland, but was owned by EFG Euro
12 Bank, which is a Greek affiliate of EFG International
13 today and back then of EFG Bank.
14 Q. Do you know whether this planned offshore
15 fund was every actualized, done?
16 A. No.
17 Q. You don't know?
18 A. No. But I don't think that these gentlemen
19 worked for EFG. I think that these were -- Sandberg
20 and Burn, I'm referring to.
21 Q. Okay. Do you know whether the fund that
22 they were going to put together or were talking about
23 putting together, and it would be administered by EFG
24 Lux and custodized by EFG Lux, whether that ever
25 happened?

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Pages 177-180

00181

1 A. But administered, I believe, is in the sense
2 because EFG Lux was in the fund administration, not
3 necessarily that they managed the money, the fund
4 administration --
5 Q. Sure.
6 A. -- business.
7 Q. The administration would mean -- my
8 understanding, the administration would mean
9 generating the account statements, doing some of the
10 back office work, that kind of thing, for the fund,
11 not for the trade?
12 A. You calculate the net asset value --
13 Q. Right.
14 A. -- and that type of -- what -- what Citco --
15 Q. Same thing Citco was doing.
16 A. Yes.
17 Q. Do you know whether the fund was ever
18 created and offered for sale?
19 A. I don't know.
20 Q. And so you don't know whether you sold any
21 of it?
22 A. No. Well, I know --
23 Q. No, you did not.
24 A. -- we did not. I know that much.
25 Q. And then it talks about what Fairfield

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1 they are the first to see it, and can be the first to
2 act on it, as well.
3 Do you see that?
4 A. Yes, sir.
5 Q. Do you recall being told in February of 2003
6 that Fairfield Sentry or Madoff, I should say, Madoff
7 was cheating and that there was a hole in the Chinese
8 wall between the investment function and the trading
9 function?
10 A. First, I received this on March 3rd. So,
11 not in February, but --
12 Q. Okay. Do you remember getting it? Did --
13 did you read it? Do you recall being told in March?
14 A. I don't remember specifically at that time
15 that I read this, but I'm sure I read it.
16 Q. Did you have discussions with Mr. Echevarria
17 that, oh, my God, Madoff is cheating, there's a hole
18 in the Chinese wall and he's manipulating the market,
19 or anything like that?
20 A. Well, I think -- I think -- I think --
21 MR. COATES: Well, hold on a second.
22 A. I think -- I think --
23 MR. COATES: Excuse me. I object to the
24 re- -- I object to the form of the question.
25 Q. (By Mr. Lawrence Kellogg) You can answer.

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00182

1 Sentry is. And I want to focus you on -- it talks
2 about Bernard L. Madoff Securities.
3 A. Where are you?
4 Q. I'm -- I'm looking at the next section here.
5 A. Okay. Seven -- yeah.
6 Q. Fairfield Sentry, Section 3.
7 A. Mm-hmm.
8 Q. If you go to the third bullet point on
9 page 2 of this report, it says, Bernie Madoff, 61,
10 founder and owner of Madoff Securities, started his
11 equity strategy 35 years ago --
12 A. Mm-hmm.
13 Q. -- initially for U.S. high net worth
14 individuals. The key to his success and the very
15 stable performance of F.S., most likely lies in his
16 market making function. FGG said, quote, off the
17 record, unquote, that MS is, quote, cheating, unquote,
18 and that there is a, quote, hole in the, quote,
19 Chinese wall, unquote, which is supposed to separate
20 the market making from the fund managing function,
21 unquote. Due to MS's role as a leading market maker,
22 the firms sees the whole market and where it is
23 heading, it sees the floors, stop-loss levels and
24 other limits and therewith related volumes. If an
25 upmove is imminent or a positive bias is being formed,

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1 MR. COATES: You can answer, sir.
2 A. I think that Mats Pehrsson, again, a Swede
3 living in Zurich, writing in English, you know,
4 sometimes the language that they use is not
5 necessarily -- he puts cheating in quotes. I don't
6 think Mats was saying that Madoff was a cheat. I
7 think what this says to me, when I read it, is that
8 Fairfield was saying that the fund has the benefit of
9 the market timing views and ability that Madoff
10 Securities has being the -- go back to a bullet above
11 this, I believe is where I read it, one of the largest
12 market makers in U.S. equities and in increasing the
13 important position in the global securities market.
14 So I think what they're saying is that --
15 what he's saying is that, when you say cheating in
16 quotes, is that the fund can take advantage of the
17 fact that Madoff and Madoff's company has a view of
18 the -- early on of the activities of the market,
19 because it executes for many, many, many people in the
20 market.
21 Q. Do you know whether there -- the NASD and/or
22 the SEC have rules that regulate a Chi- -- or create a
23 Chinese wall between the market making functions and
24 the fund managing functions of an operation?
25 A. I don't know specifically the answer to that

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00185

1 question.
2 Q. Did you seek any legal advice about this?
3 A. I don't believe that Madoff at this time was
4 the investment advisor. Madoff executed the
5 transactions.
6 Q. Was it your understanding in 2003 that
7 Madoff was not making the investment decisions in the
8 Fairfield Sentry account?
9 A. Madoff was making the investment decisions.
10 Q. He wasn't designated the investment manager
11 because he wasn't licensed to do it, but he was making
12 the investments, wasn't he?
13 MR. COATES: Object to the form of that
14 question.
15 Q. (By Mr. Lawrence Kellogg) You can answer.
16 A. I can't answer that question. I'm sorry,
17 say that again.
18 Q. Well, I'm trying to understand what you're
19 saying here. Madoff was not the investment manager?
20 A. I believe Madoff executed the strategy.
21 Q. Yes.
22 A. The stated investment manager of the fund
23 was Fairfield Greenwich in Bermuda.
24 Q. And Fairfield Greenwich had discretionary
25 account with Madoff Securities, didn't it?

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00187

1 Mr. Schonbachler?
2 A. No.
3 Q. Mr. Salem?
4 A. No.
5 Q. No one?
6 A. About this memo?
7 Q. About the fact that you've just been told
8 and everybody at EFG Bank here that received this memo
9 and EFG Capital that received this memo had been told
10 by Mr. Pehrsson's that Fairfield Group had said
11 they're cheating, that Madoff was cheating?
12 A. I don't believe --
13 Q. Did you talk to anybody about it?
14 MR. COATES: Excuse me. Object to the form
15 of the question.
16 You may answer the question.
17 Q. (By Mr. Lawrence Kellogg) Laugh all you
18 want, I just -- I want to know when you told anybody
19 this, when you talked about it.
20 A. Cheating is in quotes. I don't think that
21 Mats Pehrsson meant it the way you're saying it, sir.
22 So --
23 Q. Did you ask him? Did you ask him, what --
24 did they actually tell you you're cheating, they're
25 cheating, Madoff's cheating? Did you ask him?

