

# EXHIBIT 8

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF FLORIDA  
3 CASE NO.: 10-20206-CIV-MARTINEZ

4 LORRENE DA SILVA FERREIRA and ARLETE DA  
5 SILVA FERREIRA, individually and on  
6 behalf of all others similarly situated,

7 Plaintiffs,

8 vs.

9 EFG CAPITAL INTERNATIONAL CORP., and EFG  
10 BANK f/k/a EFG PRIVATE BANK SA,

11 Defendants.  
12 -----

13 Wednesday, October 13, 2010  
14 201 South Biscayne Boulevard  
15 Miami, Florida  
16 1:20 p.m. - 5:32 p.m.

17 VIDEOTAPE DEPOSITION

18 OF

19 VICTOR MANUEL ECHEVARRIA

20 Taken before Patricia C. Weiner, Registered  
21 Professional Reporter, Certified Realtime Reporter,  
22 Registered Merit Reporter, Florida Professional Reporter  
23 and Notary Public in and for the State  
24 of Florida at Large, pursuant to Notice of Taking  
25 Deposition filed in the above cause.

2	<p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiff:</p> <p>3 LEVINE, KELLOGG, LEHMAN, SCHNEIDER &amp; GROSSMAN, LLP</p> <p>4 34th Floor, Miami Center</p> <p>5 201 South Biscayne Boulevard</p> <p>6 Miami, Florida 33131</p> <p>7 (305) 403-8788</p> <p>8 lak@klaw.com</p> <p>9 BY: LAWRENCE A. KELLOGG, ESQ., and</p> <p>10 jk@klaw.com</p> <p>11 JASON KELLOGG, ESQ.</p> <p>12 and</p> <p>13 COHEN, KINNE, VALICENTE &amp; COOK, LLP</p> <p>14 Third Floor</p> <p>15 28 North Street</p> <p>16 Pittsfield, MA 01201</p> <p>17 (413)443-93999</p> <p>18 Kkinne@cohenkinne.com</p> <p>19 BY: KEVIN M. KINNE, ESQ.</p> <p>20 On behalf of the Defendant/EFG Bank f/a EFG Private</p> <p>21 Bank SA:</p> <p>22 HOLLAND &amp; KNIGHT, LLP</p> <p>23 Suite 3000</p> <p>24 701 Brickell Avenue</p> <p>25 Miami, Florida 33131</p> <p>(305) 374-8500</p> <p>michael.garcia@hklaw.com</p> <p>BY: MICHAEL E. GARCIA, ESQ.</p> <p>On behalf of the Defendant/EFG Capital International</p> <p>Corp.:</p> <p>GREENBERG TRAUERIG</p> <p>Suite 300 East</p> <p>777 South Flagler Drive</p> <p>West Palm Beach, Florida 33401</p> <p>(561)650-7903</p> <p>coatesj@gtlaw.com</p> <p>BY: JOSEPH C. COATES, III, ESQ.</p> <p>ALSO PRESENT: ALEJANDRO MONTALVO, VIDEOGRAPHER</p>
3	<p>1 -----</p> <p>2 INDEX</p> <p>3 WITNESS:</p> <p>4 VICTOR MANUEL ECHEVARRIA</p> <p>5 Direct Examination By Mr. Lawrence Kellogg</p> <p>6</p> <p>7 Witness Signature Page 160</p> <p>8 Certificate of Oath For Witness 161</p> <p>9 Reporter's Deposition Certificate 162</p> <p>10 Errata Sheet 163</p> <p>11 Read Letter 164</p> <p>12 Attorney Read Letter 165</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
4	<p>1</p> <p>2 PLAINTIFFS EXHIBITS</p> <p>3 NUMBER DESCRIPTION PAGE</p> <p>4</p> <p>5 Exhibit 1 EFG Capital Organizational Chart 15</p> <p>6 Exhibit 2 EFG Capital International Corp. 25</p> <p>7 Consolidated Statement of Financial</p> <p>8 Condition, December 31, 2007</p> <p>9 Exhibit 3 March 24, 1999, Memorandum to Lonnie 86</p> <p>10 Howell from Marcelo Alvarez</p> <p>11 Exhibit 4 May 7th, 2001, Barron's Article 128</p> <p>12 Exhibit 5 May 2001, Hedge MAR Article 129</p> <p>13 Exhibit 6 December 19, 2008, Announcement 155</p> <p>14 Relating to Madoff</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
5	<p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: All right. Good afternoon.</p> <p>3 We're now on the video record. This is the</p> <p>4 videotape deposition of Victor Manuel Echevarria in</p> <p>5 the matter of the case Ferreira, Lorrene Da Silva</p> <p>6 and Arlete versus EFG Capital.</p> <p>7 Today is Wednesday, October the 13th, 2010.</p> <p>8 The time is 1:20 p.m.</p> <p>9 Counsel please introduce themselves for the</p> <p>10 record and after this, court reporter swear in the</p> <p>11 witness.</p> <p>12 MR. LAWRENCE KELLOGG: Larry Kellogg and Jason</p> <p>13 Kellogg on behalf of the plaintiff, as well as</p> <p>14 Kevin Kinne.</p> <p>15 MR. COATES: Joe Coates, from Greenberg</p> <p>16 Traurig, on behalf of the defendant, EFG Capital.</p> <p>17 MR. GARCIA: Michael Garcia on behalf of EFG</p> <p>18 Bank.</p> <p>19 THE COURT REPORTER: Would you raise your</p> <p>20 right hand, please.</p> <p>21 Do you solemnly swear or affirm that the</p> <p>22 testimony you're about to give in this case shall</p> <p>23 be the truth, the whole truth, and nothing but the</p> <p>24 truth?</p> <p>25 THE WITNESS: I do.</p>

6	<p>1 Thereupon:</p> <p>2 VICTOR MANUEL ECHEVARRIA</p> <p>3 was called as a witness by the Plaintiff and, having</p> <p>4 been first duly sworn, testified as follows:</p> <p>5 DIRECT EXAMINATION</p> <p>6 BY MR. LAWRENCE KELLOGG:</p> <p>7 Q. Please state your name.</p> <p>8 A. Victor Echevarria.</p> <p>9 Q. Mr. Echevarria, have you been deposed before?</p> <p>10 A. No.</p> <p>11 MR. GARCIA: Mr. Kellogg --</p> <p>12 MR. LAWRENCE KELLOGG: Well, welcome.</p> <p>13 MR. GARCIA: -- before you begin, can I place</p> <p>14 a statement on the record on behalf of the bank?</p> <p>15 MR. LAWRENCE KELLOGG: Sure.</p> <p>16 MR. GARCIA: EFG Bank has filed a motion to</p> <p>17 dismiss based on a forum non-conveniens clause as</p> <p>18 well as a choice of law provision in the agreement.</p> <p>19 That motion is still pending. And because it's</p> <p>20 still pending EFG Bank is forced to participate</p> <p>21 in -- in discovery in this case, but by</p> <p>22 participating in discovery in this case, EFG Bank</p> <p>23 does not intend to waive the forum selection</p> <p>24 clause, the choice of law provision, or any other</p> <p>25 consequences from -- from either provision with</p>	8
7	<p>1 respect to this case, including the fact that it's</p> <p>2 EFG Bank's position that the Hague Convention</p> <p>3 should apply to discovery with respect to it.</p> <p>4 MR. LAWRENCE KELLOGG: You're free to go.</p> <p>5 MR. GARCIA: Thank you.</p> <p>6 MR. LAWRENCE KELLOGG: If you'd like.</p> <p>7 MR. GARCIA: No.</p> <p>8 MR. LAWRENCE KELLOGG: You don't have to stay</p> <p>9 BY MR. LAWRENCE KELLOGG:</p> <p>10 Q. Okay. Could you give us your residence</p> <p>11 address, please.</p> <p>12 A. Residence address?</p> <p>13 Q. Yes.</p> <p>14 A. 500 North Mashta Drive, Key Biscayne, Florida.</p> <p>15 Q. Are where are you employed?</p> <p>16 A. Employed by EFG Capital International in</p> <p>17 Miami.</p> <p>18 Q. What is your job?</p> <p>19 A. I am chairman of that company.</p> <p>20 Q. Okay. How long have you been chairman?</p> <p>21 A. Over 10 years.</p> <p>22 Q. How many -- how many years over 10 years?</p> <p>23 A. I can't recall exactly, but I have been</p> <p>24 employed by the firm since 1996.</p> <p>25 Q. Okay. When you say you're chairman, does that</p>	9
	<p>1 mean you're chairman of the board of directors of the</p> <p>2 company?</p> <p>3 A. That is correct.</p> <p>4 Q. Do you have any officer position?</p> <p>5 A. No, that is my activity.</p> <p>6 Q. So your title is chairman of the board. Do</p> <p>7 you have any -- is that right?</p> <p>8 A. That's correct.</p> <p>9 Q. Do you have any operational responsibilities</p> <p>10 as chairman of the board?</p> <p>11 A. I supervise a sales force. And compliance has</p> <p>12 reported to me and reports to me at this time.</p> <p>13 Q. When you say "compliance," what do you mean?</p> <p>14 A. The compliance department at EFG Capital.</p> <p>15 Q. What is EFG Capital? What is its business?</p> <p>16 A. It is a broker/dealer.</p> <p>17 Q. What does that mean?</p> <p>18 A. It's engaged in the securities practice in the</p> <p>19 U.S.</p> <p>20 Q. When you say "it's engaged in the securities</p> <p>21 practice," what do you mean?</p> <p>22 A. It is a member organization of FINRA which is</p> <p>23 allowed to offer securities to clients, both private</p> <p>24 clients and institutions.</p> <p>25 Q. So it actually sells securities to clients; is</p>	

10	<p>1 build the business since the company had none at the</p> <p>2 time.</p> <p>3 Q. It was a one-person operation when you joined?</p> <p>4 A. Maybe two or three.</p> <p>5 Q. Okay. And your job was what, to build a sales</p> <p>6 staff?</p> <p>7 A. Build the sales staff, sales force.</p> <p>8 Q. Find customers?</p> <p>9 A. That's correct.</p> <p>10 Q. Get the business rolling?</p> <p>11 A. Correct.</p> <p>12 Q. In September of 1996, who was the owner of the</p> <p>13 company?</p> <p>14 A. The owner of the company was Banque de Depots.</p> <p>15 Q. Could you spell that?</p> <p>16 A. B-A-N-Q-U-E. D-E. D-E-P-O-T-S, I believe.</p> <p>17 Q. Okay. What is Bank de Depots?</p> <p>18 A. It was a Swiss banking organization.</p> <p>19 Q. Is it defunct?</p> <p>20 A. It has changed names --</p> <p>21 Q. Okay. What's the name now?</p> <p>22 A. -- changed rolls.</p> <p>23 That entity is now EFG Bank European Financial</p> <p>24 Group.</p> <p>25 Q. And does EFG European Banking Financial Group</p>	12
11	<p>1 still own EFG Capital International?</p> <p>2 A. Today EFG Capital International is owned by</p> <p>3 EFG International.</p> <p>4 Q. Okay. What is EFG International?</p> <p>5 A. A bank holding company.</p> <p>6 Q. Well, that's located in Switzerland?</p> <p>7 A. Based in Zurich.</p> <p>8 Q. When -- when did EFG International become the</p> <p>9 owner of EFG Capital International?</p> <p>10 A. 2005.</p> <p>11 Q. What month did that happen?</p> <p>12 A. I don't recall. The fall of 2005.</p> <p>13 Q. Okay. All right. So in 1996 -- starting --</p> <p>14 going backwards from 1996, what was your -- what was</p> <p>15 your work background, your professional background?</p> <p>16 A. Immediately prior to 1996 or --</p> <p>17 Q. How is it you became to be employed at -- to</p> <p>18 build a business for a broker/dealer here in Florida?</p> <p>19 What was your background?</p> <p>20 A. I have been in the private client business for</p> <p>21 over 30 years.</p> <p>22 Q. What do you mean by "the private client</p> <p>23 business"?</p> <p>24 A. Dealing with primarily high net worth clients</p> <p>25 from Latin America.</p>	13
10	<p>1 Q. Where had you been employed prior to EFG</p> <p>2 Capital International?</p> <p>3 A. Immediately prior?</p> <p>4 Q. Yeah.</p> <p>5 A. At Coutts and Co.</p> <p>6 Q. Can you spell that, please?</p> <p>7 A. C-O-U-T-T-S and Co, C-O.</p> <p>8 Q. How long were you employed at Coutts and Co?</p> <p>9 A. I was employed approximately five years.</p> <p>10 Q. Were you in management or were you a salesman?</p> <p>11 A. I was in management.</p> <p>12 Q. Did you run the company?</p> <p>13 A. I was vice-chairman of the International Bank</p> <p>14 here in Florida.</p> <p>15 Q. And did you leave Coutts and Company to join</p> <p>16 EFG Capital International?</p> <p>17 A. That's correct.</p> <p>18 Q. Did you take some of your clients with you?</p> <p>19 A. I took staff that I had recruited originally</p> <p>20 to work for me at Coutts, and they joined me at the</p> <p>21 onset.</p> <p>22 Q. Okay. So starting in 1996, then, would you</p> <p>23 say that you were the person in charge -- you have been</p> <p>24 the person in charge of EFG Capital International</p> <p>25 throughout its history?</p>	11

14	<p>1 A. Allows you to conduct business in states 2 outside of your home state. 3 Q. Do you have any other licenses? 4 A. Series 24. 5 Q. What is Series 24? 6 A. Allows you to act as a general securities 7 principal. 8 Q. When did you get the Series 24? 9 A. 1997. 10 THE COURT REPORTER: "19"? 11 THE WITNESS: '97. 12 BY MR. LAWRENCE KELLOGG: 13 Q. Do you have any other licenses? 14 A. No. 15 Q. When you became a general securities 16 principal, did you replace Mr. McCluskey or shortly 17 afterwards? 18 A. Yes, probably. At some point, thereafter. 19 Q. So since you replaced Mr. McCluskey -- well, 20 has anyone -- is there a financial principal now? 21 A. Yes. 22 Q. Who is that? 23 A. Today it's Juan Massens. 24 Q. Okay. Does the financial principal report to 25 you?</p>	16	<p>1 something called an Organizational Chart -- 2 A. Yep. 3 Q. -- which is Bates Number 1063 through 1065 4 under EFG Capital. 5 A. Uh-huh. 6 Q. It's a three-page document. 7 Is this an accurate organizational chart of 8 EFG Capital International? 9 A. It is for the board. 10 Q. Now the third page has a schematic chart. Do 11 you see that? 12 A. Yes. 13 Q. And on this schematic chart there's something 14 called "board of directors, EFG Capital Holdings Corp." 15 Do you see that? 16 A. Yes. 17 Q. What is that company? 18 A. EFG Capital Holdings Corp. owns EFG Capital 19 International, the broker/dealer. 20 Q. Oh, I thought EFG International Zurich owns 21 EFG Capital International. Is that incorrect? 22 A. EFG International owns EFG Capital Holdings a 23 hundred percent. EFG Capital owns a hundred percent of 24 EFG Capital International, the broker/dealer. 25 Q. Is EFG Capital Holdings Company or Corp. a</p>
15	<p>1 A. No, he does not. 2 Q. Do you report to him? 3 A. No. 4 Q. What's your relationship -- relationship 5 between the two positions? 6 A. The financial principal reports to the CEO of 7 the firm today. 8 Q. Who is the CEO? 9 A. Sixto Campano. 10 Q. Does Mr. Campano report to you? 11 A. No. 12 Q. What's your relationship? 13 A. We both report to the board. 14 Q. Who is on the board? 15 A. I'm on the board, Mr. Campano is on the board, 16 and Marcelo Alvarez is on the board. 17 (Thereupon, the referred-to document was 18 marked by the court reporter for identification as 19 Exhibit 1.) 20 BY MR. LAWRENCE KELLOGG: 21 Q. Let me mark as Exhibit 1 -- 22 A. I'm sorry, and -- yeah. 23 Q. Go ahead. 24 A. No, that's it. 25 Q. Oh, all right. Let me mark as Exhibit 1</p>	17	<p>1 U.S. corporation? 2 A. It is. 3 Q. Where is it domiciled? 4 A. Delaware. 5 Q. Are you an officer or director? 6 A. I am a director of EFG Capital Holdings. 7 Q. Who is the chairman of the board of that? 8 A. I am. 9 Q. Does the EFG Capital Holdings Corporation have 10 any operational function or is it simply a holding 11 company? 12 A. No. And I should state that this -- I told 13 you that the -- the board page is accurate -- 14 Q. Yes. 15 A. -- but the first box of the organizational 16 chart, I believe there's a typo. 17 Q. Where is that? 18 A. Because that should be "Board of Directors, 19 EFG International." 20 MR. GARCIA: By Bates -- by Bates page, can 21 you just identify where you are? 22 THE WITNESS: Bates page is 001065. 23 BY MR. LAWRENCE KELLOGG: 24 Q. So the schematic which it says here is the 25 board of directors of EFG Capital Holdings Corp. is</p>

18	<p>1 incorrect; it's really EFG Capital International?</p> <p>2 A. The top box --</p> <p>3 Q. Yes.</p> <p>4 A. -- should be EFG Capital International.</p> <p>5 Q. All right. So the schematic shows that you</p> <p>6 are chairman, Mr. Campano is the chief executive</p> <p>7 office -- officer, and then there are several boxes</p> <p>8 underneath both of you.</p> <p>9 Do you see that?</p> <p>10 A. That's correct.</p> <p>11 Q. This seems to signify that there's a --</p> <p>12 there's a difference in function between the chief</p> <p>13 executive officer and the chairman. Is that right?</p> <p>14 A. That's correct.</p> <p>15 Q. How would you characterize the difference?</p> <p>16 A. By the activities that each one carries out.</p> <p>17 Q. Okay. What -- what activities do you carry</p> <p>18 out as opposed to Mr. Campano?</p> <p>19 A. I indicated previously that I was in charge of</p> <p>20 sales activities. Not for the entire firm, but for</p> <p>21 certain individuals in the firm.</p> <p>22 Q. What does that mean?</p> <p>23 A. That there are other individuals who have a</p> <p>24 sales supervision responsibility that report to</p> <p>25 Mr. Campano. They don't report a hundred percent to me.</p>	20	<p>1 BY MR. LAWRENCE KELLOGG:</p> <p>2 Q. The -- so what -- what criteria come into play</p> <p>3 with respect to whether a salesman is assigned to you or</p> <p>4 assigned to Mr. Campano?</p> <p>5 A. We reached the decision as to which registered</p> <p>6 representative should report to him and which should</p> <p>7 report to me by consensus.</p> <p>8 Q. Okay. So it doesn't the matter -- there's not</p> <p>9 a difference in location where they are, for example, or</p> <p>10 what kinds of customers they market to?</p> <p>11 A. In some cases, location does make a</p> <p>12 difference.</p> <p>13 Q. Does Mr. Campano --</p> <p>14 A. But in Miami, it doesn't make a difference.</p> <p>15 Q. What do you mean by that?</p> <p>16 A. There are -- there is -- there are registered</p> <p>17 reps in Miami that report to me; registered reps in</p> <p>18 Miami that report to Mr. Weyman, who is identified in</p> <p>19 there; and registered reps who report to Mr. Campano.</p> <p>20 Q. Okay. So Mr. Weyman is in something called a</p> <p>21 Key Biscayne office; is that right?</p> <p>22 A. He is based in -- on Brickell, but the Key</p> <p>23 Biscayne branch reports to him.</p> <p>24 Q. How many branches does EFG Capital</p> <p>25 International have?</p>
19	<p>1 Q. Okay. What's the difference in -- some sales</p> <p>2 report to you, some sales report to Mr. Campano.</p> <p>3 What's the difference?</p> <p>4 A. Reporting lines.</p> <p>5 Q. Well, why? Is there a reason for this?</p> <p>6 A. Ease of management.</p> <p>7 Q. Okay. Are there different kinds of customers?</p> <p>8 A. Ease of management.</p> <p>9 Q. Why? How -- how does it make it easier for</p> <p>10 some -- I mean, some sales -- salesmen report to you and</p> <p>11 some report to Mr. Campano?</p> <p>12 A. That -- that is correct. So rather --</p> <p>13 Q. Okay. How --</p> <p>14 MR. COATES: Excuse me. I would just ask,</p> <p>15 Larry, if you can just slow down --</p> <p>16 MR. LAWRENCE KELLOGG: Sure.</p> <p>17 MR. COATES: -- because we're going to</p> <p>18 overtalk; and the court reporter can't keep track</p> <p>19 of this. So just -- just slow down.</p> <p>20 THE WITNESS: That's fine.</p> <p>21 MR. COATES: Larry, let Victor answer the</p> <p>22 question and slow the pace down a little bit so the</p> <p>23 court reporter can capture everything.</p> <p>24 Thank you.</p> <p>25</p>	21	<p>1 A. We have a Key Biscayne branch and a New York</p> <p>2 branch.</p> <p>3 Q. Are any sales reps -- well, let me ask this.</p> <p>4 Is the Brickell office a branch?</p> <p>5 A. It's a head office.</p> <p>6 Q. It's the head office. All right. So you have</p> <p>7 Brickell, Key Biscayne, and New York. Is that right?</p> <p>8 A. That's correct.</p> <p>9 Q. How many sales reps are in each office?</p> <p>10 A. In Miami there are approximately 50</p> <p>11 representatives that are active, meeting with clients.</p> <p>12 In New York there are three or four. And in Key</p> <p>13 Biscayne there are three or four.</p> <p>14 Q. In 2005 what were the assets under management</p> <p>15 of the company?</p> <p>16 A. In 2005?</p> <p>17 Q. Yes. If you know.</p> <p>18 A. I can't recall specifically.</p> <p>19 Q. Can you give us your best estimate?</p> <p>20 A. No, I can't recall.</p> <p>21 Q. What would you look at to find that out?</p> <p>22 A. In a report indicating assets under</p> <p>23 management.</p> <p>24 Q. Is there a specific report that you can</p> <p>25 identify that would have that figure?</p>

