

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 Monday, October 18, 2010
13 201 South Biscayne Boulevard
14 Miami, Florida
15 9:53 a.m. - 3:21 p.m.

16 CONTINUED VIDEOTAPE DEPOSITION OF

17 VICTOR MANUEL ECHEVARRIA

18 VOLUME II

19 PAGES 166 -- 345

20 Doc. 632 Att. 9

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

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167	<p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiff:</p> <p>3 LEVINE, KELLOGG, LEHMAN, SCHNEIDER & 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@kllaw.com</p> <p>9 BY: LAWRENCE A. KELLOGG, ESQ., and</p> <p>10 jk@kllaw.com</p> <p>11 JASON KELLOGG, ESQ.</p> <p>12</p> <p>13 On behalf of the Defendant/EFG Bank f/k/a EFG Private</p> <p>14 Bank SA:</p> <p>15 HOLLAND & KNIGHT, LLP</p> <p>16 Suite 3000</p> <p>17 701 Brickell Avenue</p> <p>18 Miami, Florida 33131</p> <p>19 (305) 374-8500</p> <p>20 michael.garcia@hklaw.com</p> <p>21 BY: MICHAEL E. GARCIA, ESQ.</p> <p>22</p> <p>23 On behalf of the Defendant/EFG Capital International</p> <p>24 Corp.:</p> <p>25 GREENBERG TRAURIG</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>
168	<p>1 -----</p> <p>2 I N D E X</p> <p>3 WITNESS:</p> <p>4 VICTOR MANUEL ECHEVARRIA</p> <p>5 Direct Examination By Mr. Lawrence Kellogg 173</p> <p>6</p> <p>7 Witness Signature Page 340</p> <p>8 Certificate of Oath For Witness 341</p> <p>9 Reporter's Deposition Certificate 342</p> <p>10 Errata Sheet 343</p> <p>11 Read Letter 344</p> <p>12 Attorney Read Letter 345</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>
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170	<p>1</p> <p>2 PLAINTIFFS EXHIBITS</p> <p>3 NUMBER DESCRIPTION PAGE</p> <p>4</p> <p>5</p> <p>6 Exhibit 18 Fairfield Greenwich Group Alternative 4</p> <p>7 Investment Funds, January 2006</p> <p>8</p> <p>9 Exhibit 19 November 29, 2007, Letter of 228</p> <p>10 Understanding</p> <p>11</p> <p>12 Exhibit 20 June 12, 2008, Letter 231</p> <p>13</p> <p>14</p> <p>15 Exhibit 21 EFG Capital International, Due 242</p> <p>16 Diligence Memorandum</p> <p>17 Exhibit 22 Notice to Clients 266</p> <p>18 Exhibit 23 Fax Cover Sheet June 26, 2000, to 273</p> <p>19 Victor Echevarria from Jeffrey Tucker</p> <p>20</p> <p>21</p> <p>22 Exhibit 24 Notes of Meetings with Jeffrey Tucker 9</p> <p>23 of Fairfield Greenwich and Document</p> <p>24 Review on July 11 & 12, 2000, Re:</p> <p>25 Fairfield Sentry Limited (The Fund)</p> <p>Exhibit 25 Fax Cover Sheet May 30, 1997 283</p> <p>Exhibit 26 August 21, 1998, Letter 295</p> <p>Exhibit 27 Hedge Fund Compliance Checklist 298</p> <p>Exhibit 28 Miguel M. Yannuzzi Email to Lorrene, 303</p> <p>December 17, 2008</p> <p>Exhibit 29 January 15, 2009, Dear Customer 307</p> <p>Letter</p> <p>Exhibit 30 Miguel M. Yannuzzi Email to Lorrene, 08</p> <p>June 1, 2009</p>