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00186

1 A. Yes.
2 Q. And that gave Madoff discretion to make all
3 the decisions as to what trades were being made.
4 A. Yes.
5 Q. And -- so when you read this, you didn't
6 feel any concern at all that one of your -- one of the
7 Zurich's CROs was saying that FGG said off the record
8 that MS is, quote, cheating, unquote, and there is a,
9 quote, hole in the Chinese wall? That didn't concern
10 you?
11 A. No.
12 Q. Okay. And did you do anything? Did you
13 talk to anyone about this?
14 A. I don't recall having talked to anyone about
15 this.
16 Q. You didn't talk to Victor Echevarria about
17 it?
18 A. I don't recall.
19 Q. Did you talk to Lawrence Howell about it?
20 A. I don't recall.
21 Q. Or Lonnie Howell. I'm sorry. Or Lawrence?
22 A. Lawrence.
23 Q. Did you talk to Mr. Caduff?
24 A. I don't recall, but most likely not.
25 Q. Did you talk to anybody like

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1 A. No.
2 Q. Did you talk -- have you ever talked to him
3 ever?
4 A. Have I ever talked to Mats?
5 Q. Yes.
6 A. Before this?
7 Q. Before, after, anytime. Do you know him?
8 A. I don't -- I don't know that I had ever met
9 Mats before this.
10 Q. Okay. Did you meet him afterwards?
11 A. I have met Mats.
12 Q. Who was your outside counsel at this time?
13 A. Who is our outside counsel?
14 Q. Who was your outside counsel in February of
15 2003 or March of 2003?
16 A. Holland & Knight.
17 Q. Did you seek legal advice about this memo
18 from Holland & Knight?
19 A. No.
20 Q. From any lawyer?
21 A. No.
22 Q. Was Dart Montgomery still employed at the
23 time?
24 A. Yes.
25 Q. Did you talk to him about it?

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00189

1 A. I don't recall.
2 Q. Let's go to page 4.
3 A. What page?
4 Q. Page 4. There's a section here called,
5 quote, The black-box problem at Fairfield Sentry and
6 how FGG is handling it.
7 A. I'm sorry, wait a second, I'm on the wrong
8 page.
9 Q. It's section 5 on page 4.
10 MR. JACOBSON: Bates number?
11 MR. LAWRENCE KELLOGG: Bates number is 7762.
12 Q. (By Mr. Lawrence Kellogg) It says,
13 section 5, The black-box problem at Fairfield Sentry
14 and how FGG is handling it. Do you see that?
15 A. Mm-hmm.
16 Q. What does it mean when -- what does the term
17 "black box" mean?
18 A. Commonly, the black box is, in the hedge
19 fund industry, when a portfolio manager has a -- or
20 hedge fund manager has a set of tools which sometimes
21 are trade signals or other sometimes algorithmic
22 functions or whatnot that they program to give them
23 trading signals, and that is no -- normally what is
24 called a black box.
25 Q. Okay. Mr. Pehrsson defines the problem here

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1 understanding of the strategy and everything else.
2 This is a CRO going over and writing a
3 report who is, perhaps, not even qualified to write
4 this report. So I, frankly, do not understand that
5 statement, and I did not feel a need to ask him.
6 Q. Well, if, as we know now, Madoff Securities
7 being the person or the company that's, as you say,
8 executing the strategy, making the decisions, and also
9 has control and custody of the securities, and is also
10 the one making the prime broker, if he wants to lie
11 about it, there's no third party you could have gone
12 to at this time to confirm that the trades he said he
13 was making are actually being made. You know that
14 now, right?
15 MR. COATES: Object to the form.
16 Q. (By Mr. Lawrence Kellogg) All right. Let
17 me -- let me withdraw it. Let me withdraw it.
18 Ordinarily a -- ordinarily is it true that
19 the functions of investment advisor and custodian are
20 separate for a hedge fund?
21 A. Ordinarily, yes.
22 Q. And the purpose of that is what?
23 A. The purpose of that is to -- well, first of
24 all, there aren't too many investment managers that in
25 and of themselves have the ability to be custodians.

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1 as, Number 1, Madoff Securities is investment
2 advisor/manager and custodian and prime broker for the
3 fund resulting in reduced transparency.
4 What did you understand him to mean by that?
5 A. By the bullet point Number 1?
6 Q. Yes, sir.
7 A. MS, I think, stands for Madoff Securities.
8 He's saying that Madoff is investment advisor and
9 custodian and prime broker, which means that they're
10 the ones that execute the trades as broker-dealer for
11 the fund resulting in reduced transparency.
12 Q. What did you understand reduced transparency
13 to mean?
14 A. Well, I know what reduced transparency is.
15 I don't know necessarily why having -- why being
16 investment manager, custodian and prime broker means
17 that you have reduced transparency.
18 Q. Did you ask him?
19 A. No, because that statement doesn't make
20 sense.
21 Q. Well, if it doesn't make sense, why don't
22 you ask him what it means?
23 A. Mats Pehrsson is not a hedge fund due
24 diligence person. We were conducting our due
25 diligence for years, and we had contacts and

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00192

1 Okay?
2 Q. Okay. Is there any other purpose for the
3 ordinary difference? Any other reason for it?
4 A. I don't -- I don't know right now that a
5 Goldman Sachs, JP Morgan, that type of entity who have
6 the ability to be both investment advisors and
7 custodians never did, to be honest with you. However,
8 you're asking me the question of why you would have
9 investment advisors and custodians separate, is to
10 have a separation of those activities.
11 Q. When you're doing due diligence, would that
12 be one of the things you were looking at, whether the
13 investment advisor and custodian are the same or
14 separate?
15 A. Yes.
16 Q. Why are you looking at it?
17 A. Because normally you have them being
18 separate.
19 Q. But why? Why -- why do you care?
20 A. Because the function of the custodian is to
21 custodize the asset, and the investment advisor is the
22 investment advisor.
23 Q. When you're doing due dil- -- is that the
24 only reason you look at it, is to -- because it's
25 ordinarily that way?

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00193

1 A. No, you want -- you know, ideally you would
2 want some separation.
3 Q. But why? Why?
4 A. I think I've already said that.
5 Q. I don't -- but I don't understand. Why --
6 if you're the one doing the due diligence --
7 A. Mm-hmm.
8 Q. You're the person actually in charge of due
9 diligence at EFG Capital, aren't you? Everyone
10 reports to you on that issue.
11 A. Reports to me.
12 Q. And ordinarily, EFG Capital is looking at
13 whether the investment advisor and the custodian are
14 the same or they're different. You said yes.
15 A. Yes.
16 Q. I'm trying to find out why do you want to
17 know that, and I don't know why.
18 MR. COATES: Object to the form.
19 You may answer, sir.
20 A. Because the custodian has distinct
21 responsibilities to custodize the assets and --
22 Q. What would be wrong -- go ahead. I'm sorry.
23 I'm sorry, I thought you were done.
24 MR. COATES: Please, Larry, let him finish
25 his answer.