<p style="text-align: right;">22</p> <p>1 A. Assets under management report.  2 Q. Okay. Assets under management report?  3 A. Yes.  4 Q. What relationship does EFG Capital  5 International have with EFG Bank?  6 A. They would be considered affiliates. They  7 belong to the same parent.  8 Q. So EFG Bank is also owned by EFG Capital  9 Holdings. Is that right?  10 A. I'm sorry. When you referred to EFG Capital  11 International, since it's owned by -- a hundred percent  12 by a U.S. holding company, EFG Capital Holdings, which  13 is then in turn owned a hundred percent by EFG  14 International, it's the same parent.  15 Q. Okay.  16 A. So EFG Bank is owned a hundred percent by EFG  17 International.  18 Q. What is EFG Private Bank?  19 A. It is the prior name of EFG Bank.  20 Q. So when we say "EFG Bank," that's the current  21 name of EFG Private Bank?  22 A. That is correct.  23 Q. And both EFG Bank and EFG Capital  24 International are essentially 100 percent owned by EFG  25 International. Is that right?</p>	<p style="text-align: right;">24</p> <p>1 A. Between EFG Bank and EFG International? I  2 have no knowledge.  3 Q. Let -- let me rephrase it. Are there -- are  4 there any -- are there any contracts pursuant to which  5 revenues are shared, customers are exchanged between EFG  6 Capital International and EFG Bank?  7 A. There is a revenue sharing agreement in place  8 between EFG Capital and EFG International. I can't  9 remember whether there's also one between EFG Capital  10 and EFG Bank.  11 Q. What's the function of the revenue sharing  12 agreement? What's its purpose?  13 A. To reflect the fact that EFG Capital refers  14 business to an EFG entity in Switzerland and receive  15 compensation for that referral service.  16 Q. When you say "refers business to an EFG entity  17 in Switzerland" --  18 A. Uh-huh.  19 Q. -- what EFG entity are you referring to?  20 A. EFG Capital will introduce a client to EFG  21 Bank for custody purposes. For custody purposes.  22 Q. How long has a revenue sharing agreement been  23 in effect, to your knowledge?  24 A. I can't remember exactly. More than five  25 years.</p>
<p style="text-align: right;">23</p> <p>1 A. I'm sorry. Can you --  2 MR. COATES: Object to the form. Excuse me.  3 I'm going to object to the form of the question.  4 You may answer, sir.  5 MR. LAWRENCE KELLOGG: Let me rephrase it.  6 THE WITNESS: Okay.  7 BY MR. LAWRENCE KELLOGG:  8 Q. Both EFG Bank and EFG Capital International,  9 the ultimate owner is EFG International. Is that right?  10 A. They have separate management teams, they  11 operate in separate countries, and EFG Capital  12 International, through EFG Capital Holdings, is owned by  13 EFG International.  14 Q. Who do you report to other than the board?  15 A. To the CEO of EFG International.  16 Q. Who is the CEO of EFG International?  17 A. Lawrence Howell.  18 Q. Can you spell his name, please?  19 A. H-O-W-E-L-L.  20 Q. And his first name was?  21 A. Lawrence.  22 Q. I should know that. Same as mine.  23 Are there any -- is there a revenue sharing  24 agreement between EFG Bank and EFG International, to  25 your knowledge?</p>	<p style="text-align: right;">25</p> <p>1 (Thereupon, the referred-to document was  2 marked by the court reporter for Identification as  3 Exhibit 2.)  4 BY MR. LAWRENCE KELLOGG:  5 Q. Let me mark as Exhibit 2 EFG Capital  6 International Corporation Consolidated Statement of  7 Financial Condition as of December 31, 2007. It's not  8 Bates-labeled, but it is nine pages long.  9 And ask you to turn to page 6 and ask you if  10 this refreshes your recollection. The second paragraph,  11 page 6, where -- under the term "Related Party  12 Transactions."  13 A. Uh-huh.  14 Q. It says, quote, Effective January 1, 2005 --  15 A. I'm sorry? Is that the second paragraph?  16 Q. Second paragraph, yes.  17 "Effective January 1, 2005, the company  18 entered into a revenue sharing agreement, the agreement,  19 with EFG Bank and EFG International which allows the  20 company to be compensated at an amount determined in the  21 agreement for the introduction of customers to the  22 affiliate."  23 Does that refresh your memory as to when the  24 agreement was entered into?  25 A. Yes, it says 2005. And I think I mentioned it</p>



26	<p>1 was about five years. At least.</p> <p>2 Q. Okay. Was there a similar or predecessor</p> <p>3 agreement providing for revenue sharing prior to that</p> <p>4 date?</p> <p>5 A. I can't recall. There may have been.</p> <p>6 Q. If EF -- does the revenue sharing agreement</p> <p>7 cover situations in which EFG Bank refers customers to</p> <p>8 EFG Capital International?</p> <p>9 A. Probably haven't read the revenue sharing</p> <p>10 agreement for many years, but I recall it's primarily</p> <p>11 for the referral of business by EFG Capital to EFG</p> <p>12 entities in Switzerland.</p> <p>13 Q. As chairman of the board are there situations</p> <p>14 in which EFG Bank refers customers to your company?</p> <p>15 A. "Refers customers," you said?</p> <p>16 Q. Clients, customers.</p> <p>17 A. Clients?</p> <p>18 Q. Yeah.</p> <p>19 A. It could have the opportunity to.</p> <p>20 Q. Sure. Is that something that -- that the two</p> <p>21 companies try to accomplish, refer business back and</p> <p>22 forth?</p> <p>23 A. I think the agreement really is intended for</p> <p>24 the referral of business from EFG Capital primarily to</p> <p>25 the European entity.</p>	28	<p>1 mandated by the respective boards.</p> <p>2 BY MR. LAWRENCE KELLOGG:</p> <p>3 Q. Could you give us some examples?</p> <p>4 A. So EFG Capital International is the</p> <p>5 broker/dealer which belongs, through the holding company</p> <p>6 in the U.S., to EFG International, and carries out a</p> <p>7 securities business in the U.S. aimed primarily at Latin</p> <p>8 American clients.</p> <p>9 Q. Okay. And what entity would focus on, say,</p> <p>10 European clients?</p> <p>11 A. EFG Capital International wouldn't have any</p> <p>12 restriction as to where its clients would come from.</p> <p>13 Q. So your company could also have customers in</p> <p>14 Europe? Does it?</p> <p>15 A. EFG -- when you say "your company," you mean</p> <p>16 EFG Capital?</p> <p>17 Q. Right.</p> <p>18 A. Yes.</p> <p>19 Q. Are there any other EFG International</p> <p>20 companies that also focus -- broker/dealers or the</p> <p>21 equivalent -- that focus on European customers?</p> <p>22 A. Well, EFG International owns EFG Bank in</p> <p>23 Switzerland, which has European customers.</p> <p>24 Q. Does EFG International have any entities,</p> <p>25 other than EFG Capital International, which offer sales</p>
27	<p>1 Q. What is the formula for sharing revenue when</p> <p>2 your company refers a customer to EFG Bank?</p> <p>3 A. I would have to read the agreement and -- to</p> <p>4 be able to tell you.</p> <p>5 Q. Do you have a copy of it in your office?</p> <p>6 A. There would be one in the office.</p> <p>7 Q. You could -- you could locate the agreement if</p> <p>8 we asked for it. Is that right?</p> <p>9 A. Sure.</p> <p>10 Q. Does EFG International, which is also a party</p> <p>11 to this agreement according to the financial</p> <p>12 statement -- does EFG International have customers or</p> <p>13 does it operate through its subsidiaries, direct or</p> <p>14 indirect?</p> <p>15 A. They operate through their subsidiaries.</p> <p>16 Q. So are there -- within EFG International</p> <p>17 family of companies, are there what I might call</p> <p>18 divisions, a Latin American division, a European</p> <p>19 division, or divisions along some other lines?</p> <p>20 MR. COATES: I'll object to the form of the</p> <p>21 question.</p> <p>22 You may answer.</p> <p>23 THE WITNESS: EFG International has subsidiary</p> <p>24 companies or subsidiary banks or subsidiary</p> <p>25 broker/dealers which engage in activities as</p>	29	<p>1 of securities to customers anywhere in the world?</p> <p>2 A. EFG International has a whole host of</p> <p>3 companies around the world. I can't begin to identify</p> <p>4 every single one of its subsidiaries. But they own</p> <p>5 banks; they own asset management companies; they own</p> <p>6 trust companies around the world.</p> <p>7 Q. Okay. Do they own any other broker/dealers,</p> <p>8 to your knowledge, other than EFG Capital International?</p> <p>9 A. Not in the U.S.</p> <p>10 Q. Do they own any other broker/dealers in any</p> <p>11 other countries?</p> <p>12 A. I don't know if they have securities licenses</p> <p>13 in other countries.</p> <p>14 Q. If customers are referred from any other EFG</p> <p>15 International subsidiary to EFG Capital, is there any</p> <p>16 revenue shared for those referrals? Or vice versa?</p> <p>17 A. If they're not contemplated by a revenue</p> <p>18 sharing agreement, there would be no referral.</p> <p>19 Q. So as we sit here now, I just want to -- the</p> <p>20 source of revenue sharing primarily is EFG Capital gets</p> <p>21 paid when it refers a customer to EFG Bank. Right?</p> <p>22 A. It would get paid for the revenues generated</p> <p>23 by that customer at EFG Bank.</p> <p>24 Q. Okay. When a customer -- when one of your</p> <p>25 customers is referred to EFG Bank and opens an account</p>

30	<p>1 at EFG Bank, is the paperwork provided by one of your 2 sales reps?</p> <p>3 A. They would be provided with the paperwork for 4 EFG Capital; and they would be provided with the 5 paperwork related to their choice of custodian, whether 6 it be EFG Bank or one of our other custodians.</p> <p>7 Q. What other custodians would you have?</p> <p>8 A. JP Morgan Securities. We have a clearing 9 agreement and custody relationship with them.</p> <p>10 Q. Okay.</p> <p>11 A. And with Pershing.</p> <p>12 Q. Pershing?</p> <p>13 A. Pershing, which is an affiliate of Bank of New 14 York.</p> <p>15 Q. Is revenue shared when a customer of EFG 16 Capital opens up a depository bank account at EFG Bank?</p> <p>17 A. Can you describe a depository bank account?</p> <p>18 Q. I want to open up an account and put my money 19 in it and take it out when I want it, deposit it when I 20 want it. A bank account.</p> <p>21 A. A noninterest-bearing account, an 22 interest-bearing account?</p> <p>23 Q. Does it make a difference?</p> <p>24 A. I would imagine -- I can't be precise as to 25 every activity that the revenue agreement encompasses.</p>	32	<p>1 items were under the agreement.</p> <p>2 Q. And do you know what the management services 3 received from EFG International and EFG Bank might be?</p> <p>4 A. It -- I could imagine it can encompass many 5 things, but I would rather not speculate --</p> <p>6 Q. You don't know?</p> <p>7 A. -- without seeing an agreement.</p> <p>8 Q. All right. As you sit here, you don't know 9 without looking at the agreement. Is that fair?</p> <p>10 A. Specifically I don't know, that's correct.</p> <p>11 Q. Generally do you know?</p> <p>12 A. It could encompass many things.</p> <p>13 Q. Okay.</p> <p>14 A. I would rather not speculate.</p> <p>15 Q. According to the financial statements in 2007, 16 EFG Capital International, your company, paid 17 \$4.2 million.</p> <p>18 A. Uh-huh.</p> <p>19 Q. Do you know whether that was to EFG Bank or to 20 EFG International or to both?</p> <p>21 A. Seems to imply it was both, according to the 22 financial statements.</p> <p>23 Q. And it says with respect to the revenue 24 sharing agreement between EFG Bank and EFG 25 International --</p>
31	<p>1 Q. I see. Okay.</p> <p>2 A. But if it generates revenues, it could be 3 captured.</p> <p>4 Q. Again, that would be covered by whatever the 5 terms of this revenue sharing agreement are. Correct?</p> <p>6 A. Yes.</p> <p>7 Q. If you look back at Exhibit 2, again at 8 page 6, the next paragraph of the Related Party 9 Transactions section talks about "a Management Services 10 Agreement with EFG International and an Operations 11 Advice and Support Services Agreement with EFG Bank 12 which allows for cash compensation for management 13 services received from EFG International and EFG Bank." 14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. What is that agreement or those agreements 17 meant to cover?</p> <p>18 A. Let me read the paragraph first.</p> <p>19 Q. Sure.</p> <p>20 A. So I can't recall clearly what Management 21 Services Agreement were detailed in that agreement.</p> <p>22 Q. Do you have any general idea what's covered by 23 that?</p> <p>24 A. It says "Operations Advice and Support Service 25 Agreement," but I can't recall specifically what the</p>	33	<p>1 A. I'm sorry, where -- where --</p> <p>2 MR. COATES: Where are you?</p> <p>3 THE WITNESS: -- where are you now?</p> <p>4 BY MR. LAWRENCE KELLOGG:</p> <p>5 Q. I'm in the second paragraph. The revenue 6 sharing agreement that we discussed earlier, your 7 company, EFG Capital International, earned \$10,605,000 8 in 2007. Is that right?</p> <p>9 A. That's what it says.</p> <p>10 Q. For referring your customers, your company 11 earned 10.6 million?</p> <p>12 A. Correct.</p> <p>13 Q. And the next paragraph, the fourth paragraph 14 on this Related Party discussion, it says that your 15 company, EFG Capital International, performed 16 broker-dealer services for customers of EFG Bank and 17 other affiliates and recognized commission revenue of 18 \$5,200,000 in 2007.</p> <p>19 Do you see that?</p> <p>20 A. Correct.</p> <p>21 Q. And what -- is there an agreement that covers 22 that revenue stream? That is, when customers of EFG 23 Bank are referred to EFG Capital International.</p> <p>24 A. I don't recall.</p> <p>25 Q. Is there a formal -- strike that.</p>

34	<p>1 Is there a marketing effort, a joint marketing</p> <p>2 effort, among your company and EFG Bank and EFG</p> <p>3 International to generate customers that you can refer</p> <p>4 back and forth to each other?</p> <p>5 A. There has never been a joint marketing effort.</p> <p>6 Q. Does -- does your company have marketing</p> <p>7 materials it gives to customers? EFG Capital</p> <p>8 International.</p> <p>9 A. EFG Capital?</p> <p>10 Q. When I say "your company," that's what I mean,</p> <p>11 because you're the chairman.</p> <p>12 A. Okay.</p> <p>13 Q. EFG Cap- -- does EFG Capital International</p> <p>14 have marketing materials that it gives to customers?</p> <p>15 A. Yes.</p> <p>16 Q. Are any of those agreements reviewed by anyone</p> <p>17 at EFG International or EFG Bank?</p> <p>18 MR. COATES: I'm going to object to the form</p> <p>19 of the question. I think, you said "agreement."</p> <p>20 BY MR. LAWRENCE KELLOGG:</p> <p>21 Q. I'm sorry.</p> <p>22 Are any of those marketing materials, before</p> <p>23 they're put in final form --</p> <p>24 A. Uh-huh.</p> <p>25 Q. -- either reviewed or coauthored by anybody at</p>	36	<p>1 refers a customer to EFG Bank, how is it physically</p> <p>2 done?</p> <p>3 A. Okay. We would take the example of a custody</p> <p>4 relationship.</p> <p>5 Q. A what?</p> <p>6 A. A custody relationship.</p> <p>7 Q. Okay.</p> <p>8 A. EFG Capital would vet a new customer for the</p> <p>9 firm, for EFG Capital. That vetting would be done by</p> <p>10 the registered representative, a principal of the firm,</p> <p>11 and the compliance department of the firm.</p> <p>12 And once it is vetted by those three and all</p> <p>13 the appropriate checks are done, then it would be</p> <p>14 appropriate to refer EFG Capital's customer to EFG Bank</p> <p>15 for custody purposes if that's what that client wanted,</p> <p>16 custody of EFG Bank versus an alternate custodian.</p> <p>17 THE COURT REPORTER: "Versus"?</p> <p>18 THE WITNESS: An alternate custodian.</p> <p>19 BY MR. LAWRENCE KELLOGG:</p> <p>20 Q. Assuming the customer says yes, that makes</p> <p>21 sense to me, what happens then?</p> <p>22 A. Documentation of EFG Bank would be sent to EFG</p> <p>23 Bank, along with information related to the client.</p> <p>24 KYC-type information.</p> <p>25 Q. You mean "Know Your Customer"?</p>
35	<p>1 EFG International or EFG Bank?</p> <p>2 A. No, the EFG Capital marketing documentation is</p> <p>3 of EFG Capital, reviewed by management of EFG Capita</p> <p>4 and by FINRA, if necessary.</p> <p>5 Q. And are those marketing materials provided to</p> <p>6 anyone at the bank or at EFG International or any other</p> <p>7 affiliate so that they can be used around the world by</p> <p>8 the other companies to generate business for EFG</p> <p>9 Capital?</p> <p>10 MR. COATES: I'm going to object to the form</p> <p>11 of the question.</p> <p>12 You may answer, sir.</p> <p>13 THE WITNESS: If we were requested to</p> <p>14 have -- to have one of our marketing material</p> <p>15 pieces sent to an individual for a specific</p> <p>16 purpose? I -- I guess we would comply with that.</p> <p>17 BY MR. LAWRENCE KELLOGG:</p> <p>18 Q. How physically are the referrals made: email,</p> <p>19 telephone? Is there a form that you fill out? How is</p> <p>20 it done?</p> <p>21 A. Could you be more specific --</p> <p>22 Q. Yes.</p> <p>23 A. -- as to physically referral --</p> <p>24 Q. When EFG Bank refers a customer to EFG</p> <p>25 Capital -- vice versa. When EFG Capital International</p>	37	<p>1 A. "Know Your Customer"-type information. That</p> <p>2 information would be sent to EFG Bank, received by EFG</p> <p>3 Bank, undergo a documentation review by EFG Bank for its</p> <p>4 documentation for its own purposes. It would be</p> <p>5 reviewed by compliance at EFG Bank for the EFG Bank</p> <p>6 account for its own purposes. And it would be reviewed</p> <p>7 by the head of private banking or a member of the</p> <p>8 management committee of EFG Bank to vet the customer fo</p> <p>9 EFG Bank once the documentation has been reviewed and</p> <p>10 compliance has reviewed the complete account package.</p> <p>11 Q. And then what happens? Assuming that customer</p> <p>12 makes it through all the reviews.</p> <p>13 A. EFG Bank then would open the account for the</p> <p>14 customer.</p> <p>15 Q. In 2005, who was the head of private banking</p> <p>16 of EFG Bank?</p> <p>17 A. The head of private banking at EFG Bank.</p> <p>18 It -- it may have been Paul Imison.</p> <p>19 Q. Could you spell his name, please.</p> <p>20 A. I-M-I-S-O-N.</p> <p>21 Q. Is Mr. Imison still with EFG Bank?</p> <p>22 A. Yes, he is.</p> <p>23 Q. Is he still head of private banking?</p> <p>24 A. Let me be clear. He would have been head of</p> <p>25 private banking of the Geneva office, who would process</p>

38	<p>1 that work. He is now head of private banking of the 2 Zurich office.</p> <p>3 Q. From your answer, that means that the review 4 of the documents and the vetting of the customer would 5 happen in the Geneva office?</p> <p>6 A. That's correct.</p> <p>7 Q. Does it still happen there?</p> <p>8 A. It does.</p> <p>9 Q. If you know, what is the purpose of the review 10 that's conducted by EFG Bank of a customer who wants to 11 open up a custodial account?</p> <p>12 A. What is -- I'm sorry. Is the question is what 13 is the purpose of the review?</p> <p>14 Q. Yes. What are they looking for?</p> <p>15 MR. GARCIA: By EFG Bank?</p> <p>16 MR. LAWRENCE KELLOGG: That's right.</p> <p>17 MR. COATES: I'm sorry, can you repeat the 18 question?</p> <p>19 BY MR. LAWRENCE KELLOGG:</p> <p>20 Q. What is the purpose of EFG Bank's review of 21 the -- of a customer who wants to open a custodial 22 account?</p> <p>23 A. EFG Bank would review the account 24 documentation submitted by that client, would do its 25 appropriate checks regarding due diligence, whether it</p>	40	<p>1 Q. Is this an investment fund of some sort? A 2 hedge fund?</p> <p>3 A. It's a -- it would be similar to a short-term 4 money market fund, if you will.</p> <p>5 Q. Okay. And which affiliate runs the money 6 market fund?</p> <p>7 A. I forget which affiliate of EFG Capital right 8 now.</p> <p>9 Q. Is it an affiliate of EFG Capital, is it EFG 10 Bank?</p> <p>11 A. I don't believe it's EFG Bank.</p> <p>12 Q. Is it another Swiss affiliate?</p> <p>13 A. I would have to look at the -- at the fund.</p> <p>14 Q. What would you look at to find that out?</p> <p>15 A. The prospectus.</p> <p>16 Q. Prospectus?</p> <p>17 A. (Witness nods.)</p> <p>18 Q. What's the name of the fund?</p> <p>19 A. I can't remember the exact name of the fund 20 right now.</p> <p>21 Q. Other than the agreements we've just discussed 22 that are listed in your company's financial statement, 23 are there any other agreements between or among EFG 24 Bank, EFG International, and EFG Capital International 25 that relate to either sharing of revenues or sharing of</p>
39	<p>1 be Internet checks or world checks or different 2 media-based checks, to make sure that the client doesn't 3 appear on any list that would make him a non-desirable 4 client. And it would look at the background information 5 of the client to ensure that it's a client that it would 6 be happy to have as a client.</p> <p>7 Q. When you use the term "non-desirable client," 8 what do you mean?</p> <p>9 A. If the client is a convicted felon and he's in 10 jail, I guess, it would be a non-desirable client.</p> <p>11 Q. Any other examples you could think of that 12 would be less extreme?</p> <p>13 A. I think individuals who are undertaking 14 illicit activities.</p> <p>15 Q. I see. Okay.</p> <p>16 Going back to Exhibit 2 for a moment, which is 17 the financial statement, again on page 6, in the third 18 paragraph from the bottom, it says: An affiliate 19 administers a fund in which the customers -- I'm 20 sorry -- in which the company's customers participate. 21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. What does that mean?</p> <p>24 A. This could be related to a fund which is 25 administered by EFG Capital.</p>	41	<p>1 losses?</p> <p>2 MR. GARCIA: Object to the form.</p> <p>3 MR. COATES: I join that objection.</p> <p>4 MR. LAWRENCE KELLOGG: Let me rephrase it 5 BY MR. LAWRENCE KELLOGG:</p> <p>6 Q. Are there any other agreements, other than 7 those we just discussed, in which sharing of revenues 8 among or between the companies occurs?</p> <p>9 A. Not to my recollection.</p> <p>10 Q. Are there any agreements pursuant to which 11 losses are shared between or among EFG Bank, EFG 12 International, or EFG Capital International?</p> <p>13 MR. COATES: I'm going to object to the form 14 of the question.</p> <p>15 BY MR. LAWRENCE KELLOGG:</p> <p>16 Q. You can answer.</p> <p>17 A. There are no agreements related to loss 18 sharing activities.</p> <p>19 Q. As you sit here today, do you know what 20 revenues were earned by EFG Capital International 21 Corporation from revenue sharing agreement in the year 22 2005?</p> <p>23 A. No, I do not recall.</p> <p>24 Q. Do you know the revenue earned for 2006, 2008, 25 or 2009?</p>