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00195

1 executes the trades. Many of the trades happen
2 electronically and there is not -- it's not as
3 important to have them separate, or concerning.
4 MR. COATES: Excuse me. Larry, could we
5 take a break? It's been over an hour.
6 MR. LAWRENCE KELLOGG: Not quite yet.
7 MR. COATES: Excuse me?
8 MR. LAWRENCE KELLOGG: Not quite yet. Let
9 me just finish with this document and we can do
10 it.
11 MR. COATES: Well, I -- you know --
12 MR. LAWRENCE KELLOGG: I mean, I --
13 honestly, I don't want you talking to him while
14 I'm --
15 MR. COATES: A few more questions --
16 MR. LAWRENCE KELLOGG: I'm almost done. I
17 just want to --
18 MR. COATES: A few more questions is fine,
19 but --
20 MR. LAWRENCE KELLOGG: I want to get through
21 this one.
22 MR. COATES: I don't mean to interrupt your
23 presentation, but it's been well over an hour.
24 We'd like to take a break at a reasonable time.
25 Q. (By Mr. Lawrence Kellogg) It says -- it

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00194

1 A. And norm --
2 MR. COATES: Excuse me, Mr. -- let me just
3 say for the record, again, I want to make sure we
4 have a clean record. I interrupted you, as did
5 Larry, so why don't you finish your response.
6 I'm sorry.
7 A. And normally, you would like to have those
8 functions separate.
9 Q. Why?
10 A. Because --
11 MR. COATES: Object to form.
12 A. Because the custodian is there to custodize
13 the assets and, ideally, you want some separation
14 between the functions.
15 Q. To make sure the assets are there?
16 A. To make sure the assets are there. The
17 auditors and the administrators are also supposed to
18 verify that the assets are there.
19 Q. All right. Do you look to see whether the
20 prime broker is separate from the investment advisor
21 and manager when you do due diligence?
22 A. No. Well, you look at it. It's not as
23 important.
24 Q. Why isn't it as important?
25 A. Because the prime broker essentially

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1 says here that the other problem is that Fairfield's
2 auditors, PricewaterhouseCoopers, rely largely on
3 information provided by Madoff Securities' auditors,
4 which is not one of the leading names.
5 A. Yes.
6 Q. Did you know who their auditors were?
7 A. Yes.
8 Q. Who? When I say "they," did you know who
9 Madoff Securities' auditors were?
10 A. I don't recall the second word, but it's
11 Frieling and something.
12 Q. Did you know it at the time?
13 A. At this time?
14 Q. Yes.
15 A. Yes.
16 Q. Did you do any investigation or analysis of
17 Madoff's auditors --
18 A. No.
19 Q. -- when you did due diligence?
20 A. Not me.
21 Q. Did EFG Capital do any analysis, to your
22 knowledge, of the auditors of Madoff Securities?
23 A. I think we were aware of them, and I know
24 that at point -- at some point I recall seeing or
25 hearing that somebody prior to me had inquired with

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Pages 193-196

00197

1 Fairfield Greenwich about that.
2 Q. Now, up until this time, was it your
3 understanding that Fairfield Sentry was reviewing in
4 real-time the trades that Madoff was making for them?
5 A. At what time, sir?
6 Q. In 2003 when this memo was written.
7 A. It probably was, because that's what was
8 reported by them and by Dart's memo and -- I don't
9 know if even this memo said that. No. I don't know.
10 Q. Well, this memo says that, according to FGG,
11 Pricewaterhouse does random checks on the trades
12 directly at the source.
13 I'm looking at where it says Comments.
14 And in addition, Jeffrey Tucker of Fairfield
15 Greenwich, who allegedly has known B. Madoff for 10 or
16 15 years, has once spent a week -- about a week with
17 Madoff Securities to check the trades and positions
18 were all a match between FS, MS and the DTC, and the
19 results were satisfactory of Fairfield Greenwich.
20 A. Mm-hmm.
21 Q. Did this raise an issue in your mind that,
22 well, wait a minute, I thought that they were getting
23 real-time views of confirmations?
24 MR. COATES: I object to the form of the
25 question. Misleads and mischaracterizes the

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00199

1 perform random checks of Madoff Securities trades done
2 for Fairfield Sentry. Do you see that? Do you know
3 whether that was ever done?
4 A. No, I don't.
5 MR. LAWRENCE KELLOGG: All right. We can
6 take a break.
7 MR. COATES: Thanks.
8 THE COURT: Let's go off the record; the
9 time is 3:53.
10 (Thereupon, a recess was taken from
11 3:53 p.m. until 4:10 p.m., after which the
12 following proceedings were held.)
13 THE VIDEOGRAPHER: We're now back on the
14 record; the time is 4:10 p.m.
15 Q. (By Mr. Lawrence Kellogg) If Fairfield
16 Greenwich Group or anybody at it had told you they
17 were cheating and that there was a hole in the
18 Chinese wall that was being breached by Madoff, what
19 would you have done?
20 MR. COATES: Object to the form.
21 A. I would have asked them what they meant.
22 Q. Assuming they said, what we're doing is,
23 even though there's supposed to be a separation
24 between the market making and the investment advisory
25 businesses, they work on different floors, they're in

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00198

1 document.
2 MR. LAWRENCE KELLOGG: Just object to the
3 form of the question.
4 Q. (By Mr. Lawrence Kellogg) You can answer.
5 A. Can you repeat the question, please?
6 Q. Did it raise a question in your mind when
7 you read this that Fairfield Greenwich was saying that
8 they were getting real-time confirmations of the
9 trades?
10 A. No.
11 Q. It says here that Mr. Pehrssons was going to
12 check with Pricewaterhouse to see if these random
13 checks were actually being done at the source. Do you
14 see that?
15 MR. COATES: Where -- where are you, Larry?
16 MR. LAWRENCE KELLOGG: I'm in -- under
17 comments in the first paragraph.
18 MR. COATES: I'm sorry, which page?
19 MR. LAWRENCE KELLOGG: Page 7762.
20 Q. (By Mr. Lawrence Kellogg) It says, MP,
21 Mr. Pehrssons, to check this with
22 PricewaterhouseCoopers.
23 A. Mm-hmm.
24 Q. What he was checking was that
25 Pricewaterhouse, according to Fairfield Group, does

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00200

1 different areas, they have different employees, they
2 have different systems, there's a breach, and we know,
3 as investment advisors, what the market is going to do
4 because we secretly are able to do that, what would
5 you have done?
6 MR. COATES: Object to the form.
7 Q. (By Mr. Lawrence Kellogg) I mean, would
8 you have sought legal advice?
9 A. Probably not. I would have had a
10 conversation with them and said, what do you mean, if
11 Fairfield Sentry would have come out and said, hey,
12 we're cheating.
13 Q. Would you have told your clients to pull the
14 money? Would you have pulled -- would you have
15 told --
16 A. I would have first asked them what they
17 meant by that.
18 Q. Okay.
19 A. And then I would -- if somebody tells me
20 that they're cheating and that they're breaking the
21 law openly and blatantly --
22 Q. How about they're doing it surreptitiously?
23 A. But knowingly.
24 Q. Knowing.
25 A. Okay. Is my point. If somebody comes to

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00201

1 you and says, you know what, I am knowingly breaking
2 the law and knowingly I am cheating, and you ask the
3 questions and then they explain to you, and you decide
4 that, in fact, you see what they mean is correct, you
5 probably would have told them, you know, got to get
6 out.

7 (The referred-to document was marked for
8 identification as Plaintiff's Exhibit 114.)

9 Q. (By Mr. Lawrence Kellogg) Let me show you
10 what I'll mark as Exhibit 114, which is an e-mail
11 from Mr. Echevarria to you, which forwards a hedge
12 fund management due diligence questionnaire that
13 Fairfield had filled out or some other institutional
14 investor, and ask if you recall receiving this
15 document?

16 MR. COATES: Sorry. Excuse me.

17 THE WITNESS: Water.

18 A. Vaguely.

19 Q. This one says, Dear Victor and Sixto. This
20 is from Veronica Barco.

21 A. Mm-hmm.

22 Q. Do you know who she was?

23 A. She was one of the administrative persons on
24 Lourdes Barreneche's team at Fairfield Greenwich.

25 Q. She said, We would like to share with you

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00203

1 requirements regarding Chinese walls as set by the
2 NASD and SEC.

3 Do you see that?

4 A. I see it.

5 Q. Do you recall reading this question and
6 answer when you received this questionnaire?

7 A. No, I don't.

8 Q. So it didn't raise any issue in your mind --
9 as you sit here today, you don't recall any issue in
10 your mind being raised that, well, wait a minute,
11 Pehrsson is saying one thing and Fairfield Greenwich
12 is saying something else?

13 A. I don't.

14 Q. Now, if -- going back to my last question.

15 If Fairfield Greenwich, which as it says in this

16 questionnaire, has separated the -- it says that

17 Madoff has separated these functions on different
18 floors, different managers, and that they're trying to
19 comply with NASD and SEC rules --

20 A. Mm-hmm.

21 Q. -- and then said to you off the record, but
22 there's a hole in that wall, and Madoff can see where
23 the market is going, and Madoff can see anyway, what
24 would you have done?

25 MR. COATES: Object to the form of the

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00202

1 the attached Fairfield Sentry questionnaire that was
2 prepared for one of our institutional investors. This
3 information serves as complementary to our existing
4 due diligence questionnaire which we have also
5 attached for your reference.

6 A. Mm-hmm.

7 Q. And you vaguely recall receiving this?

8 A. (No verbal response.)

9 Q. Did you review it at the time?

10 A. I don't recall exactly. This is eight years
11 ago.

12 Q. Turn to page 61684.

13 A. Okay.

14 Q. And you see question 19 at the bottom. It
15 says, Can the team at BLM -- that's Bernard L. Madoff
16 Securities -- Can the team at Madoff Securities profit
17 from all information at Bernard Madoff Securities or
18 are there Chinese walls?

19 And the answer is, The group at BLM
20 responsible for the split-strike-conversion strategy
21 works on a different floor from the group responsible
22 for market making. Each group has separate and
23 distinct risk management systems and different
24 managers oversee the operations of each group. As
25 such, Madoff Securities exceeds the minimum regulatory

Page 202

00204

1 question.

2 Q. (By Mr. Lawrence Kellogg) You can answer.

3 A. Who was saying that in your question? I'm
4 sorry.

5 Q. Fairfield Greenwich.

6 A. Well, here, this is Fairfield Greenwich
7 making the statement.

8 Q. That's right.

9 A. And here it's Mats Pehrsson recounting --

10 Q. Something they'd said to him.

11 A. -- a meeting that he had with them. Okay.

12 So I don't know who said that to him, but he had a
13 meeting at Fairfield Greenwich. So is your question,
14 would I have asked --

15 Q. No. If -- if you were Mr. Pehrsson --

16 A. Mr. Pehrsson.

17 Q. -- Mr. Pehrsson at that meeting. You're the
18 person and -- no pun intended -- you're at the
19 meeting --

20 A. He's actually a very good pianist and
21 singer. So...

22 Q. Okay. At this point you're having a
23 conversation with Fairfield Greenwich Group and they
24 tell you, notwithstanding what we say here, I'm going
25 to tell you something off the record. I'm going to

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Pages 201-204

00205

1 tell you Madoff is cheating in the sense that there's
2 a hole in the Chinese wall, and he can see what his
3 trade execution group is doing, and that gives him an
4 advantage in his investment, you know, advisory
5 service business. He's cheating that way. What would
6 you have done?

7 MR. COATES: Object to the form.

8 A. I don't know the people at Fairfield Sentry
9 said they were cheating. Fairfield Greenwich.

10 Q. I want you to assume they told Mr. Pehrsson
11 that and assume that they --

12 A. So you're asking me if --

13 MR. COATES: Excuse me. I object to the
14 form of the question. Make sure the record's
15 clear.

16 A. Okay. To understand your question
17 correctly --

18 Q. Mm-hmm.

19 A. -- you're saying that if I am

20 Mr. Pehrsson --

21 Q. No, if you're you.

22 A. That's what you said before.

23 Q. Okay. If you're you.

24 A. If I'm me.

25 Q. If you're you, and you are.

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00207

1 therefore, you know, we're cheating, and this is not
2 true.

3 Q. Yes. What would you have done?

4 A. That's your question. What would I have
5 done?

6 Q. Yeah.

7 A. I would probably have -- well, how do you
8 then write this here and what is it, and then you
9 investigate it. And if, in fact, they say, no, no,
10 that's just -- you know --

11 Q. Right.

12 A. So that that additional investor that this
13 was prepared for comes in, I would likely then turn
14 around and recommend that we take it off the
15 recommended list and possibly even more.

16 Q. Now, you may have answered this before, but
17 bear with me, because what you just said was first
18 thing you'd do is investigate it and see if -- what --
19 see if that's true, that they're really cheating.

20 A. Well, I don't know who would be saying it,
21 you know. Obviously, you'd call a --

22 Q. You'd want to know who said --

23 A. -- high-level meeting at --

24 Q. Right.

25 A. -- Fairfield Greenwich and possibly --

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00206

1 A. Okay.

2 Q. All right.

3 A. Yes.

4 Q. You're receiving this from Fairfield Group.
5 They're telling you the functions are separate, we
6 were -- we comply with the law, but off the record
7 there's a hole.

8 A. So you're saying first I receive this and
9 then I go visit and they say, you know what,
10 regardless --

11 Q. Or they call you and --

12 A. -- regardless --

13 MR. COATES: Excuse me. Excuse me.
14 Gentlemen, again.

15 THE WITNESS: Yeah. I'm sorry. You're
16 right. I apologize. I apologize.

17 MR. COATES: And, Larry, please let

18 Mr. Campano respond. I know you're -- you're --

19 A. I want to be able to understand your
20 question correctly. You're saying that if I'm me and
21 I get this document and concurrently they say, hey,
22 despite this document, I want you to know,

23 Mr. Campano, that we're cheating and Bernard --

24 Q. Madoff is. The Madoff is.

25 A. Well, okay, the Madoff is cheating and,

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00208

1 possibly request a meeting with the folks at Madoff.