42	<p>1 A. In the -- related to the revenue sharing 2 agreement specifically?</p> <p>3 Q. Yes, sir.</p> <p>4 A. No, I do not recall.</p> <p>5 Q. Other than revenues earned from the revenue 6 sharing agreement, are there any other revenues earned 7 from EFG -- earned by EFG Capital International from any 8 EFG International affiliate or the parent?</p> <p>9 A. Could you repeat that question, sir?</p> <p>10 Q. Other than the revenues --</p> <p>11 A. Yes.</p> <p>12 Q. -- that are generated by the revenue sharing 13 agreement, does your company earn any other fees, 14 income, or revenues from any of its affiliates?</p> <p>15 MR. GARCIA: Object to the form.</p> <p>16 MR. COATES: I join in the objection.</p> <p>17 BY MR. LAWRENCE KELLOGG:</p> <p>18 Q. You can answer.</p> <p>19 A. I think the financial statements reflect the 20 revenue we generate.</p> <p>21 Q. Okay. Do you know of any other revenue that's 22 generated from the fact -- from affiliates, other than 23 what's listed here pursuant to the revenue sharing 24 agreement?</p> <p>25 A. Not outside -- not outside of the financial</p>	44	<p>1 Does EFG Capital Holdings have regular board 2 meetings?</p> <p>3 A. Yes, it does.</p> <p>4 Q. How often are those?</p> <p>5 A. Quarterly.</p> <p>6 Q. And you may have answered this before but 7 forgive me.</p> <p>8 Is the composition of the board of the holding 9 company the same as the composition of the board of EFG 10 Capital International?</p> <p>11 A. That's correct.</p> <p>12 Q. And are these board meetings held at the same 13 time?</p> <p>14 A. Not at the same time but typically the same 15 day.</p> <p>16 Q. Consecutively?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And you have minutes of those meetings?</p> <p>19 A. Yes.</p> <p>20 Q. Do you serve on any other boards related to 21 the EFG International family of companies?</p> <p>22 A. Only to those under EFG Capital Holdings.</p> <p>23 Q. What companies are under EFG Capital Holdings 24 that you served on as a board member?</p> <p>25 A. EFG Capital International, the broker-dealer;</p>
43	<p>1 statements.</p> <p>2 Q. Well, within the financial statements, what 3 would I look at to see other revenues that might be 4 earned from affiliates?</p> <p>5 A. They would be disclosed under Related Party 6 Transactions.</p> <p>7 Q. Okay. Other than this revenue sharing 8 agreement --</p> <p>9 A. Correct.</p> <p>10 Q. -- is that what you're referring to?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Does EFG Capital International have 13 regular board meetings?</p> <p>14 A. EFG Capital International?</p> <p>15 Q. Yes.</p> <p>16 A. Yes, it does.</p> <p>17 Q. How often does the board meet?</p> <p>18 A. Quarterly.</p> <p>19 Q. Are there minutes of the board meetings?</p> <p>20 A. Yes, there are.</p> <p>21 Q. And do you maintain custody of those?</p> <p>22 A. Me personally? No.</p> <p>23 Q. Or --</p> <p>24 A. The firm does.</p> <p>25 Q. Okay.</p>	45	<p>1 EFG Capital Asset Management, the registered investment 2 advisor; EFG Capital Services; EFG Capital Insurance 3 Solutions; and EFG Capital Life Settlement Brokerage.</p> <p>4 Q. I didn't hear.</p> <p>5 A. Life Settlement Brokerage.</p> <p>6 Q. Are there any other companies where you serve 7 as a board member?</p> <p>8 A. No.</p> <p>9 Q. All right. What is the purpose -- the 10 business purpose of EFG Capital Asset Management?</p> <p>11 A. It is the registered investment advisor in the 12 U.S.</p> <p>13 Q. What does that mean?</p> <p>14 A. It is an investment manager supervised by the 15 SEC authorized to engage in discretionary asset 16 management services.</p> <p>17 Q. So if a customer comes in and would like EFG 18 to have discretion to trade securities for that 19 customer, is the customer directed to EFG Capital Asset 20 Management?</p> <p>21 A. EFG Capital International does not have any 22 discretionary accounts. So if a customer wanted to have 23 his account managed on a discretionary basis within 24 specific parameters, he would sign a mandate with EFG 25 Capital Asset Management.</p>

46	<p>1 Q. So, well, let's try to put this in real world 2 terms here. 3 Sales rep in Key Biscayne meets somebody 4 wealthy in Key Biscayne and introduces them to EFG 5 Capital International or EFG and determines, after 6 discussions with that potential customer, the customer 7 would like to open an account and is willing to or wants 8 to grant the broker, financial advisor, or somebody 9 discretion to trade in that account. 10 That person would be directed to EFG Capital 11 Asset Management? 12 MR. GARCIA: Object to the form. 13 MR. COATES: I'm going to object to the form 14 as well. 15 BY MR. LAWRENCE KELLOGG: 16 Q. You can answer. 17 A. The broker's not authorized to engage in a 18 discretionary activity. 19 Q. Sure. 20 A. So the registered representative would have to 21 introduce that account to the asset management company. 22 Q. Okay. Does the registered rep or the 23 salesman, does he get a commission for doing that from 24 Capital Asset Management Corp.? 25 A. No.</p>	48	<p>1 Q. Any other examples of research? 2 A. That would be the primary one. 3 Q. You mentioned a company called EFG Capital 4 Services. What is that? 5 A. It is a services company owned by Holdings. 6 Q. What services does it provide? 7 A. It is currently the shareholder of a 8 subsidiary company and that's recently formed in 9 Argentina. 10 Q. What's the business purpose of the company in 11 Argentina? What's it's name? 12 A. Capital Asesores is the Argentine company. 13 Q. Is it a broker-dealer there? 14 A. No, it's a marketing company. 15 Q. Okay. Is there an agreement between EFG 16 Capital Services and the broker-dealer? 17 A. Not yet in place. Recently formed. 18 Q. So this is a brand-new -- 19 A. Yes. 20 Q. -- effort? Okay. 21 Was this around in 2005? 22 A. No. 23 Q. What is EFG Capital Insurance Solutions? 24 A. It's a company that's formed to be able to 25 capture insurance commissions when those commissions --</p>
47	<p>1 Q. How does he get compensated for introducing 2 the customer to Capital Asset Management Corp., if at 3 all? 4 A. There is a -- an agreement between the 5 broker-dealer and the asset management company for 6 introducing customers to the asset management company. 7 Q. Do you know what the title of that agreement 8 is? 9 A. No. 10 Q. Does EFG Capital Asset Management Corp. have 11 different financial reps or financial advisors than EFG 12 Capital International, the broker-dealer? 13 Does it have a sales force? Maybe I should 14 ask you that. Does it have a sales force? 15 A. They have portfolio managers. They have 16 individuals engaged in research who actively participate 17 with representatives in providing those services. 18 Q. Okay. So does -- does EFG Capital Asset 19 Management do its own research? 20 A. For certain activities, it does. 21 Q. Tell us -- under what circumstances does it do 22 its own research? 23 A. They do research for the mutual funds that 24 they include in their discretionary asset management 25 activities.</p>	49	<p>1 when an insurance product is either sold by an insurance 2 agent on staff or referred to an insurance company. 3 Q. So an EFG customer who buys can also buy 4 insurance through the -- through EFG Capital Insurance 5 Solutions? 6 A. Yes. 7 Q. What is EFG Capital Life Settlement Brokers? 8 A. It's a company which conducted a few life 9 settlement brokerage transactions on behalf of its 10 customers. 11 Q. What is a "life settlement transaction"? 12 A. It is a life insurance policy that is brokered 13 from the current owner to a new owner. 14 Q. Do -- financial advisors at EFG Capital 15 International, are they permitted to recommend 16 particular investments to customers? 17 MR. COATES: I'll object to the form of the 18 question. 19 BY MR. LAWRENCE KELLOGG: 20 Q. Are financial advisors permitted to recommend 21 investments to customers? 22 MR. COATES: Same objection. 23 THE WITNESS: I'm sorry. Are we now talking 24 about registered representatives of EFG Capital, 25 the broker-dealer?</p>

50	<p>1 BY MR. LAWRENCE KELLOGG:</p> <p>2 Q. Yes. Yes.</p> <p>3 A. The answer is yes.</p> <p>4 Q. Now, you made that distinction as registered</p> <p>5 reps of EFG Capital International.</p> <p>6 Are there -- are there registered financial</p> <p>7 representatives of other companies that --</p> <p>8 A. I was trying to clarify what you were asking.</p> <p>9 Q. Okay.</p> <p>10 A. We were just talking about insurance and all</p> <p>11 of a sudden --</p> <p>12 Q. Sure.</p> <p>13 A. -- you were talking about investment</p> <p>14 recommendations.</p> <p>15 Q. Okay. Under what circumstances are they</p> <p>16 permitted to make recommendations?</p> <p>17 A. Based on suitability of their customers.</p> <p>18 Q. Is there an approved recommendation list for</p> <p>19 particular investments or a -- something similar to</p> <p>20 that?</p> <p>21 A. There are.</p> <p>22 Q. What do you call it, an approved list?</p> <p>23 A. Approved list.</p> <p>24 Q. How does an investment get on the approved</p> <p>25 list?</p>	52	<p>1 representatives also become wider, we have formalized a</p> <p>2 process. And that's what I mean by "evolved."</p> <p>3 Q. You mentioned a new product review committee.</p> <p>4 What is that?</p> <p>5 A. Committee to examine new products before</p> <p>6 they're made available to the registered</p> <p>7 representatives.</p> <p>8 Q. Who is on the committee?</p> <p>9 A. It's headed by Sixto Campano. I can't recall</p> <p>10 all the members.</p> <p>11 Q. Are you on the committee?</p> <p>12 A. No.</p> <p>13 Q. Do you have any function with respect to</p> <p>14 approving new products to be contained on the</p> <p>15 approved -- approved list of securities?</p> <p>16 A. Not currently.</p> <p>17 Q. Did you ever have such responsibility?</p> <p>18 A. I was involved in the early stages of the</p> <p>19 development of the business.</p> <p>20 Q. When you say "the early stages," what years</p> <p>21 are you referring to?</p> <p>22 A. First four or five years.</p> <p>23 Q. So, say, 1996 through 2000, 2001, in that</p> <p>24 frame?</p> <p>25 A. Approximately.</p>
51	<p>1 A. It goes -- if it's a new product, it may go</p> <p>2 through a new product review committee. If it's a</p> <p>3 mutual fund, it would go through a -- the research of</p> <p>4 the individual tasked with looking at mutual funds. So</p> <p>5 it depends on the specific asset request.</p> <p>6 Q. When you say "new product," you mean new to</p> <p>7 EFG Capital International?</p> <p>8 A. Correct.</p> <p>9 Q. And has that been the procedure since you've</p> <p>10 been with the company in 1996?</p> <p>11 A. The procedure has varied -- evolved over the</p> <p>12 years, I should say.</p> <p>13 Q. Tell us how it's evolved.</p> <p>14 A. I think in -- in the early years of EFG</p> <p>15 Capital when the firm was much smaller, there was</p> <p>16 perhaps -- I don't want to say -- let me think about</p> <p>17 this for a second.</p> <p>18 Q. Go ahead.</p> <p>19 A. Because this -- now we're talking about 13</p> <p>20 years ago, 14 years ago.</p> <p>21 But it was a smaller business. And there were</p> <p>22 probably a fewer number of products available to the</p> <p>23 registered representatives.</p> <p>24 So as the business has expanded and the</p> <p>25 financial products available to the registered</p>	53	<p>1 Q. What was your function then?</p> <p>2 A. I was CEO of the firm.</p> <p>3 Q. What was your function in terms of approving</p> <p>4 the securities?</p> <p>5 A. There was regular interface with the CROs</p> <p>6 regarding what they were selling. There was an offering</p> <p>7 sheet made available to them which indicated what was</p> <p>8 available at that given point in time. And I either --</p> <p>9 the registered -- the -- I'm sorry. The general</p> <p>10 securities principal that started initially the firm,</p> <p>11 Mark McCluskey, would also be very involved in product</p> <p>12 review, security selection.</p> <p>13 Q. You mentioned something that you referred to</p> <p>14 as "CRO."</p> <p>15 What's a "CRO"?</p> <p>16 A. Oh, I'm sorry. We refer generically to</p> <p>17 registered reps as client relation officers. So the</p> <p>18 acronym CRO is what we internally refer to as registered</p> <p>19 reps.</p> <p>20 Q. Once a -- once a security or an investment is</p> <p>21 on the approved list, after that is there any further</p> <p>22 review of that security to keep it on the list or take</p> <p>23 it off the list?</p> <p>24 A. Periodic reviews.</p> <p>25 Q. When you say "periodic reviews," what do you</p>

<p style="text-align: right;">54</p> <p>1 mean?</p> <p>2 A. It depends once you get on the -- on the asset</p> <p>3 class and whether a negative event may have occurred in</p> <p>4 that -- in that -- in that security or that issue.</p> <p>5 Q. When you say "a negative event," what do you</p> <p>6 mean? Give us an example.</p> <p>7 A. Enron.</p> <p>8 Q. Okay. Some -- something is revealed. Madoff.</p> <p>9 Madoff goes to prison, that would be a negative event,</p> <p>10 but -- is that right?</p> <p>11 A. That would be a negative event.</p> <p>12 Q. But something less extreme. If there was a --</p> <p>13 A. Well, if you have a --</p> <p>14 Q. -- business reversal or --</p> <p>15 A. -- if you have --</p> <p>16 MR. COATES: Excuse me. Victor. You may --</p> <p>17 BY MR. LAWRENCE KELLOGG:</p> <p>18 Q. If there was -- give us a less extreme</p> <p>19 example. Would it -- would there be a subsequent</p> <p>20 periodic review if the value of the investment dropped</p> <p>21 dramatically or something like that?</p> <p>22 A. If -- let's take a specific example, a mutual</p> <p>23 fund. So the value of a mutual fund dropped</p> <p>24 dramatically. If the investment manager of a mutual</p> <p>25 fund changed, we would look at that more closely than if</p>	<p style="text-align: right;">56</p> <p>1 that would do the hedge fund review?</p> <p>2 A. For the past four years we have employed an</p> <p>3 external firm, a specialist firm in Connecticut called</p> <p>4 Greenwich Associates, to conduct ongoing review of the</p> <p>5 hedge funds approved for distribution on our platform.</p> <p>6 Q. So that would be since 2006?</p> <p>7 A. 2007, probably.</p> <p>8 Q. All right. Prior to 2000- -- and they -- does</p> <p>9 the Greenwich Associates do the entire hedge fund</p> <p>10 review?</p> <p>11 A. For all the -- for all the hedge funds in our</p> <p>12 platform, correct.</p> <p>13 Q. And would that include brand-new hedge funds</p> <p>14 that are being added to the list?</p> <p>15 A. If any one would be added, yes.</p> <p>16 Q. Prior to 2007, who had that function?</p> <p>17 A. Hedge fund review was conducted for a few</p> <p>18 years by Sixto Campano and Mike Donnell.</p> <p>19 Q. Who is the other person, Mike?</p> <p>20 A. Mike Donnell, D-O-N-N-E-L-L.</p> <p>21 Q. According to your organizational chart,</p> <p>22 Exhibit 1, Mr. Donnell is a -- is in wealth management?</p> <p>23 A. Today he is, correct.</p> <p>24 Q. That's -- is that something recent?</p> <p>25 A. Last year, year and a half.</p>
<p style="text-align: right;">55</p> <p>1 nothing had happened.</p> <p>2 Q. If nothing happens and things are clipping</p> <p>3 along, is there any periodic review?</p> <p>4 A. I think once a product or fund is approved</p> <p>5 there will be periodic reviews to ensure that things are</p> <p>6 continuing properly for the right reasons.</p> <p>7 But I don't think there's any specific</p> <p>8 frequency under which we would necessarily conduct that</p> <p>9 review.</p> <p>10 Q. Okay. Who does the review, the new product</p> <p>11 review committee now?</p> <p>12 A. The, umm --</p> <p>13 Q. Or someone else?</p> <p>14 A. Regarding which asset class again? So,</p> <p>15 again --</p> <p>16 Q. Okay. That's a fair -- what kind of -- when</p> <p>17 you say "asset class," you mean --</p> <p>18 A. Mutual fund.</p> <p>19 Q. -- mutual fund as opposed to something else?</p> <p>20 A. Yeah. So mutual funds there's -- there's an</p> <p>21 individual tasked with that activity.</p> <p>22 Q. And if it's not a mutual fund, say it's a</p> <p>23 hedge fund, would that be another set of eyes?</p> <p>24 A. That's correct.</p> <p>25 Q. Who would be the people or the job functions</p>	<p style="text-align: right;">57</p> <p>1 Q. Prior to that what was his job function?</p> <p>2 A. He was involved in marketing activities</p> <p>3 leading up to wealth management.</p> <p>4 Q. In his function as a marketing person for</p> <p>5 wealth management, he was also one of the two</p> <p>6 individuals in charge of reviewing hedge funds that were</p> <p>7 going to be added or maintained on the approved list?</p> <p>8 A. No, I believe when he was actually reviewing</p> <p>9 hedge funds he did not have marketing activity tasked to</p> <p>10 him.</p> <p>11 Q. Okay. What was his job then?</p> <p>12 A. He reported to Sixto Campano.</p> <p>13 Q. Do you know what his job was?</p> <p>14 A. In the review of hedge funds?</p> <p>15 Q. Oh, was that his full-time job?</p> <p>16 A. I can't remember precisely. This is -- we're</p> <p>17 now talking four, five years ago.</p> <p>18 Q. Okay. What is the purpose of the review?</p> <p>19 A. Which review are we referring to?</p> <p>20 Q. Well, let's start with when --</p> <p>21 A. Talking about hedge funds?</p> <p>22 Q. -- when a hedge fund is being added to the</p> <p>23 approved list, what is the purpose of the review and how</p> <p>24 is it accomplished?</p> <p>25 A. Well, the review --</p>



<p style="text-align: right;">58</p> <p>1 Q. Those are two questions. 2 What's -- what's the purpose? 3 A. The purpose of the review is to determine 4 whether we include or exclude a new hedge fund into the 5 approved platform. 6 Q. What factors would make EFG Capital 7 International include or exclude a hedge fund as an 8 approved investment? 9 A. Again, I'm not involved in this process today 10 and have not been for a number of years -- 11 Q. When you were involved, what -- 12 A. -- but size of the fund, track record of a 13 fund, performance of a fund, quantitative-type data and 14 qualitative-type data regarding the fund company. 15 Q. What's the difference, the way you use the 16 terms, in quantitative data and qualitative data? 17 A. I think the background of the individuals 18 versus the statistical analysis that someone would 19 perform. 20 Q. What -- what difference does the size of the 21 fund have? 22 A. In theory, a larger fund, well-established 23 fund, with a proven track record would in theory be -- 24 the word is not less risky -- it would be one less 25 element to worry about versus a start-up company. So</p>	<p style="text-align: right;">60</p> <p>1 A. Right. 2 Q. Do you do any other statistical analysis to 3 measure other things? 4 A. I don't do any of this analysis today. We 5 have outsourced this activity to professionals to do the 6 activity and to carry out the activity. 7 Q. Before you hired the outside firm and you were 8 involved in it, did -- was there statistical analysis of 9 potential investment other than how volatile it is? 10 And, if so, what was that analysis? 11 A. What time frame are we talking about, you 12 know, when the -- when the -- 13 Q. Well, starting in 1996 and tell us if it 14 changed when you were involved. 15 A. Well, I think the -- the activity in the late 16 '90s, if you will, was focusing on the offering 17 memorandum, the activities of the fund, the providers of 18 the fund, the performance of the fund, the size of the 19 fund. That type of information. 20 Q. And did that change after the late '90s? 21 A. At some point, obviously, we engaged in 22 external consulting to have a more robust review of the 23 hedge fund platform that we had approved. 24 Q. So you mentioned that before you hired -- was 25 it Greenwich --</p>
<p style="text-align: right;">59</p> <p>1 the start-up risks of a new investment, in theory, would 2 not be there. 3 Q. So one of the purposes of this review is to 4 evaluate the risks; is that true? 5 A. I think that the risks are well-defined in the 6 prospectus of the -- of the -- in many of the 7 prospectuses, but to identify risks. 8 Q. When you mentioned track record, what do you 9 mean? 10 A. The performance of the fund over a long period 11 of time. 12 Q. How well -- how well -- how much money it's 13 earned or lost? 14 A. How well it has performed in good markets, bad 15 markets. 16 Q. Now you mentioned a statistical analysis. 17 What do you mean by that? What does it entail? 18 A. Volatility, for example. 19 Q. What does -- what does volatility have to do 20 with your decision? 21 A. If the fund is up 40 percent one year and down 22 40 percent the next year, it may not be as attractive 23 for our customers. 24 Q. So the statistical analysis measures how 25 volatile the fund is; is that right?</p>	<p style="text-align: right;">61</p> <p>1 A. Associates. 2 Q. Greenwich Associates -- 3 A. Uh-huh. 4 Q. -- and internally someone at the company was 5 doing this analysis, you would review an offering 6 memorandum or prospectus -- 7 A. Uh-huh. 8 Q. -- is that right? 9 Would you review any other materials? "You" 10 being the group. And, if so, what were they? 11 A. Review of whatever materials were offered by 12 the fund company sponsor who was sponsoring the fund. 13 Q. Would you -- would you meet with -- with 14 the -- the sponsors of the funds? 15 A. If available, yes, absolutely. 16 Q. Did you ever do on-site reviews where you'd go 17 to the fund and -- and meet with them, look at their 18 facilities, get it to work? 19 A. Yes. 20 Q. Did you ever have fund of funds recommended on 21 your approved list? 22 A. Yes, I believe so. 23 Q. A fund of fund, as I use the term, is a hedge 24 fund that has investments in other hedge funds. 25 Is that your understanding?</p>

<p style="text-align: right;">62</p> <p>1 A. That's correct.</p> <p>2 Q. And when -- when you recommended a fund of</p> <p>3 funds, were there instances in which you would also</p> <p>4 review the funds that were the ultimate investments?</p> <p>5 A. I can't think of a specific instance, but I</p> <p>6 think our primary activity would be reviewing the fund</p> <p>7 sponsor and understanding where the sponsor has made his</p> <p>8 investments.</p> <p>9 Q. Hedge funds -- is it true in your experience</p> <p>10 that hedge funds are oftentimes run by an investment</p> <p>11 manager in terms of what investments are made by the</p> <p>12 fund?</p> <p>13 MR. COATES: Object to the form of the</p> <p>14 question.</p> <p>15 MR. LAWRENCE KELLOGG: Let me rephrase it.</p> <p>16 BY MR. LAWRENCE KELLOGG:</p> <p>17 Q. You mentioned before that a potential adverse</p> <p>18 event that might cause you to reexamine a fund is the</p> <p>19 manager has changed.</p> <p>20 A. Correct.</p> <p>21 Q. You remember that? What does that mean? What</p> <p>22 do you mean by "manager"?</p> <p>23 A. If you have a fund and your star fund manager</p> <p>24 leaves the company and goes somewhere else, then that's</p> <p>25 an event that would warrant looking at the fund more</p>	<p style="text-align: right;">64</p> <p>1 the entity or individual who actually pulls the trigger</p> <p>2 on the investments?</p> <p>3 Q. That sounds good. Yes. Do you look at</p> <p>4 investment advisor?</p> <p>5 A. Not always.</p> <p>6 Q. Under what circumstances do you look at the</p> <p>7 investment advisor?</p> <p>8 A. I think, once again, I think the important</p> <p>9 part in a fund is understanding what the structure of</p> <p>10 the fund is, the roles the different entities play, and</p> <p>11 understanding whether that structure is acceptable or</p> <p>12 not acceptable.</p> <p>13 Q. Well, what do you mean by the "structure"?</p> <p>14 A. The structure of the fund.</p> <p>15 Q. Again, I'm not sure what you mean by "the</p> <p>16 structure of the fund." Do you mean what it pays, how</p> <p>17 often it can be redeemed, things like that, or are you</p> <p>18 referring to something different?</p> <p>19 A. No, who the fund manager is, who the custodian</p> <p>20 is, who the external auditors are, and who the</p> <p>21 underlying investment advisor is.</p> <p>22 Q. Okay. Why is it important to know who the</p> <p>23 custodian is?</p> <p>24 A. The custodian is charged with the safekeeping</p> <p>25 of the assets.</p>
<p style="text-align: right;">63</p> <p>1 closely, going forward to see whether the new manager</p> <p>2 can perform as well as the prior manager.</p> <p>3 Q. Now, if the fund manager is another company,</p> <p>4 not an individual but another company, and the company</p> <p>5 changes, would you make the same analysis?</p> <p>6 MR. COATES: I'm going to object to the form</p> <p>7 of the question.</p> <p>8 BY MR. LAWRENCE KELLOGG:</p> <p>9 Q. You can answer.</p> <p>10 A. It would depend on the circumstances.</p> <p>11 Q. What would it depend on?</p> <p>12 A. I'm not sure. I would have to perhaps look at</p> <p>13 a specific example.</p> <p>14 Q. The reason you want to look at the fund</p> <p>15 manager -- no.</p> <p>16 What is the reason you want to look at the</p> <p>17 fund manager?</p> <p>18 A. Well, he is credited with the track record of</p> <p>19 the company over the performance of the fund. So in</p> <p>20 that sense if there's a change in the fund manager, that</p> <p>21 would be an event that you want to look at.</p> <p>22 Q. Well, when you're -- when you're initially</p> <p>23 evaluating a fund as to whether they should be put on</p> <p>24 the approved list, do you look at the fund manager?</p> <p>25 A. By "the fund manager," you mean the advisor --</p>	<p style="text-align: right;">65</p> <p>1 Q. And why is that important?</p> <p>2 A. Because an investor would like to know where</p> <p>3 his assets are held.</p> <p>4 Q. What investigation or analysis would you do or</p> <p>5 your company do as to the custodian? What would you</p> <p>6 look at?</p> <p>7 A. I think we would look to make sure that the</p> <p>8 custodian is one who's normally engaged in that type of</p> <p>9 business.</p> <p>10 Q. Would you be looking at the financial strength</p> <p>11 of the custodian?</p> <p>12 A. I think the activity that -- that the</p> <p>13 custodian carries, how the custodian carries it out as a</p> <p>14 reputable custodian I think is important. The financial</p> <p>15 strength is relative.</p> <p>16 MR. COATES: Larry, could we take a break</p> <p>17 before you continue your next question?</p> <p>18 MR. LAWRENCE KELLOGG: Yeah, sure.</p> <p>19 MR. COATES: We've been at it for over an</p> <p>20 hour.</p> <p>21 MR. LAWRENCE KELLOGG: Okay. Let's go off the</p> <p>22 record.</p> <p>23 MR. COATES: Let's take five.</p> <p>24 THE VIDEOGRAPHER: Going off the record. The</p> <p>25 time is 2:41.</p>