2 Q. And we know that you didn't do that when you
3 received Mr. Pehrsson's memo.

4 A. No, I did not.

5 Q. Do you know if anybody else at EFG Group did
6 it?

7 A. I don't know.

8 Q. Anybody at EFG Capital, EFG Bank, EF -- any
9 EFG entity said, let's investigate, let's call a
10 meeting with somebody and talk about it?

11 A. No.

12 Q. You don't know?

13 A. I don't know.

14 Q. When the fraud was revealed in December of
15 2008, there was a -- EFG made the decision to
16 redeem -- send redemption notices for all the
17 investments that EFG customers had in Fairfield
18 Sentry; is that right?

19 A. Yes.

20 Q. And that would be EFG Capital, EFG Bank,
21 anybody who was a customer of the EFG entities was
22 redeemed?

23 A. I remember the initiative coming from me,
24 and I may have consulted with Morgan Lewis, our
25 counsel, at the time.

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00209

1 Q. And I don't want to know about that, because
2 that's privileged.
3 MR. COATES: Yeah. Please --
4 THE WITNESS: Yeah, I'm sorry.
5 MR. COATES: You can --
6 MR. LAWRENCE KELLOGG: I mean, you can tell
7 me you talked to them, but not what was said.
8 THE WITNESS: No, I know. I know.
9 MR. COATES: Again, for the record --
10 THE WITNESS: Yes.
11 MR. COATES: -- you can refer to the fact
12 that you spoke with counsel, but I do not want
13 you to --
14 THE WITNESS: I understand.
15 MR. COATES: -- disclose the subjects of
16 that.
17 THE WITNESS: I understand. I understand.
18 MR. COATES: Thank you.
19 A. But it was my opinion that if you put in
20 redemptions immediately, you were first in line in
21 case anything were to -- redemptions would start.
22 Q. And so you --
23 A. Now --
24 Q. I'm sorry.
25 A. I'm sorry. I apologize. You go ahead.

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00211

1 says, Following the advice of legal counsel, EFG
2 Capital will place a forced redemption of our client
3 positions in the Fairfield Sentry fund.
4 Does that refresh your memory that the next
5 day --
6 A. Yes.
7 Q. Okay. And this was before you even -- the
8 CROs even spoke maybe or got permission from
9 particular customers. You just went ahead and did it,
10 correct?
11 A. We just went ahead and did it.
12 Q. And you did that to protect your clients.
13 A. We thought that it was in the best interest
14 of clients.
15 Q. Was this an action that was done worldwide
16 for -- for EFG Group, or was this just for EFG
17 Capital?
18 A. We requested it for our clients. I know we
19 consulted with people in Switzerland as to what we
20 were doing and we told them why. I don't recall
21 exactly if they effected at the same time a redemption
22 for all their clients.
23 Q. Oh, all right. What number was the -- can
24 you get your affidavit?
25 A. Is it still here or you -- here's the

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00210

1 Q. And EFG Capital and you made the decision to
2 go ahead and redeem those funds for every customer
3 whether or not they were recommended, solicited,
4 unsolicited or unrecommended; is that right?
5 A. Absolutely.
6 Q. And you --
7 A. Customers of EFG Capital.
8 Q. Yes.
9 Do you know whether customers of EFG Bank
10 did the same?
11 A. We told them what we were doing and why. I
12 don't recall exactly if they also took the same
13 action.
14 Q. Do you recall that Mr. Madoff's fraud was
15 revealed on December 11, 2008?
16 A. Yes.
17 Q. All right. And on -- the forced redemption
18 was done the next day, wasn't it?
19 A. I believe so.
20 Q. Let's confirm this.
21 (The referred-to document was marked for
22 identification as Plaintiff's Exhibit 115.)
23 Q. (By Mr. Lawrence Kellogg) Exhibit 115.
24 This is Bates Number 21205. It's an e-mail from
25 Juan Massens to all the CROs, copying you, that

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00212

1 affidavit. Here's a copy, yeah. 106.
2 Q. All right. If you turn to Exhibit 5 on your
3 affidavit, it's --
4 A. Do you know the page?
5 Q. Yeah. It's marked EFG Capital 7762.
6 A. Seven -- I'm sorry. Seven?
7 Q. 7762.
8 A. Okay.
9 Q. This is a letter that would go to clients
10 saying, We're writing you with regard to your holdings
11 in Fairfield Sentry Limited fund. We enclose for your
12 information and review a copy of the latest revised
13 version of the fund's investments memorandum. The
14 fund's performance speaks for itself; however, we
15 would like to highlight the fact that the funds assets
16 are custodized with the funds investment's advisor,
17 Bernard Madoff Investment Securities, rather than with
18 a major international bank, directly or through a
19 subsidiary, as is the case with most investment funds.
20 Although Madoff Securities has a substantial amount of
21 capital, it is obviously much less than the capital of
22 money-center banks. Therefore, there is a greater
23 risk to investing in the fund than would be the case
24 if the fund's assets were custodized at a major
25 international bank. Please acknowledge receipt of the

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Pages 209-212

00213

1 Prospectus and acceptance of the risks highlighted.
2 If you have any questions, please let us know.
3 And then the client would sign the letter.
4 Is this something that was instituted before
5 you came?
6 A. Yes.
7 Q. All right. What was the policy of when
8 these letters would be sent out? Would they be
9 sent -- would they be sent to the client or given to
10 the client at the time of the investment?
11 A. This particular letter --
12 Q. Yes.
13 A. -- was sent in the year 2000 to the clients
14 at a time when the fund's Prospectus and investment
15 memorandum changed. So it was sent accompanying the
16 new investment memorandum. This particular letter.
17 Q. All right. Was this letter sent to all
18 customers at the time that Prospectus changed?
19 A. I understand so.
20 Q. Was it sent to customers whether or not they
21 were solicited or recommended or unsolicited?
22 A. I don't know that specific detail, but I
23 suspect that it was sent to everybody.
24 Q. Now, after this letter was sent, from that
25 point on, was there a -- was there a procedure by

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00215

1 Q. Why?
2 A. Because, again, as we discussed before, it
3 was, first of all, customary for there to be a
4 separation between a manager and a custodian and, in
5 particular, the typical custodians of the funds were
6 entities that had a larger capital base and,
7 therefore, presumably more financially strong than
8 Madoff Sec -- Bernard Madoff Investment Securities
9 was at the time, with a reported capital of
10 \$275 million.
11 Q. And that Madoff Securities had a capital of
12 \$275 million, but might be holding billions of dollars
13 worth of Fairfield securities; is that right?
14 A. I don't want to go that far, because right
15 now, I don't know what it was holding at the time.
16 Q. Did you know the size of the Fairfield
17 Sentry fund at any point in --
18 A. At what point?
19 Q. At any point in time.
20 A. Yes.
21 Q. What was your understanding of the size?
22 A. At what point?
23 Q. Say in 2002.
24 A. A couple billion, I think.
25 Q. So if Madoff Securities had, say, a half

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00214

1 which a similar letter would be signed by everybody
2 who invested in the fund?
3 A. Yes.
4 Q. If you'd turn the page, there's something
5 called Notice to Clients.
6 A. Sorry. Page -- is that --
7 Q. That's page 7816.
8 A. 7896.
9 Q. 7816. It's the next page.
10 A. Oh, I'm sorry. Okay.
11 Q. Is this the letter that would be signed when
12 an investment was initially purchased in Fairfield
13 Sentry?
14 A. Yes. I believe this is the -- one of the
15 first formats of a similar letter that was evolved
16 through the years, but yes.
17 Q. Okay. So a similar letter was done
18 throughout the years, sometimes the words would change
19 in it, but the purpose was to disclose that Madoff
20 Securities was holding custody of the securities.
21 A. Yes.
22 Q. Is that right?
23 A. Yes.
24 Q. You wanted to highlight that risk.
25 A. Yes.