66	<p>1 (Thereupon, a recess was taken from 2:41 p.m.                  2 to 3:04 p.m.)                  3 THE VIDEOGRAPHER: All right. We're now back                  4 on the record. The time is 3:04.                  5 BY MR. LAWRENCE KELLOGG:                  6 Q. Okay. Before we broke you were -- you were                  7 talking about EFG Capital International's analysis of                  8 the structure of a hedge fund that might be added to the                  9 approved list, and we were talking about custodians.                  10 Would part of the -- I'll call it -- due                  11 diligence or analysis that would be done would be to                  12 look at contracts and underlying records of any kind for                  13 the hedge fund?                  14 A. Sometimes it's applicable and sometimes it                  15 isn't. Depends --                  16 Q. With respect -- go ahead.                  17 A. Depends on the situation.                  18 Q. What would -- what would make the difference?                  19 What would make you look at records and contracts as                  20 opposed to not doing it?                  21 A. I'm not sure it would be necessary to see the                  22 engagement letter between the fund and the external                  23 auditor or the external auditor's PWC.                  24 Q. Would it be important or necessary to look at                  25 the agreement between, say, the custodian and the hedge</p>	68	<p>1 formalized process for reviewing potential hedge fund                  2 additions to the approved list. Is that right?                  3 A. Well, the formalized process would be                  4 submitting it to a review, such as what we have in place                  5 today; which is we submit the information to our                  6 external due diligence provider, if you will, and have                  7 them review it, whether it's appropriate or not.                  8 Q. Okay. Before -- before Greenwich Associates                  9 was retained, was there a formalized process for due                  10 diligence review?                  11 A. Internally would have been discussed between                  12 the people or the individuals charged with that                  13 activity.                  14 Q. Were there written procedures?                  15 A. Probably not.                  16 Q. To your knowledge had there ever been written                  17 due diligence procedures at EFG Capital International                  18 for analysis of hedge funds or any other investment?                  19 A. I -- I don't recall.                  20 Q. Are there written procedures now?                  21 A. I am not a member of that committee, so if                  22 that committee has procedures, it may or may not.                  23 Q. Okay. Has the committee ever maintained                  24 minutes of any meetings?                  25 A. I don't know.</p>
67	<p>1 fund?                  2 A. Depends on the situation.                  3 Q. Well, what -- what would the difference be?                  4 A. If -- if the records perhaps are made                  5 available to you, perhaps it would be interesting to see                  6 it. I don't -- I don't know.                  7 Q. Okay. Would you look at the underlying                  8 contract between the investment manager or the                  9 investment advisor and the fund?                  10 A. Not necessarily.                  11 Q. Again, if they showed it to you, it would be                  12 something you'd look at of interest?                  13 A. Sure.                  14 Q. But if they don't show it to you, it wouldn't                  15 be that important?                  16 A. I think it just depends on situations.                  17 Q. Okay. What would -- what would make the                  18 difference? What would make you want to review that                  19 contract as opposed to not review it?                  20 A. I -- I really can't think of particular                  21 instances that would lead one to review it versus not                  22 review it.                  23 Q. You said earlier that there was --                  24 A. Yeah.                  25 Q. I'm sorry. You said earlier there was a</p>	69	<p>1 Q. When -- did you ever serve on the committee or                  2 there just wasn't a committee back when you were                  3 involved?                  4 A. Originally it was the general securities                  5 principal, myself, and perhaps -- and one other                  6 individual who would discuss the different issues. So,                  7 again, that's why I said the process evolved over the                  8 years.                  9 Q. Okay. So it wasn't really a formalized                  10 committee, I guess, back then?                  11 A. Back then, not a minute-taking committee, no.                  12 Q. You talked about qualitative data that you                  13 look at. And I think you described that as being the                  14 background. Is that right?                  15 A. Correct.                  16 Q. Is -- do you mean anything else by qualitative                  17 data that you would -- that the company would look at?                  18 A. I mean, I don't have a checklist here of -- of                  19 the items that would be looked at.                  20 Q. Okay.                  21 A. But I would assume that the individuals that                  22 we have in place today to look at our platform have a                  23 checklist.                  24 Q. Do you -- yeah, I was going to ask you. You                  25 anticipated my question.</p>

70	<p>1 Is there a checklist now?</p> <p>2 A. I don't know.</p> <p>3 Q. Has there ever been one, while you were</p> <p>4 involved in the process?</p> <p>5 A. Twelve, thirteen years ago, I don't recall.</p> <p>6 Q. When you -- how does the company look at the</p> <p>7 background? Just hire a private detective? Do</p> <p>8 something else?</p> <p>9 A. No, I think -- again, during what time period?</p> <p>10 If we're talking a dozen years ago, at -- at that point</p> <p>11 the general securities principal would have called</p> <p>12 counterparties in New York and tried to obtain, you</p> <p>13 know, informal references on -- on individuals involved.</p> <p>14 Q. Did that evolve or change over time?</p> <p>15 A. I don't know exactly how the background checks</p> <p>16 are performed today by our third-party provider.</p> <p>17 Q. Now when you're -- when you're calling on</p> <p>18 references, you know, when the company, someone in the</p> <p>19 company is calling references, looking into the</p> <p>20 background, would you look at the background of the</p> <p>21 person making the investment decisions for the hedge</p> <p>22 fund?</p> <p>23 A. Not necessarily.</p> <p>24 Q. Under what circumstances would you -- would</p> <p>25 the company look at the background of the person making</p>	72	<p>1 in our approved platform.</p> <p>2 Q. You say currently maintained. Is that</p> <p>3 something recent? Or has it always been the case where</p> <p>4 there's a due diligence file somewhere?</p> <p>5 A. Certainly there's files available today and</p> <p>6 they have been files for a number of years. I -- I</p> <p>7 can't pinpoint the time when files were kept properly.</p> <p>8 And certainly we're talking now about records that go</p> <p>9 10, 12 years, there may have been files. And I'm not</p> <p>10 sure where the files are today either.</p> <p>11 Q. Does the firm maintain a Fairfield Sentry due</p> <p>12 diligence file?</p> <p>13 A. There is a file for that since that's a fund</p> <p>14 in the approved -- was a fund in the approved platform.</p> <p>15 Q. Who maintained the file?</p> <p>16 A. There was a file maintained by different</p> <p>17 people at different points in time and possibly added --</p> <p>18 added to it over time.</p> <p>19 Q. Have you reviewed the file from the</p> <p>20 last -- since the Madoff scandal was revealed?</p> <p>21 A. Not the entire file, no.</p> <p>22 Q. Have you reviewed parts of it?</p> <p>23 A. I may have looked at a couple of items in</p> <p>24 the -- in the file.</p> <p>25 Q. Do you know whether the file's been produced</p>
71	<p>1 the investment decisions?</p> <p>2 A. I'm not certain, but I think our obligation is</p> <p>3 to look at the fund itself that is being offered to</p> <p>4 clients and make -- and evaluate that on a stand-alone</p> <p>5 basis.</p> <p>6 Q. I'm just trying to understand. If somebody</p> <p>7 calls up a counterparty in New York, calls up a</p> <p>8 reference in New York, are they asking about the fund,</p> <p>9 or are they asking about the people at the fund who make</p> <p>10 the decisions, or both?</p> <p>11 MR. COATES: I'm going to object,</p> <p>12 hypothetical.</p> <p>13 BY MR. LAWRENCE KELLOGG:</p> <p>14 Q. You can answer.</p> <p>15 A. You may ask about the funding, you may ask</p> <p>16 about the principals of the fund sponsor.</p> <p>17 Q. Is there a situation that you can recall as</p> <p>18 you sit here today where EFG Capital asked background on</p> <p>19 did a background analysis of the investment manager?</p> <p>20 A. I can't recall specific situations.</p> <p>21 Q. When a -- when a due diligence review is</p> <p>22 performed on a -- either potential investment or an</p> <p>23 investment that's already been on the approved list, is</p> <p>24 there a file maintained?</p> <p>25 A. There is a file maintained currently for funds</p>	73	<p>1 to us in this litigation?</p> <p>2 A. I believe that everything related to Fairfield</p> <p>3 Sentry has been requested and produced.</p> <p>4 Q. Have you reviewed any of the materials that</p> <p>5 have been produced to us?</p> <p>6 A. No.</p> <p>7 Q. Who, if anyone, was in charge or tasked with</p> <p>8 the gathering of documents for this litigation?</p> <p>9 A. Sixto Campano and individuals reporting to</p> <p>10 him.</p> <p>11 Q. I'm going to go back for a moment to Exhibit</p> <p>12 2. And, again, page 6, these are the financial</p> <p>13 statements of EFG Capital International from 2007.</p> <p>14 The fourth paragraph down, we discussed this</p> <p>15 briefly before, but I just want to make sure I</p> <p>16 understand.</p> <p>17 Fourth paragraph down, says that: "The</p> <p>18 company broker-dealer services" -- I'm sorry.</p> <p>19 "The company performed broker-dealer services</p> <p>20 for customers of EFG Bank and other affiliates."</p> <p>21 Do you know what other affiliates the company</p> <p>22 performed broker-dealer services for?</p> <p>23 A. No, I don't know the other affiliates.</p> <p>24 Q. What records would you look at to find that</p> <p>25 out?</p>

<p style="text-align: right;">74</p> <p>1 A. I would ask our financial principal.  2 Q. And his name again is?  3 A. Juan Massens.  4 Q. Can you spell his last name?  5 A. M-A-S-S-E-N-S.  6 Q. What is PRS Advisory Services?  7 A. It's an investment management company based in  8 Miami.  9 Q. Is it affiliated in some way with EFG Capital  10 International?  11 A. No. Besides -- I'm sorry. It's not an  12 affiliate of ours; it's owned by, I believe, EFG  13 International.  14 Q. Does it share offices with EFG Capital?  15 A. No.  16 Q. Where are its offices?  17 A. On Brickell.  18 Q. And what -- what is its business purpose?  19 A. It's an investment management company.  20 Q. And what does that mean?  21 A. I'm not responsible for the management of PRS  22 International.  23 Q. Okay. But do you know what it's -- what it  24 means when you say "investment management company"?  25 A. Provides investment management services. I'm</p>	<p style="text-align: right;">76</p> <p>1 for that for some time.  2 Q. And did they have any staff assisting them?  3 A. I can't recall if they had -- they may have  4 made use of staff for a particular research purposes.  5 Q. But there was no one dedicated to that  6 process; is that right?  7 They might use somebody, but there was no one  8 whose job it was full-time to perform due diligence  9 staff functions?  10 A. Not that I recall.  11 Q. Does your company prepare budgets?  12 A. Yes.  13 Q. Is a budget item -- is due diligence a  14 budgeted item?  15 A. I'm not certain whether we have a line item  16 for Greenwich Associates in the budget, but I don't  17 recall a line item today for -- that says due diligence  18 on it.  19 Q. Is there -- was there ever a line item in a  20 budget going back to 1996 for due diligence?  21 Did you try to, at the beginning of the year,  22 figure out what you might have to spend on due diligence  23 for a particular budgeted year?  24 A. Not that I recall.  25 Q. Did EFG International, has it ever had any</p>
<p style="text-align: right;">75</p> <p>1 not sure I can go much beyond that.  2 Q. Does your company share customers or refer  3 customers back and forth to PRS Advisory Services?  4 A. I'm not aware of any.  5 Q. Who runs PRS Advisory Services?  6 A. Jacobo Gadala-Maria.  7 Q. Could you please spell that.  8 A. Jacobo with an "O," Jacob with an "O."  9 Gadala, G-A-D-A-L-A, dash, Maria.  10 Q. Is there any revenue shared between EFG  11 Capital and PRS Advisory Services, to your knowledge?  12 A. Not that I'm aware of.  13 Q. When you were involved in due diligence of  14 potential investments, did -- did you have staff who  15 were dedicated to that function?  16 A. No, it was performed by primarily the  17 principals of the firm.  18 Q. Before you -- have you -- have you completely  19 outsourced this function in Greenwich Associates now?  20 A. The hedge fund process?  21 Q. Yes.  22 A. Yes.  23 Q. Prior to outsourcing it, was there any staff  24 ever dedicated to due diligence analysis of hedge funds?  25 A. Mike Donnell and Sixto Campano was responsible</p>	<p style="text-align: right;">77</p> <p>1 budgetary approval authority over your company's budget?  2 A. No.  3 Q. In other words, do you -- do you submit  4 budgets to EFG International for approval?  5 A. No, we approve the budgets internally.  6 Q. Do you --  7 A. I would say that the exception perhaps would  8 have been the first few years if -- when we were  9 building the business and we were not break-even or  10 profitable yet, we would have gone to the parent for  11 additional support.  12 Q. For capital?  13 A. Form of loans or capital or...  14 Q. Does EFG International review the budgets  15 before you approve them -- before the board approves  16 them?  17 A. No.  18 Q. Are there revenue or profit targets done on a  19 company-wide -- EFG International-wide basis?  20 A. Could you rephrase that question?  21 Q. Does EFG Capital or anyone in its management  22 sit down and say, In the broker-dealer subsidiary this  23 year we would like -- we have a targeted revenue or  24 profit goal of X?  25 A. No, we -- we supply them with a budget that we</p>

<p style="text-align: right;">78</p> <p>1 elaborate locally here.</p> <p>2 Q. Does EFG International to your knowledge have</p> <p>3 consolidated financial statements issued?</p> <p>4 A. Yes.</p> <p>5 Q. Does EFG International have a consolidated</p> <p>6 budget in the beginning of every year with all of its</p> <p>7 subsidiaries in it?</p> <p>8 A. A consolidated?</p> <p>9 Q. Budget.</p> <p>10 A. I suppose so.</p> <p>11 Q. Have you ever seen one?</p> <p>12 A. Nope.</p> <p>13 Q. Prior to outsourcing the due diligence to</p> <p>14 Greenwich Associates, did EFG Capital International have</p> <p>15 any training program or seminars that it sent its people</p> <p>16 to to teach them how to conduct due diligence?</p> <p>17 A. No.</p> <p>18 Q. Were there any either third-party or</p> <p>19 management reviews of the due diligent process at any</p> <p>20 time before you outsourced it to Greenwich Associates?</p> <p>21 A. Not that I recall.</p> <p>22 Q. Okay. Who -- does EFG Capital have outside</p> <p>23 auditors? I guess they do.</p> <p>24 A. Yes, we do.</p> <p>25 Q. PriceWaterhouseCoopers in Miami was the</p>	<p style="text-align: right;">80</p> <p>1 Q. Yes.</p> <p>2 A. Are we talking about a hedge fund in</p> <p>3 particular? I mean, because there -- there's no</p> <p>4 consistency. Some -- some do pay and some don't pay.</p> <p>5 Q. Is that something that's negotiated?</p> <p>6 A. Sometimes.</p> <p>7 Q. As part of the due diligence analysis is</p> <p>8 whether or not a hedge fund is paying for distribution</p> <p>9 services, is that a factor in the due diligence?</p> <p>10 A. It's an item that's looked at.</p> <p>11 Q. I'm sorry?</p> <p>12 A. It's an item that's looked at.</p> <p>13 Q. What is the purpose of looking at it?</p> <p>14 A. To determine whether you will be receive</p> <p>15 compensation for placing a product or not.</p> <p>16 Q. Why is that important to -- to know in the due</p> <p>17 diligence process?</p> <p>18 A. I think just one -- one of the items that we</p> <p>19 look at.</p> <p>20 Q. And you're looking at it for the purpose of</p> <p>21 whether this particular investment we want to recommend</p> <p>22 to our customers is whether or not EFG Capital is going</p> <p>23 to get paid for distributing it. Is that right?</p> <p>24 A. I think we would look at it to determine</p> <p>25 whether in fact they're paying distributors or not. Is</p>
<p style="text-align: right;">79</p> <p>1 auditor for 2007. Do they continue to be the auditor?</p> <p>2 A. Yes, they do.</p> <p>3 Q. And how long has PriceWaterhouseCoopers been</p> <p>4 an auditor for EFG Capital?</p> <p>5 A. Since the onset.</p> <p>6 Q. Has PriceWaterhouseCoopers ever analyzed or</p> <p>7 opined on the due diligence procedures of EFG Capital?</p> <p>8 A. I don't know.</p> <p>9 Q. Who would you ask or how would you find that</p> <p>10 out?</p> <p>11 A. The primary interface with PWC and in any</p> <p>12 examination would be either Sixto Campano, CEO, or Juan</p> <p>13 Massens, financial principal.</p> <p>14 Q. When a -- when a hedge fund becomes placed on</p> <p>15 the recommended list of EFG Capital, are there instances</p> <p>16 in which EFG Capital is paid by the hedge fund?</p> <p>17 MR. COATES: I'm going to object to the form</p> <p>18 of the question.</p> <p>19 BY MR. LAWRENCE KELLOGG:</p> <p>20 Q. You can answer.</p> <p>21 A. The question is whether hedge funds pay for</p> <p>22 placement services, distribution services?</p> <p>23 Q. I guess so. That sounds good. Sounds like a</p> <p>24 good question. Do they?</p> <p>25 A. Was that your question?</p>	<p style="text-align: right;">81</p> <p>1 that a consideration whether we recommend that fund or</p> <p>2 not? Not necessarily.</p> <p>3 Q. When -- when you say "not necessarily," what</p> <p>4 do you mean? Sometimes it is and sometimes it isn't?</p> <p>5 A. That's correct.</p> <p>6 Q. Okay. Under what circumstances would it be</p> <p>7 important and what circumstances would it not be</p> <p>8 important?</p> <p>9 A. Some funds pay and some don't.</p> <p>10 Q. Okay. And from the company's perspective,</p> <p>11 would you rather get paid than not get paid?</p> <p>12 A. All things being equal, yes.</p> <p>13 Q. Okay. So in determining whether to put a</p> <p>14 hedge fund on the recommendation list, whether or not</p> <p>15 you get paid is something that is put into the mix,</p> <p>16 right?</p> <p>17 A. It's a consideration.</p> <p>18 Q. How about is the amount that's being paid, is</p> <p>19 that important to know as well?</p> <p>20 A. Yes.</p> <p>21 Q. If -- if you get -- if the hedge fund is</p> <p>22 paying more than other hedge funds, would that make it</p> <p>23 more likely that the hedge fund would make your list?</p> <p>24 A. Not necessarily.</p> <p>25 Q. Are there -- sometimes it would, sometimes it</p>

82	<p>1 wouldn't?</p> <p>2 A. That's correct.</p> <p>3 Q. Was Fairfield Sentry paying EFG Capital to</p> <p>4 distribute its fund to the customers?</p> <p>5 A. Yes.</p> <p>6 Q. What was the formula for payment? And if it</p> <p>7 changed, tell us how.</p> <p>8 A. Originally it was a percentage of the</p> <p>9 management fee. And the management fee was on an</p> <p>10 incentive basis only.</p> <p>11 Q. What does that mean?</p> <p>12 A. There was no fixed component to the management</p> <p>13 fee.</p> <p>14 Q. Still don't understand what you mean by that.</p> <p>15 A. It means that the fund had a management fee</p> <p>16 that was determined based on the performance of the</p> <p>17 fund.</p> <p>18 Q. Okay. So when you say "the fund," you mean</p> <p>19 Fairfield Sentry?</p> <p>20 A. I think you asked about Fairfield Sentry</p> <p>21 specifically now.</p> <p>22 Q. Yeah, so Fairfield Sentry would be</p> <p>23 paid -- would pay a management fee to whom?</p> <p>24 A. Fairfield Sentry would charge the fund a</p> <p>25 management fee.</p>	84	<p>1 Q. Do you remember what the percentage of the</p> <p>2 fixed management fee was?</p> <p>3 A. No.</p> <p>4 Q. Was the percentage negotiated with Fairfield</p> <p>5 Sentry?</p> <p>6 A. It was discussed. They typically came out</p> <p>7 with a standard offering and it was evaluated.</p> <p>8 Q. When you say "it was discussed," that's</p> <p>9 different than being negotiated?</p> <p>10 A. If negotiation means did we negotiate whether</p> <p>11 we received a bit more or less?</p> <p>12 Q. Right.</p> <p>13 A. Perhaps at times we -- we negotiated with</p> <p>14 them.</p> <p>15 Q. When you say -- were you part of those</p> <p>16 discussions, in negotiating?</p> <p>17 A. Initially I was.</p> <p>18 Q. Who did -- who else was involved?</p> <p>19 A. Mark McCluskey.</p> <p>20 Q. Who did you discuss or negotiate this with at</p> <p>21 Fairfield?</p> <p>22 A. Probably, but I -- I cannot be precise, either</p> <p>23 Lourdes Barreneche or Jeffrey Tucker or both.</p> <p>24 Q. Did you -- did you have a -- a Fairfield</p> <p>25 Sentry file yourself?</p>
83	<p>1 Q. Okay.</p> <p>2 A. And a percentage of that management fee would</p> <p>3 be paid to distributors.</p> <p>4 Q. So if the -- when you say it's on an incentive</p> <p>5 basis, you mean that if the fund did well, the manager</p> <p>6 would get an -- get a fee?</p> <p>7 A. The manager would get a fee, correct.</p> <p>8 Q. An EFG Capital would share in that fee, for</p> <p>9 the customers that it had placed?</p> <p>10 A. Would receive a percentage of that fee,</p> <p>11 correct.</p> <p>12 Q. What was the percentage?</p> <p>13 A. I can't -- I can't recall precisely what that</p> <p>14 percentage was.</p> <p>15 Q. So that's the way it was originally, you said?</p> <p>16 A. That's correct.</p> <p>17 Q. Did that change?</p> <p>18 A. At some point in time the fund added a fixed</p> <p>19 management fee to the incentive.</p> <p>20 Q. And at that point in time then, EFG Capital</p> <p>21 would get a percentage of the fixed management fee?</p> <p>22 A. Yes.</p> <p>23 Q. Would it also get a percentage of the</p> <p>24 incentive management fee?</p> <p>25 A. I believe so.</p>	85	<p>1 A. Yes.</p> <p>2 Q. Today, you know, at the beginning of the</p> <p>3 deposition we were given Bates label 1068 to 1316.</p> <p>4 That's why we started a little late, so I could go</p> <p>5 through these a little bit.</p> <p>6 Is that your file?</p> <p>7 A. I don't know. I didn't look at it.</p> <p>8 Q. Okay. Did you provide your file to one of the</p> <p>9 lawyers --</p> <p>10 A. Yes.</p> <p>11 Q. -- to give to us?</p> <p>12 Were they bringing it to us today?</p> <p>13 A. I'm sorry?</p> <p>14 Q. Were they bringing it to us today?</p> <p>15 A. I don't know if they gave it to you yesterday</p> <p>16 or today or when it was.</p> <p>17 MR. LAWRENCE KELLOGG: Is this his file?</p> <p>18 MR. COATES: Yes.</p> <p>19 MR. LAWRENCE KELLOGG: Okay. That's all I</p> <p>20 want to know is whether this is your file so I'll</p> <p>21 know what I'm talking about.</p> <p>22 MR. COATES: Those are the documents I brought</p> <p>23 and handed you today, not the ones that Jacobson</p> <p>24 emailed you.</p> <p>25 MR. LAWRENCE KELLOGG: Yeah, I'm just -- this</p>