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00216

1 million dollars worth or \$500 million worth of capital
2 and was holding \$2 billion worth of assets, that was a
3 risk in your mind, that if he went down, there might
4 not be enough assets to --
5 A. They were -- I'm sorry. One second.
6 Still on?
7 Q. Yes.
8 A. I apologize.
9 The assets of the client in the balance
10 sheet of a broker-dealer are not the assets of the
11 entity. So, therefore, you don't look at the assets
12 and say you have 500 million or a billion or something
13 and compare it to the capital. I mean that's clear,
14 no?
15 Q. It doesn't belong to Madoff.
16 A. It doesn't -- doesn't belong to Madoff.
17 Q. Okay. So he might be holding things, even
18 if he's broke, if he still has the interest, he could
19 return them because they're not his, correct?
20 A. Supposedly, yeah.
21 Q. Was another risk of having custody in
22 Mr. Madoff's hands was that the trades might not be
23 actually being made, you couldn't confirm it with a
24 third party. Did that ever cross your mind at any
25 time as a risk?

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Pages 213-216

00217

1 MR. COATES: Object to the form.
2 A. No.
3 Q. If -- if they're not assets of Madoff, what
4 difference does it make how big or strong he is in
5 terms of risk to the -- to the customer?
6 A. Because a smaller company -- well, anyhow,
7 some companies in the broker-dealer industry have lots
8 of different activities. And if a securities company
9 goes down and there's no SIPC coverage, presumably the
10 assets should be segregated, but maybe they're not.
11 And in any event, you don't ever want to
12 have the problem of wherever your account is to go
13 down because then things get locked in -- look at the
14 Lehman situation -- for quite some time until things
15 get resolved.
16 Q. Gets tied up in the process.
17 A. Mm-hmm.
18 Q. So what was the practice or policy with
19 respect to these Notices to Clients? Was everybody --
20 every customer who did an initial trade in Fairfield
21 Sentry required to receive the Prospectus, receive
22 this disclosure and sign off on it?
23 A. Yes.
24 Q. Was it the same whether or not you're
25 solicited, recommended, unsolicited?

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00219

1 Q. Have there been any settlements?
2 A. No.
3 Q. Your next paragraph says that three EFG
4 Capital customers signed a release pursuant to which
5 they released all claims.
6 Do you see that?
7 A. Yes.
8 Q. Who did -- well, what was the circumstances
9 where someone would be releasing claims?
10 A. Some clients -- those three clients wanted
11 to send their assets away from EFG. The assets that
12 they had -- essentially transfer and close the
13 accounts. The accounts included -- and I believe they
14 were related, I think they were related --
15 Q. These three were related entities?
16 A. I -- I believe they were related customers
17 by family or -- or something.
18 And we were told that the -- because the
19 fund was in liquidation, Fairfield Sentry, by the time
20 that they wanted to send this out, we were told by the
21 liquidator and the administrator that they would
22 not -- that they weren't allowing the funds to be
23 transferred -- the Fairfield Sentry shares to be
24 transferred from one nominee shareholder to another.
25 And, essentially, we said, okay, so you can

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00218

1 A. Yes.
2 Q. Okay. Let's go back to your affidavit for a
3 minute, paragraph 40 to 44.
4 A. I'm sorry, paragraph?
5 Q. Paragraph 40.
6 A. Is that on page 10?
7 MR. COATES: Page 10, yes.
8 Q. (By Mr. Lawrence Kellogg) Actually, in
9 paragraph 43 --
10 A. 43 or 40?
11 Q. 43.
12 A. 43.
13 Q. You say that there have been 12 EFG Capital
14 customers who filed arbitration claims with FINRA in
15 two different proceedings. So there's two cases going
16 on?
17 A. There's two cases.
18 Q. Are there -- have there been any other cases
19 filed?
20 A. No.
21 Q. Any other arbitrations filed?
22 A. No.
23 Q. Are there any other pending arbitration
24 demands?
25 A. No.

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00220

1 send all your assets, but you can't close the account
2 and you've got to leave this here, this position, for
3 whatever it's worth. And they said, no, we want to
4 close the account. And we said, well, you know, we
5 can't do this. And they said, well, we don't care
6 what happens with the shares in EFG -- in -- in
7 Fairfield Sentry, so, you know, we'll sign a release
8 and whatever, they're not ours. We'll -- you know,
9 you can keep them, you can do whatever you want with
10 them, we just want to close the account. That's what
11 that meant.
12 Q. And so you said, fine, release us, and you
13 can go.
14 A. Yeah.
15 Q. Do you know what the net value of the
16 Fairfield securities investments of those three
17 accounts was? In other words, what was the amount
18 that was released?
19 A. I don't know exactly, but I don't think it
20 was a very large amount.
21 Q. When you say it wasn't very large, give us a
22 ballpark --
23 A. Between the three?
24 Q. Yes.
25 A. 100,000, low six figures, something like

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Pages 217-220

00221

1 that.

2 MR. LAWRENCE KELLOGG: Why don't we go off
3 the record for a second.

4 THE VIDEOGRAPHER: Off the record; the time
5 is 4:37.

6 (Thereupon, a recess was taken from
7 4:37 p.m. until 4:48 p.m., after which the
8 following proceedings were held.)

9 MR. LAWRENCE KELLOGG: Okay. Let's go back
10 on.

11 THE VIDEOGRAPHER: Okay. We're back on the
12 record; the time is 4:48.

13 Q. (By Mr. Lawrence Kellogg) All right.

14 Turning back to your affidavit for a minute,
15 paragraph 27, you mentioned that four Fairfield
16 investors transferred the Fairfield investment into
17 new accounts, that they bought it somewhere else and
18 transferred it in.

19 A. That's right.

20 Q. How did you determine that, which ones were
21 transfers? What did you look at?

22 A. Because we -- in our exhaustive record of
23 the trading blotters and the position records, as of
24 the dates in question, we reconstructed back and
25 looked at -- reconciled the ending positions that we

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00223

1 Q. You could do that?

2 A. That, supplemented by looking at trade
3 tickets if we needed to, but yes.

4 Q. Were there any procedures for accepting a
5 transfer investment from another broker firm --
6 brokerage firm?

7 A. Any investment?

8 Q. Hedge fund investment. Let's talk about
9 hedge funds.

10 A. If it was a hedge fund that we -- that EFG
11 Bank as custodian and as nominee shareholder didn't
12 have, that meant that they had to become a nominee
13 shareholder.

14 So if it was the transfer in of a
15 position -- if it was particularly a hedge fund --
16 mutual funds, stocks, bonds is easier because sort of
17 they have central depositories, but if it was a
18 specific hedge fund that wasn't, again, on the master
19 securities list and holdings of EFG Bank, you would
20 need to look to make sure that the bank could be a
21 holder for things. For example, some funds are -- you
22 could only be a U.S. -- I mean, an offshore holder,
23 that type of thing.

24 But for the most part, that's what we would
25 look at, not necessarily much more. It's the ability

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00222

1 were showing, together with the purchase and sales
2 blotter, and if we had any position that didn't
3 correspond, we'd look further, and then the system has
4 a category called transferred in or transferred out,
5 and then we have to manually then go in and -- and
6 double-check that.

7 So we feel that we have exhausted --

8 Q. Do you know -- you've attached to your
9 affidavit a list of the customers, it's Exhibit 1,
10 without their names, but their -- their losses at the
11 end. Do you know which ones of those on this
12 exhibit -- I'm sorry, it's Exhibit 4 to the affidavit,
13 which ones are the transferred ones?

14 A. Not offhand, but I think it's something --

15 Q. You could find that out?

16 A. We could find that out possibly.

17 Q. You mentioned that you would look at the
18 internal trade blotter.

19 A. Mm-hmm.

20 Q. And reconcile it with the ending -- that
21 asset value of Fairfield Sentry --

22 A. Ending shares in the account.

23 Q. And you traced it back through the blotter
24 to the beginning?

25 A. Mm-hmm.

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00224

1 to hold, the ability to price.

2 Q. If somebody transferred in a hedge fund that
3 was not on the recommended or approved list, what
4 would happen?

5 A. Other than what I just described to you of
6 making sure that, from an operational point of view,
7 they could hold it in custody, nothing specifically
8 happened.

9 Q. So for transferred in accounts, if something
10 wasn't on the list, some hedge fund wasn't on the
11 list, you didn't require one of those waiver letters?

12 A. No.

13 Q. You have to answer verbally.

14 A. I'm sorry. No.

15 Q. Okay. Thank you.

16 Would you -- would -- would EFG Capital
17 receive any fee, transfer fee or anything like that?

18 A. When -- when we took assets in from --

19 Q. Yes.

20 A. -- from -- from the client?

21 Q. Yes.

22 A. Normally not, no.

23 Q. I saw in your affidavit, paragraph 22, you
24 make a statement that, quote, Based on the Fairfield
25 investors' conversations with their CROs and the

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Pages 221-224

00225

1 information they provided to EFG Capital, the
2 Fairfield investors comprise a collection of wealthy
3 and sophisticated individuals -- including offshore
4 entities, British Virgin Island investment
5 corporations, financial consultants, commodities
6 trainers, and an Ecuadorian bank -- who reasonably
7 understood the risks of investing in an offshore hedge
8 fund and the fee arrangement between a broker-dealer
9 and a hedge fund, unquote.
10 Where did you draw that information from?
11 A. Which part?
12 Q. All of it.
13 A. All of it. From looking at all of the
14 250 -- what is it -- 55 EFG Capital customers, and
15 looking at their files, and looking at the KYC
16 documents, and looking at their country of domicile,
17 and looking at their descriptions of who they are and
18 what they do.
19 Q. So you say, Based on the Fairfield
20 investors' conversations with their CROs.
21 A. Well, because initially that's when you open
22 an account, you have a conversation and you ascertain
23 who you are and you know your customers.
24 Q. So that's -- would there be -- when an
25 account was opened, the CRO would create a narrative?

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00227

1 risks of hedge funds and the fee arrangements between
2 a broker-dealer and a hedge fund.
3 Q. Did -- the people who actually reviewed all
4 these files, did they give you some sort of written
5 summary of each of them?
6 A. We prepared summaries and spreadsheets.
7 Q. So you have spreadsheets with summaries of
8 what?
9 A. Of the accounts, indicating who they are,
10 the -- I believe the country of domicile of the -- of
11 the account, whether the consent forms were on file,
12 that type of information.
13 Q. And you have possession of those?
14 A. I believe so, yes.
15 Q. Have those been produced to us?
16 MR. JASON KELLOGG: What were they?
17 MR. LAWRENCE KELLOGG: They're spreadsheets
18 of the information from which he drew this
19 conclusion.
20 MR. JASON KELLOGG: I don't think so.
21 MR. LAWRENCE KELLOGG: Okay. Have you
22 produced those to us; do you know?
23 MR. COATES: No. You've received all of the
24 underlying KYC new account application documents
25 for all the customers. You have them all.

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00226

1 A. Yes, absolutely.
2 Q. And you reviewed that?
3 A. Yes.
4 Q. And you say, The information they provided
5 to EFG Capital. Is that what you're referring to, the
6 narrative when they opened up?
7 A. Yes.
8 Q. And you looked at each one of them?
9 A. Me personally?
10 Q. Yes.
11 A. I personally did not look at every single
12 one of them.
13 Q. Who -- who -- on what basis are you swearing
14 here in an affidavit that based upon the -- these
15 conversations and the information provided, that you
16 can swear under oath that the Fairfield investors
17 were -- reasonably understood the risks of investing
18 in an offshore hedge fund and the fee arrangement?
19 How can you say that when you hadn't reviewed the
20 stuff yourself?
21 A. Because they are a staff that prepared it
22 and most of the or all -- I'm not going to say all.
23 Most of the accounts had a risk disclosure statement
24 and an additional risk disclosure statement in which
25 they attested to understanding and recognizing the

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1 MR. JACOBSON: Narrative descriptions, about
2 6,000 pages.
3 Q. (By Mr. Lawrence Kellogg) Did EFG Capital
4 ever issue a blanket written statement to all
5 customers that they were receiving retrocessions
6 from Fairfield Sentry?
7 A. Outside of the confirmation at the time of
8 purchase?
9 Q. The confirmation would show a commission,
10 wouldn't it?
11 A. And it would also indicate -- I believe, in
12 the back or in the front, it would also indicate that
13 we were receiving a retrocession, and if they wanted
14 to find out and ask, they could.
15 Q. That would be on the back of the
16 confirmation?
17 A. I believe it was on the back of the
18 confirmation.
19 Q. I don't have one here. Maybe I'll talk to
20 you about that last -- next time. I'll move on for
21 now.
22 A. Okay. Yeah.
23 Q. Do you have that document? No, no, no.
24 Leave that alone. Oh, I don't think it is. He's
25 telling --