86	<p>1 is what you brought here. And I read the Bates 2 into the record. 3 Do you have a copy of this? 4 MR. JASON KELLOGG: There's a copy attached. 5 MR. LAWRENCE KELLOGG: Oh, okay. Good. 6 (Thereupon, the referred-to document was 7 marked by the court reporter for Identification as 8 Exhibit 3.) 9 BY MR. LAWRENCE KELLOGG: 10 Q. Let me mark as Exhibit 3 a March 24, 1999, 11 memorandum to Lonnie Howell from Marcelo Alvarez. And 12 attached to it is a fax cover sheet from Mr. Echevarria 13 to Lonnie Howell dated the same day. 14 Take a look at this. Is this one document, to 15 your knowledge, or two? 16 A. I don't know whether it's the same document or 17 two separate items on the same date. 18 Q. Okay. And this is a -- let's -- let's start 19 with the second page which is the fax EFG_Capital-1207. 20 Is that your signature? 21 A. Yes. 22 Q. And this is addressed from you to Lonnie D. 23 Howell, EFG in Zurich. Do you see that? 24 A. That's correct. 25 Q. Who is Lonnie D. Howell or who was he then?</p>	88	<p>1 A. I have no recollection. 2 Q. Why were you telling the head of EFG Private 3 Bank about this? 4 A. Informing him of activity related to that in 5 addition to another visit that was taking place. 6 Q. But why would you want to tell the head of the 7 Private Bank that you were going to try to negotiate 8 more money out of Fairfield for your rebate? 9 A. I -- I can't recall specifically why I -- 10 Q. Well, was -- was there a joint effort here 11 from EFG Bank and EFG Capital to -- to market these 12 Fairfield investments? 13 A. No. 14 Q. Were you sharing revenue with EFG Bank, some 15 of this rebate, was it going to EFG Bank? 16 A. I don't believe in 1999 there was, but I can't 17 recall. 18 Q. Did you report to Mr. Howell? 19 A. I've always reported to Mr. Howell. 20 Q. And was Mr. Howell then informed by you about 21 the Fairfield Sentry investment? 22 A. Informed about -- regarding what? I'm sorry? 23 Q. That this was something that was on their 24 approved list and that EFG Capital was making money off 25 of.</p>
87	<p>1 A. CEO of -- what year was this, '99? -- of EFG 2 Private Bank or EFG Bank. 3 Q. It says here: "Dear Lonnie, further to our 4 discussion I'm meeting with Jeffrey Tucker on March 5 26th in New York to discuss the rebate to EFG. I will 6 try to double our share from 15 percent of 20 percent 7 incentive to 30 percent of 20 percent incentive. Any 8 suggestions are welcome." 9 Do you see that? 10 A. Yes. 11 Q. Jeffrey Tucker, who is he? 12 A. One of the principals of the Fairfield 13 Greenwich Group. 14 Q. And when you mentioned "the rebate to EFG," 15 what were you referring to, what does that represent? 16 A. The -- the rebate paid to distributors for -- 17 for distributing the fund. 18 Q. And you're saying that you're trying to double 19 your share in this meeting that was going to take place 20 in 1999. Is that right? 21 A. Yes. 22 Q. Were you successful? 23 A. I don't recall. 24 Q. At some point in time did the percentage go 25 from 15 percent to 30 percent?</p>	89	<p>1 A. He would have been aware that Fairfield Sentry 2 was on an approved list of EFG Capital. 3 Q. Why would he care whether you were meeting 4 with Mr. Tucker in New York? Why would you want to tell 5 him that? 6 A. I don't know. 7 Q. Did you have meetings with Fairfield Sentry in 8 New York or elsewhere? 9 A. Yes. 10 Q. And every time you had a meeting, did you tell 11 Mr. Howell about it? 12 A. I don't believe so. 13 Q. Did Mr. Howell give you any advice or 14 suggestions as you asked him? 15 A. Not that I recall. 16 Q. Did you discuss negotiating strategy with 17 Mr. Howell? 18 A. Don't believe so. 19 Q. When you negotiated other rebates with other 20 hedge funds, would you keep Mr. Howell informed of that? 21 A. Perhaps. 22 Q. When you did due diligence analysis of other 23 hedge funds, would you tell Mr. Howell about that? 24 A. Perhaps. Don't know. 25 Q. Well, what would make you tell him as opposed</p>



90	<p>1 to not tell him?</p> <p>2 A. Depends whether we spoke or didn't speak or</p> <p>3 communicated or didn't communicate.</p> <p>4 Q. Did Mr. Howell have anything to do with</p> <p>5 approving the Fairfield Sentry investment?</p> <p>6 A. For EFG Capital?</p> <p>7 Q. For anybody. For any EFG company.</p> <p>8 A. The Fairfield --</p> <p>9 MR. GARCIA: Object to form.</p> <p>10 Go ahead.</p> <p>11 THE WITNESS: Okay. For EFG Capital, the</p> <p>12 Fairfield Sentry was approved by EFG Capital's</p> <p>13 management.</p> <p>14 BY MR. LAWRENCE KELLOGG:</p> <p>15 Q. Well, was Fairfield Sentry sold by other EFG</p> <p>16 affiliates?</p> <p>17 A. I believe it was.</p> <p>18 Q. Which other affiliate sold it, Fairfield</p> <p>19 Sentry?</p> <p>20 A. I don't know -- I don't know precisely.</p> <p>21 Q. Did -- was there a coordination among the</p> <p>22 different affiliates as to what EFG Cap-- or what</p> <p>23 Fairfield Sentry would pay?</p> <p>24 A. I'm not aware of the others' distribution</p> <p>25 agreements that they may have made with other entities.</p>	92	<p>1 A. He is a director today.</p> <p>2 Q. You don't know whether he shared any due</p> <p>3 diligence; is that right?</p> <p>4 A. Or Mark McCluskey, correct.</p> <p>5 Q. Mr. McCluskey is deceased; is that correct?</p> <p>6 A. That is correct.</p> <p>7 Q. Does the firm still have Mr. McCluskey's</p> <p>8 Fairfield Sentry file, do you know?</p> <p>9 A. I believe we have turned over all the files</p> <p>10 that we have found regarding Fairfield Sentry.</p> <p>11 Q. Okay. Was there -- was there a McCluskey</p> <p>12 file?</p> <p>13 A. I don't know.</p> <p>14 Q. Is there -- are there files in storage or --</p> <p>15 or warehoused electronically somewhere?</p> <p>16 A. We have searched physical storage and</p> <p>17 electronic storage and turned over all -- all the files</p> <p>18 to our attorneys as requested.</p> <p>19 Q. Did you review any due diligence done by any</p> <p>20 other EFG affiliate on the Fairfield Sentry fund?</p> <p>21 A. No.</p> <p>22 Q. Do you know whether any other Fairfield -- any</p> <p>23 other EFG affiliate did any due diligence?</p> <p>24 A. I believe EFG Bank did due diligence also.</p> <p>25 Q. What makes you say that?</p>
91	<p>1 Q. Well, was there -- was there a coordinated due</p> <p>2 diligence effort among the different EFG entities as to</p> <p>3 this fund that you're all selling together?</p> <p>4 MR. GARCIA: Object to the form.</p> <p>5 MR. COATES: Object to form as well.</p> <p>6 BY MR. LAWRENCE KELLOGG:</p> <p>7 Q. Answer.</p> <p>8 A. There was independent due diligence carried</p> <p>9 out by EFG Capital staff for its own behalf.</p> <p>10 Q. Did you share your due diligence with any</p> <p>11 other EFG affiliate?</p> <p>12 A. I don't recall. But was -- was -- I -- I</p> <p>13 can't say whether Marcelo Alvarez in this report shared</p> <p>14 the results or not.</p> <p>15 Q. Well, who is Marcelo Alvarez?</p> <p>16 A. He's been a director of EFG Capital since the</p> <p>17 beginning.</p> <p>18 Q. And you say you don't know whether he shared</p> <p>19 the due diligence? Is that what you said?</p> <p>20 A. Yes, you asked whether we shared due</p> <p>21 diligence.</p> <p>22 Q. Okay. Did you share any of it?</p> <p>23 A. I don't recall having shared due diligence.</p> <p>24 Q. And Marcelo Alvarez, is he -- is he a director</p> <p>25 today?</p>	93	<p>1 A. I was informed at one point they did.</p> <p>2 Q. Who told you?</p> <p>3 A. I don't recall precisely.</p> <p>4 Q. Do you know who at EFG Bank performed the due</p> <p>5 diligence, the separate due diligence, on Fairfield</p> <p>6 Sentry?</p> <p>7 A. No.</p> <p>8 Q. Do -- do you have access to those files?</p> <p>9 A. No.</p> <p>10 Q. Have you ever reviewed those files?</p> <p>11 A. No.</p> <p>12 Q. Was Mr. Howell in charge of -- well, let me</p> <p>13 ask this question.</p> <p>14 Was there a relationship person at EFG -- any</p> <p>15 of the EFG affiliates who was in charge of the</p> <p>16 relationship with Fairfield Sentry?</p> <p>17 MR. COATES: Object to the form.</p> <p>18 THE WITNESS: Not that I'm aware of.</p> <p>19 BY MR. LAWRENCE KELLOGG:</p> <p>20 Q. Who was -- who, if anybody, was the</p> <p>21 relationship person at EFG Capital with Fairfield?</p> <p>22 A. Mark McCluskey and I had probably the most</p> <p>23 contact initially.</p> <p>24 Q. When would you say you stopped having contact,</p> <p>25 if ever, with Fairfield Sentry?</p>

<p style="text-align: right;">94</p> <p>1 A. I had diminished contact in the latter years.  2 Q. What are "the latter years"?  3 A. So in the first -- from perhaps '97 to 2002.  4 I had more contact.  5 Q. Okay. Would you characterize yourself as  6 being the relationship person with Fairfield Sentry?  7 MR. COATES: I'll object to the form.  8 You may answer.  9 THE WITNESS: I'm sorry. I don't know what --  10 what a relationship person is.  11 BY MR. LAWRENCE KELLOGG:  12 Q. Was there somebody designated at your company  13 to be the primary contact with Fairfield Sentry?  14 A. No.  15 Q. Was there somebody at Fairfield Sentry who was  16 the primary contact with EFG Capital?  17 A. Yes.  18 Q. Who?  19 A. Lourdes Barreneche.  20 Q. Could you spell that, please.  21 A. B-A-R-R-E-N-E-C-H-E.  22 Q. He was the primary relationship person for  23 Fairfield Sentry during the entire period?  24 A. She.  25 Q. She. I'm sorry. Was she?</p>	<p style="text-align: right;">96</p> <p>1 A. That's correct.  2 Q. Did you -- had you done any due diligence of  3 Fairfield Sentry for your former employer?  4 A. No, I was not responsible for due diligence.  5 Q. Had -- had you ever reviewed any due  6 diligence?  7 A. No.  8 Q. So you knew about -- you knew about the  9 Fairfield Sentry fund for that reason.  10 Had -- had -- had you ever purchased any  11 investment in that fund or subscribed to any shares,  12 yourself?  13 A. Personally?  14 Q. Yes.  15 A. No.  16 Q. At any time did you ever do that?  17 A. No.  18 Q. Did you ever consider doing it?  19 A. Fairfield Sentry Ltd. is not available to U.S.  20 citizens.  21 Q. Okay. Did you -- and Fairfield had a  22 U.S.-based fund, didn't it?  23 A. I'm sorry?  24 Q. Fairfield had a U.S.-based fund as well, did  25 it not?</p>
<p style="text-align: right;">95</p> <p>1 A. Yes.  2 Q. How did you -- how did the company first come  3 in contact with Fairfield Sentry?  4 A. We were approached by Lourdes directly in  5 Miami.  6 Q. When was that approximately?  7 A. Approximately 1997.  8 Q. Had you ever heard of that fund before?  9 A. Yes.  10 Q. How did you hear about it and what did you  11 know about it?  12 A. Heard about it at my former employer.  13 Q. Had your former employer sold Fairfield Sentry  14 to its customers?  15 A. They -- they had used it as part of a  16 multi-manager hedge fund.  17 Q. What does that mean?  18 A. A fund that they sponsored that invested in  19 various hedge funds. And Fairfield Sentry was one of  20 the strategies that they invested in.  21 Q. So that was a -- your former employer had its  22 own proprietary fund of funds?  23 A. Yes.  24 Q. And one of the funds within its fund was  25 Fairfield Sentry?</p>	<p style="text-align: right;">97</p> <p>1 A. I believe so, yes.  2 Q. Did -- did you purchase any of that fund?  3 A. No.  4 Q. Did you ever consider doing it?  5 A. No.  6 Q. Did you purchase or subscribe to any hedge  7 fund that fed into Madoff?  8 A. No.  9 Q. Did you ever consider doing it?  10 A. Perhaps.  11 Q. Which fund did you consider investing through?  12 A. I didn't consider -- I mean, your question was  13 did I consider it.  14 Q. Yeah.  15 A. I may have considered investing in -- in  16 Fairfield Greenwich, which would have been the domestic  17 limited partnership with Fairfield Sentry -- for -- for  18 that strategy.  19 Q. Okay. You say you may have. Did you or did  20 you not?  21 A. I didn't invest.  22 Q. Did you consider it?  23 A. Yes.  24 Q. Why didn't you invest in it?  25 A. I can't think of any reason. I think the</p>

98	<p>1 minimum was a hundred thousand for that fund.</p> <p>2 Q. To your knowledge, did Mr. Campano ever invest</p> <p>3 in Fairfield Greenwich or any of the Fairfield Sentry</p> <p>4 funds?</p> <p>5 A. To my knowledge?</p> <p>6 Q. Yes.</p> <p>7 A. No.</p> <p>8 Q. Do you know whether anyone at EFG Capital</p> <p>9 International invested in the Fairfield Sentry funds?</p> <p>10 A. I believe Mr. Alvarez did.</p> <p>11 Q. And his job again -- he's the other director?</p> <p>12 A. He's the director of the firm.</p> <p>13 Q. Which fund did he invest in?</p> <p>14 A. It would have been the -- the domestic</p> <p>15 version. He's a U.S. citizen.</p> <p>16 Q. Did -- did any of the EFG entities, to your</p> <p>17 knowledge, sell the domestic fund?</p> <p>18 A. No.</p> <p>19 Q. So you're -- you're aware that Mr. Alvarez</p> <p>20 invested in -- in a Fairfield domestic hedge fund. Do</p> <p>21 you know how much he invested?</p> <p>22 A. No.</p> <p>23 Q. Did he lose money?</p> <p>24 A. I believe so.</p> <p>25 Q. Did he redeem any of his investment prior to</p>	100	<p>1 done the due diligence to invest in the -- each of the</p> <p>2 strategies, including Fairfield Sentry, out of London,</p> <p>3 probably.</p> <p>4 Q. Out of London?</p> <p>5 A. Out of London.</p> <p>6 Q. When -- when you first learned about Fairfield</p> <p>7 Sentry -- tell me again, what was your former employer?</p> <p>8 A. Coutts and Co.</p> <p>9 Q. Did you know at that time that the investment</p> <p>10 manager was Bernard Madoff?</p> <p>11 A. I don't recall precisely.</p> <p>12 Q. Do you have a general recollection one way or</p> <p>13 another whether you knew this was a Madoff-directed</p> <p>14 fund?</p> <p>15 A. Of whether I knew this in 1995 or --</p> <p>16 Q. Yeah.</p> <p>17 A. -- or in 1994 or '93? I don't recall.</p> <p>18 Q. How -- how did you learn that Mr. Madoff was</p> <p>19 the investment advisor essentially -- his company was</p> <p>20 investment advisor of Fairfield?</p> <p>21 A. While at EFG Capital we were approached by</p> <p>22 Fairfield Greenwich to distribute the fund and provided</p> <p>23 with the information related to the fund, marketing</p> <p>24 material of Fairfield Greenwich, as well as the offering</p> <p>25 memorandum for the fund. And Bernard Madoff Securities</p>
99	<p>1 the revelation of Mr. Madoff's fraud?</p> <p>2 A. I don't know.</p> <p>3 Q. Do you know how much he lost?</p> <p>4 A. No.</p> <p>5 Q. Okay. So we were talking about how you first</p> <p>6 learned about Fairfield and that was at your former</p> <p>7 employer. And you said you didn't do any due diligence</p> <p>8 at all for your former employer?</p> <p>9 A. I did not personally.</p> <p>10 Q. Okay. Did you -- and did you review any due</p> <p>11 diligence?</p> <p>12 A. No.</p> <p>13 Q. Did you review the prospectus and do your own</p> <p>14 analysis of the fund?</p> <p>15 A. Well --</p> <p>16 MR. COATES: I'm going to object to the form.</p> <p>17 BY MR. LAWRENCE KELLOGG:</p> <p>18 Q. At your former employer.</p> <p>19 MR. COATES: You may answer, sir.</p> <p>20 THE WITNESS: The product that was sponsored</p> <p>21 by Coutts and Co involved multiple investments.</p> <p>22 BY MR. LAWRENCE KELLOGG:</p> <p>23 Q. I see.</p> <p>24 A. So I probably would have seen the prospectus</p> <p>25 of the sponsor fund, and my former employer would have</p>	101	<p>1 or Bernard Madoff was in the offering memorandum.</p> <p>2 Q. Was this the offering memorandum of Fairfield</p> <p>3 Sentry?</p> <p>4 A. Fairfield Sentry. Correct.</p> <p>5 Q. And it's your recollection that Mr. Madoff was</p> <p>6 disclosed in the prospectus?</p> <p>7 A. Either he --</p> <p>8 Q. At that time.</p> <p>9 A. -- either he or his firm.</p> <p>10 Q. And your understanding from that point was</p> <p>11 that he wasn't simply a -- an executing broker, but he</p> <p>12 was the investment advisor making the decisions as to</p> <p>13 what securities would be purchased and sold. Is that</p> <p>14 right?</p> <p>15 A. I believe he had discretion for the account</p> <p>16 that the fund held with Bernard Madoff Securities.</p> <p>17 Q. When you were first approached, did they --</p> <p>18 did you understand that the Fairfield Sentry fund was</p> <p>19 close to a hundred percent invested with a discre- -- in</p> <p>20 a discretionary account at Bernard Madoff Securities?</p> <p>21 A. When I was approached at the EFG Capital?</p> <p>22 Q. Yes.</p> <p>23 A. Yes, a hundred percent.</p> <p>24 Q. And did you know that before you were</p> <p>25 approached?</p>

102	<p>1 MR. COATES: Excuse me. Can you repeat that, 2 please? 3 BY MR. LAWRENCE KELLOGG: 4 Q. Did you know that -- did you know that fact 5 before you were approached by -- by Fairfield Sentry to 6 distribute? 7 A. I don't -- I don't recall. 8 Q. Okay. So she approached you. What did she 9 say? What was her proposal? 10 MR. COATES: You mean Lourdes? 11 MR. LAWRENCE KELLOGG: Yes. 12 THE WITNESS: She asked us to consider that 13 fund. I can't recall whether there were other 14 funds also that she asked us to consider. 15 Fairfield Greenwich sponsored more than one fund so 16 they didn't just sponsor Fairfield Sentry. I can't 17 recall whether the conversation was about Fairfield 18 Sentry only or about all the funds they sponsored. 19 BY MR. LAWRENCE KELLOGG: 20 Q. Did EFG Capital ever put any other Fairfield 21 fund on its approved list? 22 A. Fairfield-sponsored funds, yes. 23 Q. And was that from the beginning or did that 24 happen over time? 25 A. I can't recall what point.</p>	104	<p>1 Q. And was that ultimately on the approved list? 2 A. I believe so. 3 Q. How about Greenwich Sentry LP? 4 A. I don't remember that one. 5 Q. How about Greenwich Sentry Partners LP? 6 A. Don't believe I'm aware of that one. 7 Q. Okay. So she gave you marketing 8 materials -- Lourdes did -- marketing materials, the 9 prospectus or offering statement. Did she give you any 10 other materials when she first approached you? 11 A. Information on the Fairfield Greenwich Group, 12 the principals of the group. And the fund. And that 13 fund or other funds. 14 Q. And did you discuss at that time or did she 15 pose to you a rebate that would be paid to EFG Capital? 16 A. I don't recall. 17 Q. At some point that topic came up? 18 A. Yes. 19 Q. All right. So Lourdes proposed this to you. 20 What happened next in terms of putting it on the 21 approved list? 22 A. Different visits were conducted to New York, 23 to meet with Fairfield Greenwich. 24 Q. Who -- who went to these meeting or visits? 25 A. Mark McCluskey.</p>
103	<p>1 Q. What other Fairfield-sponsored funds were on 2 the approved list? 3 A. There was a foreign currency version of 4 Fairfield Sentry Ltd., but I can't remember the exact 5 name. 6 Q. When you say "a foreign currency version," 7 what do you mean by that? 8 A. Denominated in different currency, not in 9 dollars. 10 Q. Okay. Other than that, did you -- were any 11 other Fairfield-sponsored funds on the approved list of 12 EFG Capital? 13 A. At which point -- at the beginning? 14 Q. Over time. 15 A. Over time? Yes, there -- 16 Q. Yeah. 17 A. -- were others. I can't remember the names of 18 all of them. 19 Q. Let me throw some out, see if this refreshes 20 your memory. 21 A. Please. 22 Q. Fairfield Sigma Ltd.? 23 A. I believe that's one of the foreign currency 24 funds similar to Fairfield Sentry but denominated in 25 different currency.</p>	105	<p>1 Q. Did you go? 2 A. I went also. 3 Q. Anyone else? 4 A. Perhaps -- perhaps not together but at 5 different times. 6 So Mark McCluskey, myself. Marcelo Alvarez. 7 Dart Montgomery at a later date. 8 Q. Who was that? 9 A. He was in-house counsel. 10 Q. Anyone else attend those meetings? 11 A. I don't recall anybody else. 12 Q. How long a process did it take to determine 13 that Fairfield Sentry was appropriate to be placed on 14 the approved list? 15 A. I don't recall the exact timing. 16 Q. Was it a several-week process, several-month? 17 A. Probably several months. 18 Q. Was there a written agreement between 19 Fairfield Sentry and EFG Capital for distribution of the 20 hedge fund subscription shares? 21 A. Yes. 22 Q. Was there more than one agreement over time 23 or -- 24 A. It may have been revised over time. 25 Q. Do you have copies of the agreement or</p>