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1 When you say there's a disclosure on the
2 confirmation, you're referring to the confirmation of
3 the trade; is that right?
4 A. Yes.
5 Q. You're not referring to the -- this
6 disclosure here?
7 A. No.
8 Q. All right.
9 A. It's the confirmation of the trade that
10 we're supposed to mail post trade to the client.
11 Q. Other than that confirmation, was there --
12 was there any other way -- was there any other written
13 disclosure of the amount of retrocessions or rebates
14 paid to you for the customers?
15 A. On the specific formula? On the specific
16 formula that we were --
17 Q. Yes.
18 A. Like -- like what we discussed earlier
19 you're going to get -- no. The offering memorandum, I
20 think, makes a reference that there will be
21 retrocessions paid to distributors, but not -- it
22 doesn't go into specifics as to how or to whom.
23 Q. Was there ever any disclosure to purchases
24 of Fairfield Sentry that EFG Capital was making more
25 money from the rebates than they were from the

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00231

1 CRO told the client. Our obligation under Rule 10b-10
2 of FINRA was to advise the clients that we would be
3 getting a retrocession, and if they needed to find
4 out, they could, and we complied with our obligation.
5 Q. And do you think that since those rebates
6 came from a performance that was bogus, that they
7 should be returned to the customers?
8 A. Not right now.
9 Q. Why?
10 A. Because we don't know what's going to happen
11 with the collections of this fund and how much money
12 is going to be eventually returned to the clients.
13 Q. If the clients don't get made whole, do you
14 think that money should be paid back to them?
15 MR. COATES: Object to form.
16 Q. (By Mr. Lawrence Kellogg) You know, they
17 don't get made whole by Fairfield Sentry from the
18 class action or from the Madoff estate or from some
19 other source.
20 A. I don't have a definite position on that at
21 this point.
22 (The referred-to document was marked for
23 identification as Plaintiff's Exhibit 116.)
24 Q. (By Mr. Lawrence Kellogg) I'll show you
25 Exhibit 116, which is an e-mail string, Bates

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00230

1 commissions on the trade?
2 A. That was not the case.
3 Q. You're making more money on the commissions
4 than you were on the retrocessions?
5 A. Every situation is different, okay, but the
6 commission -- well, the commission is one time. So
7 are you saying at that one time the commission was
8 more than the retrocession, or over a period?
9 Q. Well, over a period of time, were there any
10 customers that you know of where you made more money
11 off the commission on the trade than you did on the
12 retrocession or rebate?
13 A. If you take the retrocession over a period
14 of holding time --
15 Q. Yes.
16 A. -- okay, then the answer is no. Some -- in
17 the majority of the cases, assuming that the holding
18 period was over a couple of years, then we would make
19 more in those circumstances if the holding period was
20 long enough.
21 Q. Did you tell customers that over a period of
22 time we're going to make more money from Fairfield
23 Sentry than we are on you -- from you, on you in this
24 investment?
25 A. I don't know specifically that -- what every

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00232

1 Number 25714. This is an e-mail exchange between
2 you and Mozamil Afzal, A-f-z-a-l.
3 And who is he again?
4 A. Right now, Mozamil Afzal is the chief
5 investment officer of EFG Asset Management in London.
6 Q. And what was he in 2009, February of 2009?
7 A. Probably the same position.
8 Q. He asks you, Do not want to say in open
9 forum. Do we need to give back rebates we received on
10 Madoff funds?
11 And you respond, I have been bringing that
12 up selectively. I have to get to Lonnie about it. I
13 think we should, because our rebates came from a
14 performance that was bogus and with money that really
15 belonged to investors. I take it you agree.
16 And he says, Unfortunately we may have to,
17 but I guess we need to know when the fraud started.
18 Has your position changed since February
19 of '09, sir?
20 A. Yes.
21 Q. Have you spoken to Lonnie Howell about it?
22 A. Yes.
23 Q. And what -- what did you talk about? What
24 did he say to you, what did you say to him?
25 A. I brought it up the same way that I'm

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00233

1 bringing it up here, around this time.
 2 Q. And what did you say? I think we should pay
 3 it back because the performance fees were bogus,
 4 performance was bogus, we should pay the money back,
 5 is that what you told him?
 6 A. That's what I said at the time.
 7 Q. What did he say?
 8 A. He said, well, we don't know what's going to
 9 happen. We did work throughout the time. We don't
 10 know when the fraud started. We don't know what
 11 customers are going to get back.
 12 Q. Well, now we know the fraud started before
 13 EFG Group or EFG Capital started selling Fairfield
 14 Sentry. Does that answer at least that question, that
 15 everything, every performance fee was based on a bogus
 16 performance?
 17 A. What are you basing your statement on?
 18 Q. Madoff has pleaded guilty to a fraud that he
 19 says started at least in the middle '80s and that
 20 there were never any trades.
 21 So we know that now, the fraud started long
 22 before you started selling this.
 23 A. Okay.
 24 Q. With that in mind, do you think that since
 25 the performance was bogus -- not you, but the

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

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

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00234

1 company -- think that the performance was bogus, the
 2 rebate should be paid back to customers?
 3 MR. COATES: Object to form.
 4 A. I am not right now in a position to make
 5 that determination because I don't know how much
 6 clients are going to get back from this and, frankly,
 7 since then, I've also realized that we did a lot of
 8 work during the years for this. So I don't have
 9 exactly the same position right now.
 10 MR. LAWRENCE KELLOGG: Okay. On that note,
 11 why don't we close for today.
 12 MR. COATES: Excuse me?
 13 MR. LAWRENCE KELLOGG: Why don't we close
 14 for today.
 15 MR. COATES: Okay. Great.
 16 MR. LAWRENCE KELLOGG: Thank you.
 17 THE VIDEOGRAPHER: Going off the record; the
 18 time is 5:04.
 19 (Thereupon, the taking of the deposition
 20 was adjourned at 5:04 p.m.)
 21
 22
 23
 24
 25

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1
 2 CERTIFICATE OF OATH
 3
 4 STATE OF FLORIDA)
)SS
 5 COUNTY OF MIAMI-DADE)
 6
 7
 8 I, JODY L. WARREN, Registered
 9 Professional Reporter, Florida Professional
 10 Reporter, Notary Public in and for the State of
 11 Florida at Large, certify that the witness, SIXTO
 12 CAMPANO, personally appeared before me on 1/7/11
 13 and was duly sworn by me.
 14 WITNESS my hand and official seal this
 15 7th day of January, 2011.
 16
 17
 18

 19 JODY L. WARREN, RPR, FPR
 Notary Public, State of Florida at Large
 My Commission Expires 2/28/11
 20 My Commission No. DD618340
 21
 22

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CERTIFICATE OF REPORTER

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

20
21 _____
22 JODY L. WARREN, RPR
23
24

00239

1 VERITEXT FLORIDA REPORTING CO.
19 West Flagler Street, Suite 1020
2 Miami, FL 33130
Phone: 305.376.8800

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

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ERRATA SHEET

1
2 RE: FERREIRA VS. EFG CAPITAL
DEPO OF: Sixto Campano
3 TAKEN: 1/7/11
REPORTER: JODY L. WARREN, RPR

4 DO NOT WRITE ON TRANSCRIPT, ENTER ANY CHANGES HERE

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21 State of Florida
County of Miami-Dade
22