106	<p>1 agreements?</p> <p>2 A. If we have -- if we have copies, they have</p> <p>3 been provided.</p> <p>4 Q. Reason I ask is I haven't seen them.</p> <p>5 MR. LAWRENCE KELLOGG: Have those been</p> <p>6 produced, do you know?</p> <p>7 MR. COATES: I don't know. Off the top of my</p> <p>8 head, I don't know whether they've been produced.</p> <p>9 MR. LAWRENCE KELLOGG: Maybe that's in the</p> <p>10 group for this afternoon. I don't know.</p> <p>11 BY MR. LAWRENCE KELLOGG:</p> <p>12 Q. Now, once a hedge fund is put on the approved</p> <p>13 list, is that list circulated to the financial advisors</p> <p>14 or CROs or whatever you call them -- the salesmen?</p> <p>15 A. They may have -- it may have been circulated.</p> <p>16 It may have become aware at during a weekly marketing</p> <p>17 meeting. So there -- we have a weekly marketing meeting</p> <p>18 where we discuss investment strategies with CROs and it</p> <p>19 would -- would at some point during the year be a topic.</p> <p>20 Q. If Fairfield Sentry was placed on the approved</p> <p>21 list from 1997, did it remain on the approved list all</p> <p>22 the way until the fraud was revealed?</p> <p>23 A. I believe so.</p> <p>24 Q. And when it -- when it or any other investment</p> <p>25 is on the list, are there periodic marketing meetings</p>	108	<p>1 A. They would be aware of -- they typically would</p> <p>2 be aware, not all of them necessarily, but those</p> <p>3 who -- who were interested in finding out would know.</p> <p>4 Q. Now if a CRO sold a Fairfield Sentry to one of</p> <p>5 its customers, would it receive any portion of the</p> <p>6 rebate? Would that person receive any portion of the</p> <p>7 rebate?</p> <p>8 A. There -- there's no direct payment from a fund</p> <p>9 sponsor to a CRO for the selling of any product.</p> <p>10 Q. Okay. Well, is there an indirect payment? Do</p> <p>11 they somehow -- when you get your -- when the company</p> <p>12 gets its fee, they share in it?</p> <p>13 A. The -- whatever revenues that they produce,</p> <p>14 that their clients produce, are credited to their</p> <p>15 respective P &amp; L, if you will.</p> <p>16 Q. So the way you compensate a CRO is they make</p> <p>17 sales or they -- they create customers who -- who -- who</p> <p>18 provide commissions to the firm. Is that how it works?</p> <p>19 How -- how does -- better question.</p> <p>20 How does a CRO get compensated and did that</p> <p>21 change over time?</p> <p>22 A. CROs at EFG Capital get a market salary. And</p> <p>23 based on the revenues of their business and the expenses</p> <p>24 of their direct business, they have a bonus at the end</p> <p>25 of the year on top of the salary. Not a draw.</p>
107	<p>1 where those approved investments are discussed</p> <p>2 with -- with the CROs?</p> <p>3 A. The CROs were made aware of the investments</p> <p>4 that are available to them.</p> <p>5 Q. How's that done? And if it changed, tell us</p> <p>6 how it changed.</p> <p>7 A. In the early days, perhaps in our more</p> <p>8 informal meeting with all the registered reps. At a</p> <p>9 later stage, in the weekly -- the weekly meeting.</p> <p>10 Q. So every week there'd be a marketing meeting</p> <p>11 with all the CROs in attendance?</p> <p>12 A. Typically.</p> <p>13 Q. And the ones in New York, would they attend by</p> <p>14 telephone or by --</p> <p>15 A. They can.</p> <p>16 Q. Or other ways?</p> <p>17 A. (Witness nods.)</p> <p>18 Q. Other than the meetings, were there marketing</p> <p>19 materials circulated periodically about approved</p> <p>20 investments?</p> <p>21 A. I can't recall precisely what -- when what may</p> <p>22 have been circulated.</p> <p>23 Q. Were -- were CROs informed of the -- of the</p> <p>24 rebate program that the company had with Fairfield</p> <p>25 Sentry?</p>	109	<p>1 Q. So is the bonus based on some percentage of</p> <p>2 the profits they generated?</p> <p>3 A. Of the net revenues of their business.</p> <p>4 Q. With respect to the Fairfield Sentry, from a</p> <p>5 marketing perspective, what points about that hedge fund</p> <p>6 were used to market to customers?</p> <p>7 A. I think, as in all hedge funds, they were</p> <p>8 offered with diversification in mind to clients and it</p> <p>9 depends on really what the client objective was.</p> <p>10 Q. What -- what --</p> <p>11 A. So it's difficult to tell because every client</p> <p>12 has different objectives.</p> <p>13 Q. Okay. What -- if you could tell us, what was</p> <p>14 the profile of a customer who would be appropriate to be</p> <p>15 offered the hedge fund -- Fairfield Sentry hedge fund?</p> <p>16 A. I don't think there's a general profile. I</p> <p>17 think different clients purchased or subscribed to</p> <p>18 Fairfield Sentry for different reasons.</p> <p>19 Q. What -- what are some of the reasons that you</p> <p>20 were aware of?</p> <p>21 A. Some may want participation in a hedge fund</p> <p>22 and the alternative assets.</p> <p>23 Some only wanted participation in hedge funds</p> <p>24 period, and they wanted this as one of the</p> <p>25 representative strategies.</p>

110	<p>1 Q. Was the Fairfield Sentry revenue to the firm, 2 the rebate, was that somehow credited to a particular 3 CRO's profit, revenue, or whatever you call them, net 4 revenues? 5 A. No, I think I -- I explained that the revenues 6 generated by clients of CROs -- 7 Q. Uh-uh. 8 A. -- are treated as, if you will, gross revenues 9 of the clients that a CRO handles. 10 Q. All right. So the client bought Fairfield 11 Sentry and there was a commission on the trade. 12 A. Yes. 13 Q. That would go to the CRO's balance sheet, if 14 you will? 15 A. Yes. 16 Q. That would -- that would be the -- the basis 17 for calculating the revenue to him. Is that right? 18 A. No, just the bonus. 19 Q. Just the bonus. And -- but -- but the revenue 20 that the firm earned, in rebates, would not be credited 21 to the particular CRO for purposes of determining a 22 bonus. Is that right? 23 A. I'm not sure that -- I'm not sure whether 24 you're asking the same question again or ... 25 Q. I guess I'm not understanding completely.</p>	112	<p>1 credited to the CRO's P &amp; L, over the clients that 2 he or she handles. 3 BY MR. LAWRENCE KELLOGG: 4 Q. And would that include the rebate? 5 A. And that includes the commissions and the 6 rebates. 7 Q. Oh, okay. Thank you. 8 On the marketing meetings that you discussed, 9 were there any records of when they occurred or minutes 10 or files created from those meetings? 11 A. No. 12 Q. So, in other words, if a meeting happened last 13 week, would we be able to look at who attended, when it 14 was, where it was? 15 A. There's no attendance and no minutes. 16 Q. Would we know what was presented to the 17 brokers, the CROs? 18 A. I don't know whether that was kept or not. 19 MR. LAWRENCE KELLOGG: You want a break? 20 MR. COATES: Yeah, let's get a quick break. 21 It's been over an hour. 22 THE VIDEOGRAPHER: Okay. Let's go off the 23 record. The time is 4:08. 24 (Thereupon, a recess was taken from 4:08 p.m. 25 to 4:27 p.m.)</p>
111	<p>1 There -- there -- when -- when a customer 2 bought Fairfield Sentry there were -- there would be a 3 commission charged to the customer -- 4 A. That's correct. 5 Q. -- is that right? 6 And then when -- the customer would be charged 7 a management fee by Fairfield Sentry, right, at some 8 point? 9 A. The customer would not be charged a management 10 fee. The fund would be charged a management fee from 11 the sponsor. 12 Q. Okay. I gotcha. And then the customer would 13 get net of those fees -- would get a return every year? 14 Right? 15 A. The customer gets a return net of the internal 16 operating expenses of a fund, correct. 17 Q. If a CRO generated a trade for Fairfield 18 Sentry that resulted in EFG Capital sharing in the 19 management fee, would that CRO get any compensation 20 because of that? 21 MR. COATES: I'm going to object to the form 22 of the question. 23 You may answer. 24 THE WITNESS: I thought I explained that the 25 revenues attributable to customers generally get</p>	113	<p>1 THE VIDEOGRAPHER: All right. We're now back 2 on the record. The time is 4:27. 3 BY MR. LAWRENCE KELLOGG: 4 Q. All right. When Lourdes brought you the 5 Fairfield Sentry fund, what due diligence did EFG 6 Capital perform at that time? 7 And we're talking 1997. Is that right? 8 A. Approximately. 9 Q. Okay. What due diligence was performed at 10 that time? 11 A. Mark McCluskey traveled to New York subsequent 12 to that meeting, met with Fairfield Greenwich, the 13 sponsor of the fund. 14 Q. Who did he meet with? 15 A. I can't recall precisely. 16 Q. Were you at the meeting? 17 A. No. 18 Q. Do you know what happened at the meeting? 19 A. With precision, no. 20 Q. You have a general idea what happened at the 21 meeting? They ever tell you? 22 A. We're talking 1997, '98. Had a meeting with 23 the principals and reported that it was satisfactory. 24 Meeting was satisfactory. Not necessarily those words, 25 obviously.</p>

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1 Q. This was after one meeting then, was the  
 2 decision made to put the Fairfield Sentry fund on the  
 3 approved list?  
 4 A. No.  
 5 Q. All right. There was a meeting in '97 --  
 6 A. There was a subsequent meeting to evaluate the  
 7 fund.  
 8 Q. All right. So the first meeting was a "just  
 9 to get to know you" sort of a meeting?  
 10 MR. COATES: I'm going to object to the form  
 11 of the question.  
 12 BY MR. LAWRENCE KELLOGG:  
 13 Q. You can answer.  
 14 A. Which first meeting?  
 15 Q. The meeting with Mr. McCluskey and the  
 16 principals of Fairfield Sentry.  
 17 A. I wasn't present at the meeting.  
 18 Q. Were you present at the next meeting?  
 19 A. Mark went various times. I can't recall  
 20 having -- having been with him necessarily in any given  
 21 point in time.  
 22 Q. Did you ever -- in the initial due diligence  
 23 of the Fairfield Sentry fund, did you ever go to New  
 24 York yourself and meet with them?  
 25 A. Yes.

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1 Q. How many times?  
 2 A. Various times. I can't remember how many.  
 3 Q. Who did you meet with when you were there?  
 4 A. I can't recall all the individuals. But  
 5 certainly met with Jeffrey Tucker.  
 6 Q. And you said Mr. Tucker was the general  
 7 counsel?  
 8 A. No, I said he's one of the principals of  
 9 Fairfield Greenwich.  
 10 Q. What did you talk about with him?  
 11 A. I can't recall specifically, but --  
 12 Q. Generally.  
 13 A. I would -- we discussed the fund.  
 14 Q. Did you review any materials when you were  
 15 there?  
 16 A. Don't recall.  
 17 Q. Did you -- well, what were you looking to find  
 18 out?  
 19 A. Get a senior management look at the  
 20 organization that was sponsoring the fund.  
 21 Q. And for what purpose? What did you want to  
 22 know about it?  
 23 A. What their different roles were at the time,  
 24 perhaps.  
 25 Q. Did you review -- did you ever meet with

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1 Mr. Madoff at that time?  
 2 A. I met with Mr. Madoff one time.  
 3 Q. When did you meet with Mr. Madoff?  
 4 A. I don't recall the year. '97, '98.  
 5 Q. Was this near the beginning?  
 6 A. '96. Near the beginning.  
 7 Q. Where did you meet him?  
 8 A. I was invited to go with Fairfield Greenwich  
 9 staff -- I can't remember who went -- along with other  
 10 either distributors or potential distributors to see  
 11 Mr. Madoff at his office.  
 12 Q. Okay. And what happened at the meeting?  
 13 A. Met with him. Viewed the premises. Asked how  
 14 the fund was performing. So general questions regarding  
 15 the strategy of the fund.  
 16 Q. What did he tell you?  
 17 A. I don't recall precisely.  
 18 Q. When you say you were at the premises, were  
 19 you at the premises of Bernard Madoff Investment  
 20 Securities?  
 21 A. I believe I was at the only premises at the  
 22 time.  
 23 Q. Okay.  
 24 A. I was unaware of multiple premises.  
 25 Q. All right. Where was his offices then? Where

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1 were his offices?  
 2 A. I believe it's Third Avenue.  
 3 Q. How long was the meeting?  
 4 A. Half an hour or 45 minutes, less than an hour.  
 5 Q. Did you meet anybody other than Mr. Madoff for  
 6 the Bernard Madoff Securities?  
 7 A. Not that I recall.  
 8 Q. Did you ask any questions?  
 9 A. I may have but I don't recall.  
 10 Q. After your meeting with Mr. Madoff, did you  
 11 understand his operations better?  
 12 A. The meeting was more regarding his investment  
 13 strategy and not necessarily his operation.  
 14 Q. You say you went with other potential or  
 15 actual distributors?  
 16 A. Yeah.  
 17 Q. Is that right?  
 18 A. (Witness nods.)  
 19 Q. Was it a large crowd?  
 20 A. I -- I really cannot recall. There may have  
 21 been one, two, or three more. It was not 20. It wasn't  
 22 30. It was -- maybe between Fairfield Greenwich and  
 23 other people there, five, six.  
 24 Q. After the meeting, what was your understanding  
 25 of Mr. Madoff's investment strategy? What was it?

118	<p>1 A. He indicated his strategy was investing in</p> <p>2 the -- in U.S. equities, in equities which replicated</p> <p>3 the S &amp; P 100; and that he would implement hedges, via</p> <p>4 options, above and below the positions to take advantage</p> <p>5 of market movements.</p> <p>6 So, in essence, a -- an investment in U.S.</p> <p>7 equities hedged by options.</p> <p>8 Q. By the time you met with Mr. Madoff, had you</p> <p>9 already had a meeting or two or several meetings with</p> <p>10 Fairfield Sentry?</p> <p>11 A. With the representative of Fairfield</p> <p>12 Greenwich, correct.</p> <p>13 Q. And had you or your company reviewed the</p> <p>14 performance of the Fairfield Sentry fund?</p> <p>15 A. Yes.</p> <p>16 Q. And were you impressed by the fact that the</p> <p>17 fund very, very seldom lost any money?</p> <p>18 A. Yes.</p> <p>19 Q. When you were with Mr. Madoff, did you -- did</p> <p>20 you ask him how he was able to accomplish that?</p> <p>21 A. Again, the meeting was a dozen years ago, I</p> <p>22 don't recall exactly what was asked.</p> <p>23 Q. Have you ever seen a fund before that had such</p> <p>24 a fabulously successful record of never losing money?</p> <p>25 MR. COATES: I want to object to the form of</p>	120	<p>1 how he was able to do it?</p> <p>2 A. I think we were satisfied with the information</p> <p>3 that we received from Fairfield Sentry, the fund itself,</p> <p>4 regarding its investment activities.</p> <p>5 Q. What information did they give you that</p> <p>6 answered your question as to how he was able to do this?</p> <p>7 A. They indicated they were monitoring the</p> <p>8 investments that were made by their advisor and matching</p> <p>9 up the trades to determine whether those trades were</p> <p>10 representative of trades in the marketplace on the days</p> <p>11 that they took place and whether the volumes were</p> <p>12 representative of volumes of that day's activity.</p> <p>13 Q. And --</p> <p>14 A. And they consistently would do this.</p> <p>15 Q. And from that you were -- were you concerned</p> <p>16 at that time that maybe this isn't even real, maybe he's</p> <p>17 making it up?</p> <p>18 A. No.</p> <p>19 Q. Okay. When -- when -- when you say that they</p> <p>20 were monitoring investments, matching up the trades to</p> <p>21 determine whether they were representative of the</p> <p>22 marketplace and whether the volumes represented the</p> <p>23 volumes of when the trades were.</p> <p>24 A. Yes.</p> <p>25 Q. How did that answer your question as to how he</p>
119	<p>1 the question.</p> <p>2 BY MR. LAWRENCE KELLOGG:</p> <p>3 Q. You can answer.</p> <p>4 A. I don't know.</p> <p>5 Q. Was this -- was this fund unique in your</p> <p>6 experience, in its -- its performance up to that time of</p> <p>7 simply making money every month?</p> <p>8 A. There may have been other low volatility hedge</p> <p>9 funds in the marketplace.</p> <p>10 Q. There may have been, but did you know of them?</p> <p>11 A. At that time, probably not.</p> <p>12 Q. Did Mr. Madoff explain how it was or did</p> <p>13 anybody at Fairfield Sentry explain how it was that they</p> <p>14 were able to time the market so perfectly to get in on</p> <p>15 the upswing and get out before it went down every month?</p> <p>16 MR. COATES: Object to the form of the</p> <p>17 question.</p> <p>18 BY MR. LAWRENCE KELLOGG:</p> <p>19 Q. You can answer.</p> <p>20 A. I -- I don't recall that conversation</p> <p>21 specifically.</p> <p>22 Q. Did you wonder -- did you wonder how he was</p> <p>23 able to do it?</p> <p>24 A. And -- yes.</p> <p>25 Q. And did you ever get an answer from anybody</p>	121	<p>1 is able to time that market so perfect?</p> <p>2 MR. COATES: I'm going to object to the form</p> <p>3 of the question.</p> <p>4 You may answer.</p> <p>5 THE WITNESS: I think there's many</p> <p>6 professional investors out there who have</p> <p>7 successfully invested over the course of years and</p> <p>8 provided investors outstanding performance over</p> <p>9 long periods of time. And he was one more.</p> <p>10 BY MR. LAWRENCE KELLOGG:</p> <p>11 Q. Did -- in 1996 or '97, did EFG Capital do a</p> <p>12 background check on Mr. Madoff?</p> <p>13 A. I don't believe we did a background check on</p> <p>14 the advisor of the fund.</p> <p>15 Q. Other than meeting with Mr. Madoff on that one</p> <p>16 occasion, did EFG Capital at that time do any -- perform</p> <p>17 any due diligence of Mr. Madoff and his company?</p> <p>18 A. Mark McCluskey made calls to counterparties in</p> <p>19 New York regarding the fund and the fund's activities.</p> <p>20 Whether that included also activities of the advisor, I</p> <p>21 don't know.</p> <p>22 Q. So to your knowledge Mr. McCluskey did --</p> <p>23 called what you call "counterparties"?</p> <p>24 A. Yes.</p> <p>25 Q. What do you mean by "counterparties"?</p>



122	<p>1 A. Professional counterparties, people that you</p> <p>2 trade with or execute with in New York.</p> <p>3 Q. And to ask them about Fairfield Sentry?</p> <p>4 A. Primarily.</p> <p>5 Q. When I'm -- when you use the term</p> <p>6 "counterparties" --</p> <p>7 A. Yes.</p> <p>8 Q. -- I'm wondering exactly what you mean.</p> <p>9 A. Professional firms that you trade with.</p> <p>10 Q. That your firm would trade with. Is that</p> <p>11 right?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. You're not talking about any</p> <p>14 counterparties to any trades that Fairfield Sentry might</p> <p>15 have done --</p> <p>16 A. No.</p> <p>17 Q. -- with someone? Okay.</p> <p>18 Did you ever -- to your knowledge, did EFG</p> <p>19 Capital ever contact any counterparties to any trades</p> <p>20 done, either options or stocks, with -- by Fairfield</p> <p>21 Sentry and/or Madoff?</p> <p>22 A. I don't know.</p> <p>23 Q. In 1996 and '97 you said that you were given</p> <p>24 information that Fairfield Sentry was monitoring the</p> <p>25 investments and so forth, matching up the trades, and</p>	124	<p>1 sponsors the fund.</p> <p>2 Q. And did he review anything other than the</p> <p>3 confirmations?</p> <p>4 A. I don't recall.</p> <p>5 Q. Did he do a written report on that analysis?</p> <p>6 A. He may have, but I don't recall.</p> <p>7 Q. Did Mr. -- what was Mr. Alvarez's background</p> <p>8 and experience in terms of being a person who would be</p> <p>9 doing part of the due diligence here?</p> <p>10 A. He was a CPA with Coopers Lybrand for more</p> <p>11 than 20 years. Prior to joining our board he was -- had</p> <p>12 retired as the -- I believe the managing partner for the</p> <p>13 Latin America practice.</p> <p>14 Q. Did anyone go with him to do this?</p> <p>15 A. I don't know whether he was there by himself</p> <p>16 or whether Mark McCluskey accompanied him. I don't</p> <p>17 recall.</p> <p>18 Q. Was it your understanding in 1997 that</p> <p>19 Fairfield Sentry was monitoring Mr. Madoff's trades in</p> <p>20 realtime? That is, as he was doing it, they were</p> <p>21 reviewing it?</p> <p>22 A. I'm not certain.</p> <p>23 Q. Do you know whether EFG Capital performed any</p> <p>24 analysis as to whether Fairfield Sentry was reviewing</p> <p>25 the trades in realtime?</p>
123	<p>1 looking at the volume.</p> <p>2 A. Probably '97, not '96.</p> <p>3 Q. '97?</p> <p>4 A. '97.</p> <p>5 Q. Okay. Well, what, if anything, did EFG</p> <p>6 Capital do to confirm that EF -- that Fairfield was</p> <p>7 actually monitoring?</p> <p>8 A. Marcelo Alvarez went to New York and conducted</p> <p>9 a physical review of advices that the fund was</p> <p>10 receiving.</p> <p>11 Q. When you say "advices," you mean the</p> <p>12 confirmations?</p> <p>13 A. Confirmations.</p> <p>14 Q. So there would be a written piece of paper</p> <p>15 called confirmation of a trade?</p> <p>16 A. I -- I was not involved in that -- in that</p> <p>17 review.</p> <p>18 Q. How do you know if Mr. Alvarez did this?</p> <p>19 A. Because he informed us he was doing it.</p> <p>20 Q. Did he do it back in '97?</p> <p>21 A. I can't remember the year exactly, whether it</p> <p>22 was '97, '98, '99. Sometime early on.</p> <p>23 Q. Did -- he went to Fairfield Sentry and he</p> <p>24 reviewed the confirmation. Is that what you said?</p> <p>25 A. Went to Fairfield Greenwich's offices that</p>	125	<p>1 A. We would only have available to us whatever</p> <p>2 Fairfield Greenwich had.</p> <p>3 Q. Well, what does that mean?</p> <p>4 A. Whatever information they had to share with us</p> <p>5 was the information that we would have an opportunity to</p> <p>6 review.</p> <p>7 Q. Well, do you know whether they shared anything</p> <p>8 that would indicate that they were reviewing in realtime</p> <p>9 Mr. Madoff's trades?</p> <p>10 MR. COATES: I'm going to object to the form.</p> <p>11 I think it's been answered -- asked and answered,</p> <p>12 to me. Testify.</p> <p>13 BY MR. LAWRENCE KELLOGG:</p> <p>14 Q. You can answer.</p> <p>15 A. I don't recall.</p> <p>16 Q. At the time you met with Mr. Madoff, was the</p> <p>17 fund already on the approved list or was this part of</p> <p>18 the initial analysis?</p> <p>19 A. I don't recall the timing of it.</p> <p>20 Q. Did you do any background check -- not you,</p> <p>21 but did EFG Capital do any background checks on</p> <p>22 Mr. Tucker or any of the other principals of Fairfield</p> <p>23 Sentry?</p> <p>24 A. I don't know of any specific background checks</p> <p>25 or credit checks are done, but I think counterparties,</p>

126	<p>1 again, were called in the relationship to Fairfield 2 Greenwich and its principals and the fund. 3 Q. Were any of the underlying agreements between 4 Fairfield and Madoff reviewed at that time, that is, 5 1997? 6 A. I can't be precise of the timing of the 7 review, but they were reviewed at some point. 8 Q. Do you know whether they were reviewed before 9 Madoff -- before Fairfield Sentry was put on the 10 approved list? 11 A. They may have been. Don't know. 12 Q. After -- after -- well, who made the decision 13 to put it on the approved list -- the fund on the 14 approved list? 15 A. At EFG Capital, the decision would have been 16 made by Mark McCluskey and myself. 17 Q. After it was on the approved list, were there 18 other additional due diligence or monitoring or analysis 19 done at the Fairfield Sentry fund over the ensuing 20 years? 21 A. There was no requirement for us to maintain 22 any ongoing monitoring investments in our approved list, 23 but we would receive information and review it on a 24 periodic basis. 25 Q. When you say "there was no requirement," you</p>	128	<p>1 visits done. Whether they were done by Mark 2 McCluskey or Dart Montgomery or in later years by 3 Mike Donnell or Sixto Campano or, in fact, started 4 in 2007 by Greenwich Associates, there was 5 periodic -- there were periodic reviews conducted. 6 BY MR. LAWRENCE KELLOGG: 7 Q. What were the purpose of those reviews? 8 A. The same purpose as one would look at 9 periodically the funds that one has approved for 10 distribution and see if there's any anomalies. 11 Q. Any? 12 A. Anomalies. 13 Q. And what do you mean by "anomalies" or 14 "anomalies"? 15 A. Change in the investment advisor. Dramatic 16 change in performance. 17 Q. Anything else? 18 A. Investments in areas which were not properly 19 described in the prospectus. 20 (Thereupon, the referred-to document was 21 marked by the court reporter for Identification as 22 Exhibit 4.) 23 BY MR. LAWRENCE KELLOGG: 24 Q. Let me have marked as Exhibit Number 4 a May 25 7th, 2001, Barron's article under the headline "Don't</p>
127	<p>1 mean no -- no legal requirement or -- 2 A. There was no -- 3 Q. -- no internal requirement? 4 A. There's no regulatory requirement. 5 Q. No regulatory requirement. So if they gave 6 you information, you'd look at it, but it wasn't 7 something that you were required to do by the 8 regulators, so you didn't do it? 9 MR. COATES: I'm going to object to the form 10 of the question. 11 You may answer, sir. 12 BY MR. LAWRENCE KELLOGG: 13 Q. You can answer. 14 A. I think our requirement is to, at the point of 15 sale, be satisfied that we have done due diligence and 16 an investment is suitable for a client. 17 Q. Well -- 18 A. And we fulfill that requirement. 19 Q. Okay. So am I correct to state then that 20 after the initial due diligence, EFG Capital never again 21 performed any due diligence analysis on the Fairfield 22 Sentry fund? 23 MR. COATES: Object to the form of the 24 question. 25 THE WITNESS: There were -- there were various</p>	129	<p>1 Ask, Don't Tell." And a subheadline: "Bernie Madoff is 2 so secretive, he even asks his investors to keep mum." 3 I pulled this out of the file that you 4 produced today. Did you review this at the time that it 5 was published? 6 A. Received it at the time, correct. 7 Q. How did you get it? 8 A. I -- I don't know how I got it, whether 9 someone in the office read Barron's or it was provided 10 to me. 11 (Thereupon, the referred-to document was 12 marked by the court reporter for Identification as 13 Exhibit 5.) 14 BY MR. LAWRENCE KELLOGG: 15 Q. We'll mark as Exhibit 5 another May 2001 16 article in something called "Hedge MAR," under the 17 headline "Madoff Tops Charts; Skeptics Ask How." 18 And I found that in your file today. Is that 19 something you received and reviewed at the time? 20 A. Yes. 21 Q. Did you receive both of these articles 22 together? 23 A. I don't recall. 24 Q. Is this the sort of negative information that 25 might cause additional due diligence analysis of the</p>

130	<p>1 Fairfield Sentry fund?</p> <p>2 MR. COATES: Object to the form.</p> <p>3 You may answer the question.</p> <p>4 THE WITNESS: Do you want me to read the</p> <p>5 article?</p> <p>6 BY MR. LAWRENCE KELLOGG:</p> <p>7 Q. Do you remember the articles?</p> <p>8 A. Vaguely, but I read it in 2001.</p> <p>9 Q. You haven't read it since 2001?</p> <p>10 A. No.</p> <p>11 Q. Okay. In 2001, did this -- these articles</p> <p>12 cause you any concern?</p> <p>13 A. Should I read the article to determine --</p> <p>14 Q. You can read them all you want. I just -- as</p> <p>15 you sit here today, do you know whether these articles</p> <p>16 caused you any concern?</p> <p>17 A. Reviewed -- we certainly reviewed the articles</p> <p>18 internally and discussed the articles with Fairfield</p> <p>19 Greenwich.</p> <p>20 Q. If you'll look at Exhibit 5. And the fourth</p> <p>21 paragraph it says --</p> <p>22 A. What page? I'm sorry.</p> <p>23 Q. First page, fourth paragraph of Exhibit 5. It</p> <p>24 says: Madoff's 6 to \$7 billion in assets under</p> <p>25 management are provided primarily by three feeder funds.</p>	132	<p>1 Q. All right. Read it. Go ahead.</p> <p>2 A. -- and determine -- I -- honestly, I cannot</p> <p>3 remember --</p> <p>4 Q. Okay.</p> <p>5 A. -- the conversation I had with Fairfield</p> <p>6 Greenwich at the time. But clearly we had a</p> <p>7 conversation with Fairfield Greenwich at some point</p> <p>8 after the articles.</p> <p>9 Q. Did you personally participate in that?</p> <p>10 A. I may have. I don't recall.</p> <p>11 Q. Who did you talk to at Fairfield Greenwich?</p> <p>12 A. Would have spoken typically to either Lourdes</p> <p>13 Barrenache or Jeffrey Tucker.</p> <p>14 Q. Did they come to you or did you go to them?</p> <p>15 A. I can't recall.</p> <p>16 Q. And do you recall what they told you that made</p> <p>17 you feel okay about these funds?</p> <p>18 A. I remember asking over the years whether, in</p> <p>19 fact, they verified all the transactions that the</p> <p>20 advisor made and reported to the fund. And they were</p> <p>21 satisfied with the verification of every single</p> <p>22 transaction that they checked.</p> <p>23 Q. You personally asked them several times?</p> <p>24 A. Yes.</p> <p>25 Q. So that was one of your concerns, how these</p>
131	<p>1 Did you know that other feeder funds were</p> <p>2 providing Madoff with -- with funds to manage?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know what the other funds were --</p> <p>5 A. That I was aware of --</p> <p>6 Q. -- at that time?</p> <p>7 A. -- at the time?</p> <p>8 Q. Yes.</p> <p>9 A. Probably King Gate.</p> <p>10 Q. And did you know it was 6 to 7 million</p> <p>11 dollars?</p> <p>12 A. 67 or 6 --</p> <p>13 Q. 6 to 7 million.</p> <p>14 A. I can't recall the number.</p> <p>15 Q. After reading this article, were you concerned</p> <p>16 by the fact that experts had said they could not</p> <p>17 duplicate Mr. Madoff's returns?</p> <p>18 A. As I mentioned to you, I discussed these</p> <p>19 articles with Fairfield Greenwich, expressed --</p> <p>20 addressed the concerns raised by both articles, and they</p> <p>21 were able to satisfy our -- our questions.</p> <p>22 Q. Okay. What concerns did you have and how did</p> <p>23 they address them?</p> <p>24 A. Well, I would have to read the article right</p> <p>25 now --</p>	133	<p>1 transactions actually happened. Is that right?</p> <p>2 MR. COATES: Object to the form of the</p> <p>3 question.</p> <p>4 You may answer.</p> <p>5 THE WITNESS: I don't think it was a concern</p> <p>6 that the transactions happened or didn't happen but</p> <p>7 that they reflected accurately what the fund was</p> <p>8 recording.</p> <p>9 BY MR. LAWRENCE KELLOGG:</p> <p>10 Q. Well, explain the difference to me. What do</p> <p>11 you mean?</p> <p>12 A. At no time did I ever suspect that this was a</p> <p>13 fraud.</p> <p>14 Q. Okay. Why would you be asking them whether</p> <p>15 they were confirming the transactions if you weren't</p> <p>16 concerned that the transactions may not be happening?</p> <p>17 A. The articles raised a concern.</p> <p>18 Q. After the articles raised a concern, then that</p> <p>19 concern is, are these transactions actually happening or</p> <p>20 is Madoff making them up.</p> <p>21 That what crossed your mind?</p> <p>22 A. No.</p> <p>23 Q. What was it about whether -- what was it about</p> <p>24 monitoring these transactions that -- what concern did</p> <p>25 you have that that addressed?</p>

134	<p>1 A. I think the -- if I recall correctly, the</p> <p>2 articles addressed the issue of how were the returns</p> <p>3 possible.</p> <p>4 Q. Yeah.</p> <p>5 A. So we wanted to ensure that the trades were</p> <p>6 being effected as recorded.</p> <p>7 Q. So your -- your concern was not that there was</p> <p>8 a fraud but that the returns weren't accurate. Is that</p> <p>9 right?</p> <p>10 MR. COATES: Object to the form.</p> <p>11 THE WITNESS: We wanted to make sure that the</p> <p>12 information that the manager was receiving was</p> <p>13 accurate. Correct.</p> <p>14 BY MR. LAWRENCE KELLOGG:</p> <p>15 Q. And what did they tell you specifically that</p> <p>16 made your concerns go away? Or did they go away? Did</p> <p>17 they go away after the conversations?</p> <p>18 A. The fund remained on our approved list.</p> <p>19 Q. So your concerns went away?</p> <p>20 A. So our concerns were addressed.</p> <p>21 Q. And how -- how did they specifically address</p> <p>22 those concerns?</p> <p>23 A. I -- specifically?</p> <p>24 Q. Yes.</p> <p>25 A. I can't recall.</p>	136	<p>1 internally.</p> <p>2 Q. Was this a -- was this a -- was this an</p> <p>3 important issue at EFG when this came to light?</p> <p>4 A. As I said, we discussed the articles with</p> <p>5 Fairfield Greenwich, the fund sponsor. They addressed</p> <p>6 the concerns to our satisfaction.</p> <p>7 Q. Was it an important issue to EFG Bank and EFG</p> <p>8 Capital International?</p> <p>9 MR. COATES: Object to the form of the</p> <p>10 question.</p> <p>11 MR. GARCIA: Objection.</p> <p>12 BY MR. LAWRENCE KELLOGG:</p> <p>13 Q. When you answered, you're saying to me, "I</p> <p>14 talked to Fairfield." I understand you talked to</p> <p>15 Fairfield.</p> <p>16 A. Yes.</p> <p>17 Q. Was this a very important issue to EFG Capital</p> <p>18 when you learned about these -- these articles?</p> <p>19 A. Whenever allegations are raised, I think it's</p> <p>20 important to address those. And certainly, you know, a</p> <p>21 reputable newspaper writes an article and we ask</p> <p>22 questions.</p> <p>23 Q. Did -- were customers concerned about this?</p> <p>24 Was the company getting inquiries from customers at</p> <p>25 that --</p>
135	<p>1 Q. What did they show you?</p> <p>2 A. I can't recall specifically in 2001 what they</p> <p>3 showed me.</p> <p>4 Q. What did they give you?</p> <p>5 A. I can't recall specifically what they gave me</p> <p>6 or showed me or we discussed in 2001 related to these</p> <p>7 articles.</p> <p>8 Q. Did you hire any consultant to analyze the</p> <p>9 fund at this point, any professional?</p> <p>10 A. In 2001, no --</p> <p>11 Q. Did you --</p> <p>12 A. -- I don't believe so.</p> <p>13 Q. Did you discuss your concerns with Mr. Howell</p> <p>14 over there at the EFG Bank?</p> <p>15 A. We probably discussed the articles at some</p> <p>16 point.</p> <p>17 Q. Did -- did Mr. Howell get these articles too?</p> <p>18 A. I don't know for sure, but I wouldn't be</p> <p>19 surprised.</p> <p>20 Q. And do you recall talking about them with him?</p> <p>21 A. I don't recall specifically discussing it with</p> <p>22 him.</p> <p>23 Q. How about generally?</p> <p>24 A. I don't recall specifically talking with</p> <p>25 anybody in particular, but certainly I discussed it</p>	137	<p>1 A. Some customers may have seen the article and</p> <p>2 asked questions.</p> <p>3 Q. Do you remember specifically?</p> <p>4 A. I don't remember specifically of which</p> <p>5 customers -- of a customer, but I do remember customers</p> <p>6 asking about the article.</p> <p>7 Q. Did customers -- any customers redeem their</p> <p>8 investments based upon these articles?</p> <p>9 A. I don't know.</p> <p>10 Q. I mean, was it a concern at EFG Capital that</p> <p>11 customers were going to take their money somewhere else</p> <p>12 if this turns out to be a problem? You'd lose</p> <p>13 customers.</p> <p>14 A. I don't think it was a concern that -- I don't</p> <p>15 think we ever had a concern that people would redeem a</p> <p>16 fund, just to simply take away. And if -- if they</p> <p>17 redeemed a fund and bought something else, we would have</p> <p>18 been more than happy to continue that relationship with</p> <p>19 the customer.</p> <p>20 Q. Okay. If they redeemed the funds and take</p> <p>21 their money to another bank, another broker-dealer,</p> <p>22 would that be a concern to you?</p> <p>23 A. You always hate to lose customers.</p> <p>24 Q. At this point in time in 2001, what was the</p> <p>25 dollar volume of customer funds that had been invested</p>

138	<p>1 in Fairfield Sentry through EFG Capital?</p> <p>2 A. I -- I don't recall.</p> <p>3 Q. Was it less or more than it was when the fraud</p> <p>4 was revealed?</p> <p>5 A. I don't know.</p> <p>6 Q. What records would you look at to determine</p> <p>7 the answer to that question?</p> <p>8 A. I don't know what records would be available</p> <p>9 to us to determine that from a number of years ago.</p> <p>10 Q. Are there -- are there -- are there reports</p> <p>11 for -- on a monthly basis that track -- that would track</p> <p>12 the dollar amount invested in any particular hedge fund</p> <p>13 or any particular asset that was recommended?</p> <p>14 A. Not necessarily, no.</p> <p>15 Q. Do you know whether anyone else at EFG Capital</p> <p>16 talked to Fairfield about the concerns raised in these</p> <p>17 articles?</p> <p>18 A. I don't recall who else was involved in</p> <p>19 conversations at that time.</p> <p>20 Q. Do you know whether anyone from EFG Bank</p> <p>21 talked to Fairfield about this issue?</p> <p>22 A. I don't know.</p> <p>23 Q. Did you share with Mr. Howell or anyone at EFG</p> <p>24 Bank your conclusion that Fairfield Sentry had</p> <p>25 adequately addressed your concerns?</p>	140	<p>1 Q. I know -- bear with me.</p> <p>2 You talked to Mr. Howell, you think, about the</p> <p>3 concerns?</p> <p>4 A. Yes.</p> <p>5 Q. Did you also talk to Mr. Howell about the</p> <p>6 responses to your concerns by Fairfield Sentry?</p> <p>7 A. Yeah, possibly.</p> <p>8 Q. Did -- was there at that time a general</p> <p>9 counsel of EFG Capital?</p> <p>10 A. I -- Dart Montgomery may have -- may have been</p> <p>11 employed at that time.</p> <p>12 Q. That's right. He was the general counsel.</p> <p>13 Was he involved in this issue in terms of</p> <p>14 determining whether Fairfield Sentry and Madoff</p> <p>15 were -- were going to remain on the approved list?</p> <p>16 A. He had -- he has -- he had conducted reviews</p> <p>17 in the past.</p> <p>18 Q. But when these articles came out, was he</p> <p>19 involved in the -- in the response to it, internal</p> <p>20 response to it?</p> <p>21 A. I don't recall specifically.</p> <p>22 Q. Was outside counsel involved?</p> <p>23 A. I don't recall.</p> <p>24 Q. Was -- did -- did the company have outside</p> <p>25 counsel in 2001, and if so, who was it?</p>
139	<p>1 MR. GARCIA: Object to the form.</p> <p>2 THE WITNESS: I don't recall specifically.</p> <p>3 BY MR. LAWRENCE KELLOGG:</p> <p>4 Q. Do you recall generally?</p> <p>5 A. Discussing these -- these articles in</p> <p>6 generally, yes. What -- what was -- what took place in</p> <p>7 that conversation, I can't recall.</p> <p>8 Q. And do you know generally who you spoke with</p> <p>9 at EFG Bank?</p> <p>10 A. Your question was regarding Mr. Howell.</p> <p>11 Q. Okay. Is that the only person you spoke to,</p> <p>12 you think, or were there others at EFG Bank?</p> <p>13 A. Not that I recall.</p> <p>14 Q. Did you discuss with him or tell him, "I think</p> <p>15 it's okay, I've spoken with Fairfield Sentry, here's</p> <p>16 what they told me and I believe them"?</p> <p>17 MR. GARCIA: Object to form.</p> <p>18 MR. COATES: I'm going to object to the form</p> <p>19 of the question. This has been asked and answered.</p> <p>20 BY MR. LAWRENCE KELLOGG:</p> <p>21 Q. You can answer.</p> <p>22 A. Am I still answering the same question?</p> <p>23 Q. Yeah, same question.</p> <p>24 A. Well, I don't recall specifically what the</p> <p>25 conversation, you know --</p>	141	<p>1 A. Holland &amp; Knight has been their outside</p> <p>2 counsel since the outset.</p> <p>3 Q. Holland &amp; Knight?</p> <p>4 A. Yes.</p> <p>5 Q. That's the counsel for EFG Capital?</p> <p>6 A. Yes.</p> <p>7 Q. Was counsel at EFG Bank involved at all</p> <p>8 internally -- internal counsel?</p> <p>9 A. I don't recall.</p> <p>10 Q. Did the compliance department get involved?</p> <p>11 MR. COATES: Excuse me. Can you repeat that?</p> <p>12 BY MR. LAWRENCE KELLOGG:</p> <p>13 Q. Was there a compliance department or a</p> <p>14 compliance person at EFG Capital in 2001?</p> <p>15 A. Yes.</p> <p>16 Q. Who was that person?</p> <p>17 A. In 2001, I -- I can't recall.</p> <p>18 Q. Okay.</p> <p>19 A. It may have been Dart Montgomery. I can't</p> <p>20 recall precisely who it was.</p> <p>21 Q. So general counsel and compliance might have</p> <p>22 been the same?</p> <p>23 A. Right.</p> <p>24 Q. All right. Do you know whether the compliance</p> <p>25 department was consulted about your concerns?</p>

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1 A. Dart Montgomery would have been consulted.  
 2 Q. Do you know whether Mr. Montgomery met and  
 3 visited with Fairfield Sentry along with you after these  
 4 articles came out?  
 5 A. I don't recall.  
 6 Q. On the second page of Exhibit 5, the  
 7 second-to-last paragraph right here (indicating), last  
 8 column, the article says: "But among other things,  
 9 they" -- referring to skeptics -- "they also marvel at  
 10 the seemingly astonishing ability to time the market and  
 11 move to cash in the underlying securities before market  
 12 conditions turn negative; and the related ability to buy  
 13 and sell the underlying stocks without noticeably  
 14 affecting the market."  
 15 Do you see that?  
 16 A. Yes.  
 17 Q. Was that -- after reading this article, was  
 18 that one of your concerns?  
 19 A. I don't know if that was one of my concerns in  
 20 2001 or --  
 21 Q. Or what? Or some other time or...  
 22 A. In 2010 -- looks differently, doesn't it?  
 23 Q. Well, I mean, the reason I ask you is, I'm  
 24 wondering if Fairfield Sentry told you anything to  
 25 explain how Madoff was able to do this, that is, move in

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1 and out of the markets perfectly without affecting the  
 2 market volume.  
 3 A. I think --  
 4 MR. COATES: I'm going to object to the form  
 5 of the question. I don't think it's perfectly, and  
 6 let's just -- you know, let's not characterize what  
 7 a -- what a skeptic says in an article.  
 8 But in any event, you can answer.  
 9 BY MR. LAWRENCE KELLOGG:  
 10 Q. You can answer.  
 11 A. I don't think there's a -- there was a  
 12 specific charge by anybody at the time. There were --  
 13 certainly the regulators had no comment on this. There  
 14 wasn't anything specific other than hearsay.  
 15 Q. So, my question was, the Fairfield  
 16 Sentry -- well, I guess that means this didn't give you  
 17 concern. Is that right?  
 18 MR. COATES: I'm going to object to the form  
 19 of the question.  
 20 BY MR. LAWRENCE KELLOGG:  
 21 Q. You can answer.  
 22 MR. COATES: Asked and answered. We've been  
 23 through this, Larry --  
 24 MR. LAWRENCE KELLOGG: Not really.  
 25 MR. COATES: -- for the last 45 minutes.

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1 BY MR. LAWRENCE KELLOGG:  
 2 Q. Did you not have concern?  
 3 A. I think I informed you already that we looked  
 4 at both articles, addressed our concerns to Fairfield  
 5 Greenwich, or whatever issues that we wanted to discuss  
 6 at that time, and they satisfied our concerns.  
 7 Q. I heard that, but I'm focusing you now on a  
 8 particular concern. This man is able to move, you know  
 9 and not affect the market. And my question is real  
 10 simple --  
 11 A. I don't --  
 12 Q. -- was that one of your concerns?  
 13 A. I don't know if that's an accurate statement  
 14 or not.  
 15 Q. Okay. So it wasn't one of your concerns.  
 16 That's all.  
 17 A. That could have been one of my concerns. I  
 18 can't tell you today if that was one of my concerns in  
 19 2001. It could have been.  
 20 Q. Okay. Okay. The next paragraph says:  
 21 "Experts ask why no one has been able to duplicate  
 22 similar returns using the strategy."  
 23 Was that a concern of yours after reading this  
 24 article?  
 25 A. I think a lot of fund managers at hedge funds

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1 have strategies that haven't been duplicated. I don't  
 2 think --  
 3 Q. Okay. So it wasn't -- it wasn't one of your  
 4 concerns. Is that fair?  
 5 A. Again, I think whatever concerns I had  
 6 regarding the article, whether it's the paragraph you  
 7 read or the next one, were addressed -- are addressed  
 8 and satisfied by Fairfield Greenwich at the time.  
 9 Q. You see, you're sitting here and you're saying  
 10 you don't remember, so I'm trying to see if this maybe  
 11 refreshes your memory.  
 12 And I'm reading these charges here to you and  
 13 I'm taking from your answers that this is not refreshing  
 14 your memory that this was a concern. Is that right?  
 15 MR. COATES: Object to the form of the  
 16 question.  
 17 MR. LAWRENCE KELLOGG: I'll withdraw it.  
 18 BY MR. LAWRENCE KELLOGG:  
 19 Q. This paragraph goes on to say: Experts ask  
 20 why other firms on Wall Street haven't become aware of  
 21 the fund and its strategy and traded against it, as has  
 22 happened so often in other cases.  
 23 Do you see that?  
 24 A. Is that --  
 25 Q. Next sentence.

146	<p>1 A. Go ahead.</p> <p>2 Q. Was -- does that refresh your memory as to</p> <p>3 what concern you might have had? In a market, if</p> <p>4 someone is very successful, someone is always going to</p> <p>5 be doing the opposite.</p> <p>6 MR. COATES: Object to the form of the</p> <p>7 question.</p> <p>8 BY MR. LAWRENCE KELLOGG:</p> <p>9 Q. You can answer.</p> <p>10 A. It does not refresh my memory regarding the</p> <p>11 conversations I had with Fairfield Greenwich at the</p> <p>12 time.</p> <p>13 Q. Well, I'm really trying to find out what your</p> <p>14 concerns were after reading this article. You said you</p> <p>15 had some. You said you don't remember what they are.</p> <p>16 I'm trying to find out what they might have been. Is</p> <p>17 this one of them? Yes or no? Or I don't know.</p> <p>18 A. It could have been.</p> <p>19 Q. Well, everything in here could have been a</p> <p>20 concern. As you sit here now, does this mean that you</p> <p>21 had a concern or you didn't?</p> <p>22 MR. COATES: Object to the form of the</p> <p>23 question.</p> <p>24 MR. GARCIA: Object to the form.</p> <p>25</p>	148	<p>1 was engaged in a fund -- in a fraud. Is that right?</p> <p>2 MR. GARCIA: Object to form.</p> <p>3 MR. COATES: Object to the form of the</p> <p>4 question.</p> <p>5 BY MR. LAWRENCE KELLOGG:</p> <p>6 Q. You can answer.</p> <p>7 MR. COATES: Mischaracterizes the testimony.</p> <p>8 MR. LAWRENCE KELLOGG: You can answer.</p> <p>9 THE WITNESS: I did not believe at the time</p> <p>10 that the advisor for Fairfield Sentry, the fund</p> <p>11 that we were distributing, was engaged in a fraud</p> <p>12 or that the fund was engaged in a fraud.</p> <p>13 BY MR. LAWRENCE KELLOGG:</p> <p>14 Q. And you weren't concerned about it. Is that</p> <p>15 right?</p> <p>16 MR. GARCIA: Object to form.</p> <p>17 MR. COATES: Object to the form of the</p> <p>18 question. I'm going to instruct the witness not to</p> <p>19 answer any more --</p> <p>20 MR. LAWRENCE KELLOGG: No, you can't --</p> <p>21 MR. COATES: -- questions on this topic.</p> <p>22 MR. LAWRENCE KELLOGG: You can't do that. No</p> <p>23 you can't do that.</p> <p>24 Go ahead. Answer the question.</p> <p>25 MR. COATES: No, that's enough.</p>
147	<p>1 BY MR. LAWRENCE KELLOGG:</p> <p>2 Q. You can answer.</p> <p>3 A. I don't believe I ever had a concern that</p> <p>4 Fairfield Sentry, the fund or the advisor, were involved</p> <p>5 in a fraud.</p> <p>6 Q. Okay. And after reading this article, you had</p> <p>7 no concern about them being involved in fraud. Is that</p> <p>8 right?</p> <p>9 MR. COATES: Object to the form of the</p> <p>10 question.</p> <p>11 BY MR. LAWRENCE KELLOGG:</p> <p>12 Q. Is that correct?</p> <p>13 MR. COATES: You may answer.</p> <p>14 THE WITNESS: I'm sorry. Is that a statement</p> <p>15 or --</p> <p>16 MR. LAWRENCE KELLOGG: That's a question.</p> <p>17 BY MR. LAWRENCE KELLOGG:</p> <p>18 Q. My question is: After reading this article,</p> <p>19 you had no concerns that Mr. Madoff might have been</p> <p>20 engaged in a fraud. Is that right?</p> <p>21 A. I don't -- I did not believe at the time that</p> <p>22 he was engaged in a fraud or reason to believe that he</p> <p>23 was engaged in a fraud.</p> <p>24 Q. And in 2001, neither you or anyone at EFG</p> <p>25 Capital attempted to determine whether or not Mr. Madoff</p>	149	<p>1 MR. LAWRENCE KELLOGG: You can't do that.</p> <p>2 Don't even start down that road.</p> <p>3 MR. COATES: Larry, you've asked the question</p> <p>4 ten times.</p> <p>5 MR. LAWRENCE KELLOGG: No, but I'm trying to</p> <p>6 get an answer, with all due respect. I'm trying to</p> <p>7 get an answer that's clear.</p> <p>8 BY MR. LAWRENCE KELLOGG:</p> <p>9 Q. After you read this article, I've read you at</p> <p>10 least two statements from it --</p> <p>11 A. Uh-huh.</p> <p>12 Q. -- you say you're not concerned after reading</p> <p>13 this article that there was a fraud involved. You did</p> <p>14 not believe it, you weren't concerned with it, and you</p> <p>15 didn't do anything to determine whether or not there was</p> <p>16 a fraud ongoing. Is that right?</p> <p>17 MR. GARCIA: Object. Object to the form.</p> <p>18 MR. COATES: I object to the form and move to</p> <p>19 strike the speech from counsel.</p> <p>20 BY MR. LAWRENCE KELLOGG:</p> <p>21 Q. Did you -- did you --</p> <p>22 A. I don't believe I said any of that.</p> <p>23 Q. Okay. So were you concerned about a fraud --</p> <p>24 whether or not you believed it, were you concerned about</p> <p>25 a fraud after reading this?</p>

150	<p>1 MR. COATES: Objection. Asked and answered.</p> <p>2 MR. GARCIA: Same objection.</p> <p>3 THE WITNESS: I did not at the time nor any</p> <p>4 time before the fraud was revealed believe that</p> <p>5 there was engagement in fraud here.</p> <p>6 BY MR. LAWRENCE KELLOGG:</p> <p>7 Q. Okay. Were you concerned that Mr. -- after</p> <p>8 reading the statement "People wonder why Madoff</p> <p>9 Securities is willing to earn commissions off the trades</p> <p>10 but not set up a separate asset management division to</p> <p>11 offer hedge funds directly to investors and keep all the</p> <p>12 incentive fees for itself," was that something you</p> <p>13 wondered about after reading this?</p> <p>14 A. This -- this is -- I mean, one -- one writer's</p> <p>15 interpretation, no?</p> <p>16 Q. Okay. So you weren't, is that right?</p> <p>17 A. I -- I will restate again that I am not -- I</p> <p>18 do not recall specifically which one of these issues I</p> <p>19 may have been concerned about in 2001.</p> <p>20 MR. LAWRENCE KELLOGG: Let's go off the record</p> <p>21 for one second.</p> <p>22 THE VIDEOGRAPHER: Going off the record. Time</p> <p>23 is 5:13.</p> <p>24 (Thereupon, a recess was taken from 5:13 p.m.</p> <p>25 to 5:22 p.m.)</p>
151	<p>1 THE VIDEOGRAPHER: Okay. We're now back on</p> <p>2 the record. Time is 5:22.</p> <p>3 BY MR. LAWRENCE KELLOGG:</p> <p>4 Q. After you saw these articles, Exhibits 4 and</p> <p>5 5, would you agree with me that if the conduct described</p> <p>6 in here turned out to be true, that some of your</p> <p>7 customers might lose money?</p> <p>8 MR. GARCIA: Object to the form.</p> <p>9 MR. COATES: Object to the form.</p> <p>10 THE WITNESS: Well, was the conduct here</p> <p>11 describing what, a fraud?</p> <p>12 BY MR. LAWRENCE KELLOGG:</p> <p>13 Q. After you -- after you read these articles,</p> <p>14 did you have any concerns that if the transactions are</p> <p>15 as described and the implications and allegations made</p> <p>16 in these articles are true, that your customers might</p> <p>17 lose money?</p> <p>18 MR. GARCIA: Object to the form.</p> <p>19 MR. COATES: Object to the form.</p> <p>20 BY MR. LAWRENCE KELLOGG:</p> <p>21 Q. Did that cross your mind?</p> <p>22 A. I think with the -- whatever concerns were</p> <p>23 raised at the time by EFG Capital, by either myself or</p> <p>24 whomever else met with Fairfield Greenwich at the time,</p> <p>25 were satisfied and we did not believe at the time that</p>
152	<p>1 the activity of Fairfield Sentry would lead to a loss of</p> <p>2 customer assets.</p> <p>3 Q. Before Fairfield Sentry allayed your concerns,</p> <p>4 in however they did it, was -- were you concerned that</p> <p>5 if these allegations or these facts turned out to be</p> <p>6 true, that your customers might lose money? Was that a</p> <p>7 concern of yours?</p> <p>8 MR. GARCIA: Object to the form.</p> <p>9 MR. COATES: Object to form.</p> <p>10 BY MR. LAWRENCE KELLOGG:</p> <p>11 Q. Yes or no. It either was or it wasn't.</p> <p>12 MR. COATES: Well, I -- no. Object to the</p> <p>13 form.</p> <p>14 BY MR. LAWRENCE KELLOGG:</p> <p>15 Q. No.</p> <p>16 A. Well, it's --</p> <p>17 MR. COATES: It's a hypothetical.</p> <p>18 BY MR. LAWRENCE KELLOGG:</p> <p>19 Q. You just said to me your concerns were taken</p> <p>20 care of by Fairfield Sentry, whatever they might be, and</p> <p>21 so you had no concerns that the clients would lose</p> <p>22 money. Is that right?</p> <p>23 MR. GARCIA: Object to the form.</p> <p>24 MR. COATES: Same objection.</p> <p>25</p>
153	<p>1 BY MR. LAWRENCE KELLOGG:</p> <p>2 Q. Is that true or not true?</p> <p>3 A. I think we had -- we conducted a -- periodic</p> <p>4 due diligence reviews, identified issues which might be</p> <p>5 of concern to ourselves and customers investing in this</p> <p>6 fund and other funds. And the concerns that we</p> <p>7 expressed to the fund sponsor at the time were dealt</p> <p>8 with in a satisfactory fashion.</p> <p>9 Q. My question --</p> <p>10 A. The regulators must have been pleased also</p> <p>11 because they took no action also on these articles.</p> <p>12 Q. Well -- okay. My question is real simple, I</p> <p>13 mean, and either you had concerns that your clients</p> <p>14 would lose money or you didn't. Did you?</p> <p>15 A. We did not have concerns that the fund would</p> <p>16 fail; hence, the customers would not lose money.</p> <p>17 Q. Okay. Now, when you got these two articles</p> <p>18 saying all these things about Madoff, did you try to</p> <p>19 meet with Mr. Madoff or talk to him?</p> <p>20 A. No, I met with the sponsors of the fund.</p> <p>21 Q. Well, you get these articles talking about</p> <p>22 Madoff. Why didn't you pick up the phone and call him</p> <p>23 or try to meet with him or do anything -- find out from</p> <p>24 the horse's mouth what's going on?</p> <p>25 A. We're distributors of a fund called Fairfield</p>



154	<p>1 Sentry Ltd.; our distribution agreement is directly with</p> <p>2 Fairfield Sentry Ltd.; parties to that fund may or may</p> <p>3 not have to talk to us.</p> <p>4 Q. Did you try?</p> <p>5 A. We addressed, again, our concerns with</p> <p>6 Fairfield Greenwich.</p> <p>7 Q. Did you try to talk to Madoff?</p> <p>8 A. Don't recall.</p> <p>9 Q. Did you ask Fairfield Sentry whether you could</p> <p>10 talk to Madoff?</p> <p>11 A. I -- I don't recall specifically.</p> <p>12 Q. Did you consider talking to Madoff?</p> <p>13 A. I may have. I don't know. I don't recall.</p> <p>14 Q. Did you talk to Mr. Howell about whether you</p> <p>15 should try to contact Madoff?</p> <p>16 MR. COATES: Objection, asked and answered.</p> <p>17 THE WITNESS: I don't recall all the things</p> <p>18 that I may have considered in 2001 related to these</p> <p>19 two articles.</p> <p>20 BY MR. LAWRENCE KELLOGG:</p> <p>21 Q. I'm not asking about all things you</p> <p>22 considered. I'm asking you about something specific.</p> <p>23 Did you consider and talk with Mr. Howell at</p> <p>24 EFG Bank about calling Mr. Madoff or meeting with Mr.</p> <p>25 Madoff directly?</p>	156	<p>1 to its customers?</p> <p>2 A. I do not recall.</p> <p>3 Q. It says here: "EFG International's exposure</p> <p>4 to Bernard L. Madoff Investment Securities LLC is as</p> <p>5 follows: It has no exposure in its own name to any fund</p> <p>6 managed or advised by Madoff."</p> <p>7 That turned out to be correct. Is that right?</p> <p>8 A. This is EFG International's announcement. I</p> <p>9 assume it's correct.</p> <p>10 Q. Did EFG Capital have any of its money in any</p> <p>11 Madoff-managed fund?</p> <p>12 A. EFG -- EFG Capital doesn't take proprietary</p> <p>13 positions.</p> <p>14 Q. Okay. So it did not?</p> <p>15 A. Did not.</p> <p>16 Q. The third point here, it says: "Within</p> <p>17 discretionary portfolios, some private banking clients</p> <p>18 have exposure to third-party funds that have invested in</p> <p>19 Madoff. The amount involved is circa \$130 million in</p> <p>20 well-diversified portfolios which are predominantly</p> <p>21 multi-manager fund-based."</p> <p>22 Does that number, that \$130 million number,</p> <p>23 include EFG Capital customers?</p> <p>24 A. EFG Capital customers had no discretionary</p> <p>25 portfolios.</p>
155	<p>1 MR. COATES: Object to the form.</p> <p>2 THE WITNESS: I don't recall.</p> <p>3 (Thereupon, the referred-to document was</p> <p>4 marked by the court reporter for Identification as</p> <p>5 Exhibit 6.)</p> <p>6 BY MR. LAWRENCE KELLOGG:</p> <p>7 Q. Okay. The last thing I'm going to show you</p> <p>8 today is something I'm going to mark as Exhibit 6, which</p> <p>9 is something called "Announcement Relating to Madoff."</p> <p>10 It's dated December 19, 2008.</p> <p>11 Have you seen this before?</p> <p>12 A. Yes.</p> <p>13 Q. Did you have anything to do with drafting it?</p> <p>14 A. No.</p> <p>15 Q. Did you provide any information that was used</p> <p>16 in this announcement?</p> <p>17 A. Nope.</p> <p>18 Q. What was the purpose of the announcement?</p> <p>19 A. It's an announcement by our parent.</p> <p>20 Q. And what was the purpose of making an</p> <p>21 announcement about the Madoff situation?</p> <p>22 A. I don't know specifically, but there were</p> <p>23 probably a lot of questions in the marketplace regarding</p> <p>24 Madoff.</p> <p>25 Q. Did EFG Capital distribute this announcement</p>	157	<p>1 Q. So the EFG Capital customers would be in the</p> <p>2 next point, which is: "EFG International also holds, in</p> <p>3 custody for private banking clients, third-party funds</p> <p>4 that have invested in Madoff." Is that right?</p> <p>5 A. Yes.</p> <p>6 Q. What entities, EFG entities, had customers in</p> <p>7 discretionary portfolios amounting to \$130 million with</p> <p>8 Madoff funds?</p> <p>9 A. I don't know.</p> <p>10 Q. What would you do to find that out? I mean,</p> <p>11 what would you look at?</p> <p>12 A. I would have no way of finding out.</p> <p>13 Q. Why?</p> <p>14 A. I'm not an officer of EFG International.</p> <p>15 Q. Well, EFG International -- it says here, EFG</p> <p>16 International -- in the next bullet point -- has --</p> <p>17 holds in custody for private banking clients third-party</p> <p>18 funds that invested in Madoff.</p> <p>19 Could you find out -- strike that.</p> <p>20 The next sentence says: "The amount involved</p> <p>21 is in the region of .30 percent of total clients' assets</p> <p>22 under management as at June 30 -- 30 June 2008."</p> <p>23 Is that 30 percent or .3 percent? Looks like</p> <p>24 .3 to me.</p> <p>25 A. Looks like 0.3.</p>

158	<p>1 MR. COATES: 0.3.</p> <p>2 THE WITNESS: Of 1 percent.</p> <p>3 MR. GARCIA: What exhibit?</p> <p>4 MR. COATES: Exhibit 6.</p> <p>5 BY MR. LAWRENCE KELLOGG:</p> <p>6 Q. What was the -- what was the dollar figure of</p> <p>7 EFG Capital customer funds that were included in</p> <p>8 Madoff-managed funds?</p> <p>9 A. I don't recall.</p> <p>10 Q. You don't recall the dollar figure?</p> <p>11 A. No.</p> <p>12 MR. LAWRENCE KELLOGG: You almost out of tape</p> <p>13 now? I don't want to change it. Less than a</p> <p>14 minute?</p> <p>15 BY MR. LAWRENCE KELLOGG:</p> <p>16 Q. Let me show you your interrogatory responses,</p> <p>17 page 11.</p> <p>18 MR. GARCIA: You going to mark them?</p> <p>19 MR. LAWRENCE KELLOGG: No, I just want to show</p> <p>20 it to him.</p> <p>21 BY MR. LAWRENCE KELLOGG:</p> <p>22 Q. Does this refresh your memory that the number</p> <p>23 is \$49,986,000?</p> <p>24 A. It could be. I was not involved in the</p> <p>25 preparation of these numbers -- of these reports.</p>	160	<p>1 RE: FERREIRA VS EFG</p> <p>2 DEPO OF: VICTOR MANUEL ECHEVARRIA</p> <p>3 TAKEN: 10/13/10</p> <p>4</p> <p>5 EXCEPT FOR ANY CORRECTIONS</p> <p>6 MADE ON THE ERRATA SHEET BY</p> <p>7 ME, I CERTIFY THIS IS A TRUE</p> <p>8 AND ACCURATE TRANSCRIPT.</p> <p>9 FURTHER DEPONENT SAYETH NOT.</p> <p>10</p> <p>11 _____</p> <p>12 VICTOR MANUEL ECHEVARRIA</p> <p>13</p> <p>14 STATE OF FLORIDA )</p> <p>15 ) SS:</p> <p>16 COUNTY OF MIAMI-DADE )</p> <p>17 Sworn and subscribed to before me this _____</p> <p>18 day of _____, 2010.</p> <p>19 PERSONALLY KNOWN _____ OR I.D. _____</p> <p>20</p> <p>21 _____</p> <p>22 Notary Public in and for the</p> <p>23 State of Florida at Large.</p> <p>24</p> <p>25 My Commission Expires:</p>
159	<p>1 MR. LAWRENCE KELLOGG: All right. Let's go</p> <p>2 off the record.</p> <p>3 THE VIDEOGRAPHER: Going off the record. The</p> <p>4 time is 5:32.</p> <p>5 (Thereupon, the taking of the deposition was</p> <p>6 adjourned at 5:32 p.m.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	161	<p>1</p> <p>2 CERTIFICATE OF OATH OF WITNESS</p> <p>3</p> <p>4 STATE OF FLORIDA )</p> <p>5 )SS</p> <p>6 COUNTY OF MIAMI-DADE )</p> <p>7</p> <p>8</p> <p>9 I, PATRICIA C. WEINER, Registered Professional</p> <p>10 Reporter, Registered Merit Reporter, Certified Realtime</p> <p>11 Reporter, Florida Professional Reporter, Notary Public</p> <p>12 in and for the State of Florida at Large, certify that</p> <p>13 the witness, VICTOR MANUEL ECHEVARRIA, personally</p> <p>14 appeared before me on 10/13/10 and was duly sworn by me.</p> <p>15 WITNESS my hand and official seal this 15th</p> <p>16 day of October, 2010.</p> <p>17</p> <p>18</p> <p>19</p> <p>20 _____</p> <p>21 PATRICIA C. WEINER, RPR, CRR, RMR, FPR</p> <p>22 Notary Public, State of Florida at Large</p> <p>23 My Commission Expires 10/12/11</p> <p>24 My Commission No. DD690056</p> <p>25</p>

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1 REPORTER'S DEPOSITION CERTIFICATE

2

3 I, PATRICIA C. WEINER, Registered Professional

4 Reporter, Registered Merit Reporter, Certified Realtime

5 Reporter, Florida Professional Reporter, certify that I

6 was authorized to and did stenographically report the

7 deposition of VICTOR MANUEL ECHEVARRIA, the witness

8 herein on 10/13/10; that a review of the transcript was

9 requested; that the foregoing pages numbered from 1 to

10 159, inclusive, is a true and complete record of my

11 stenographic notes of the deposition by said witness;

12 and that this computer-aided transcript was prepared

13 under my supervision.

14 I further certify that I am not a relative,

15 employee, attorney, or counsel of any of the parties,

16 nor am I a relative or employee of any of the parties'

17 attorney or counsel connected with the action, nor am I

18 financially interested in the action.

19 DATED this 15th day of October, 2010.

20

21 \_\_\_\_\_

22 PATRICIA C. WEINER, RPR, CRR, RMR, FPR

23

24

25

4:00

164

1 VERITEXT FLORIDA REPORTING CO.

2 19 West Flagler Street, Suite 1020

3 Miami, FL 33130

4 Phone: 305.376.8800

5

6 October 14th, 2010

7 Victor Manuel Echevarria

8 c/o Joseph C. Coates, III, Esq.

9 777 South Flagler Drive, Suite 300 East

10 West Palm Beach, Florida 33401

11

12 RE: Ferreira vs EFG

13 DEPO OF: VICTOR MANUEL ECHEVARRIA

14 TAKEN: 10/13/10

15 READ & SIGN BY: 30 days

16 Dear Victor Manuel Echevarria:

17 This letter is to advise you that the transcript of the

18 deposition listed above is completed and is awaiting

19 reading and signing.

20 Please arrange to stop by our office in Suite 1020, 19

21 West Flagler Street, Miami, Florida, to read and sign

22 the transcript. Our office hours are from 8:00 a.m. to

23 p.m. Monday through Friday. Depending on the

24 length of the transcript, you should allow yourself

25 sufficient time.

26

27 If the reading and signing has not been completed prior

28 to the referenced date, we shall conclude that you have

29 waived the reading and signing of the deposition

30 transcript. Your prompt attention to this matter is

31 appreciated.

32 Thank you

33 Very truly yours,

34

35 \_\_\_\_\_

36 PATRICIA C. WEINER, RPR, CRR, RMR, FPR

37 cc: LAWRENCE A. KELLOGG, ESQ.

38 MICHAEL E. GARCIA, ESQ.

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1 ERRATA SHEET

2 RE: FERREIRA VS EFG

3 DEPO OF: VICTOR MANUEL ECHEVARRIA

4 TAKEN: 10/13/10

5 REPORTER: PATRICIA C. WEINER, RPR, CRR, RMR, FPR

6

7 DO NOT WRITE ON TRANSCRIPT, ENTER ANY CHANGES HERE

8 PAGE # | LINE # | CHANGE | REASON

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16 \_\_\_\_\_

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18 \_\_\_\_\_

19 \_\_\_\_\_

20 \_\_\_\_\_

21 State of Florida

22 County of Miami-Dade

23

24 Under penalties of perjury, I declare that I

25 have read my deposition transcript, and it is true and

correct subject to any changes in form or substance

entered here.

23 PATRICIA C. WEINER, RPR, CRR, RMR, FPR

24 cc: LAWRENCE A. KELLOGG, ESQ.

25 MICHAEL E. GARCIA, ESQ.

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

5 Lawrence A. Kellogg, ESQ.  
6 Levine, Kellogg, Lehman, Schneider & Grossman, LLP  
7 34th Floor, Miami Center  
8 201 South Biscayne Boulevard  
9 Miami, Florida 33131

10 RE: Ferreira vs EFG

11 DEPO OF: Victor Manuel Echevarria

12 DATE TAKEN: 10/13/10

13 READ & SIGN BY: 30 days

14 Dear Counsel:

15 The original transcript of the deposition listed  
16 above is enclosed for your file. The witness did not  
17 waive reading and signing and has been sent a letter  
18 notifying them to come in and read and sign their  
19 deposition transcript.

20 The witness will be provided a copy of their  
21 deposition transcript for reading in our office should  
22 they come in to review the transcript, and we will  
23 forward to you any corrections made by the witness at  
24 that time, along with an original signature page which  
25 should be attached to the original transcript which is  
in your possession.

Sincerely,

PATRICIA C. WEINER, RPR, RMR, CRR, FPR  
VERITEXT/FLORIDA REPORTING CO.