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<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>			
<p style="text-align: center;">PLAINTIFFS EXHIBITS</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 15%;">NUMBER</td> <td style="width: 60%;">DESCRIPTION</td> <td style="width: 25%;">PAGE</td> </tr> </table> <p>Exhibit 31 Miguel M. Yannuzzi Email to Lorrene, 10 June 29, 2009</p> <p>Exhibit 32 August 3, 2009, Notice to Customers 314 Regarding Fairfield Sentry Limited</p> <p>Exhibit 33 Miguel M. Yannuzzi Email to Lorrene, 15 October 22, 2009</p>	NUMBER	DESCRIPTION	PAGE	<p>Thereupon: VICTOR MANUEL ECHEVARRIA was called as a witness by the Plaintiff and, having been first duly sworn, testified as follows: CONTINUED DIRECT EXAMINATION BY MR. LAWRENCE KELLOGG: Q. Good morning. A. Good morning. Q. Last week, when we were discussing these matters, you had mentioned that EFG Capital International and some or more EFG affiliated companies had entered into revenue sharing agreements. Do you recall that testimony generally? A. I recall discussing that EFG Capital had entered into revenue sharing agreements with one or two entities. Correct. Q. Okay. And since then we have been produced some materials. I'd like to go over them briefly with you. (Thereupon, the referred-to document was marked by the court reporter for Identification as Plaintiff's Exhibit 7.) BY MR. LAWRENCE KELLOGG: Q. I've marked as Exhibit 7 a Business Introducing and Revenue Agreement, dated January 1,</p>
NUMBER	DESCRIPTION	PAGE		
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<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>			
<p style="text-align: center;">PROCEEDINGS</p> <p>THE VIDEOGRAPHER: All right. Good morning. We are now on the video record to continue with the videotape deposition of Victor Manuel Echevarria in the matter of the case Lorrene Da Silva Ferreira and Arlete Da Silva Ferreira versus EFG Capital. Today is Monday, October the 18th, 2010, and the time is 9:53. Counsel please introduce themselves for the record and after this, the court reporter swear in the witness. MR. LAWRENCE KELLOGG: Larry Kellogg and Jason Kellogg on behalf of the plaintiffs. MR. COATES: Joe Coates of Greenberg Traurig on behalf of the defendant, EFG Capital. MR. GARCIA: Michael Garcia with Holland & Knight on behalf of EFG Bank. THE COURT REPORTER: Would you raise your right hand, please. Do you solemnly swear or affirm that the testimony you're about to give in this case shall be the truth, the whole truth, and nothing but the truth? THE WITNESS: I do.</p>	<p>2002, between EFG Private Bank SA and EFG Capital International Corp. It's Bates Numbers 1944 through 1946. EFG Capital, that is. To your knowledge, is this a true copy of an agreement between the private bank -- EFG Private Bank and EFG Capital International Corp.? A. Seems that way. Q. Does your signature appear? A. No, it does not. Q. Does Mr. Howell's signature appear on behalf of EFG Private Bank? A. Yes, it does. Q. I see Mr. Campano appears to have signed, is that right, as president -- A. That's correct. Q. -- of EFG Capital International? Who is the other signature, if you know? A. EFG Capital, you mean? Q. Yes. A. Juan Massens. Q. To your knowledge, was this the first written agreement between EFG Private Bank and EFG Capital International regarding the sharing of revenue between those two companies? A. I don't recall.</p>			

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1 Q. And does this refresh your memory as to the
 2 fact that every time EFG Capital introduced a customer
 3 to EFG Private Bank it would receive a 30 percent fee --
 4 30 percent of the revenue-generated fee?
 5 A. I'm sorry --
 6 MR. COATES: Object to the form of the
 7 question.
 8 MR. LAWRENCE KELLOGG: Let me rephrase it.
 9 BY MR. LAWRENCE KELLOGG:
 10 Q. Does this refresh your memory that every time
 11 EFG Capital would introduce a client to EFG Private Bank
 12 it would receive 30 percent of the revenue generated
 13 from that referral?
 14 MR. COATES: Object to the form of the
 15 question.
 16 BY MR. LAWRENCE KELLOGG:
 17 Q. You can answer it.
 18 A. The agreement indicates that there is a
 19 compensation for 30 percent of the net revenues, I
 20 believe, for clients introduced by EFG Capital to EFG
 21 Bank.
 22 Q. And Section 2 of this agreement refers to a
 23 category of compensation wherein EFG Private Bank was
 24 going to pay EFG Capital a quarterly fee to recognize
 25 additional revenues received from EFG Capital's

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1 introduced customers. Do you see that?
 2 A. Yes.
 3 Q. What is that other fee meant to capture?
 4 A. I can't recall in that I don't know what other
 5 fees were envisioned.
 6 Q. It says, "The other fee is intended to promote
 7 activities that benefit EFG Bank." Do you see that?
 8 A. Which section is that?
 9 Q. That's next --
 10 A. 2A or 2B?
 11 Q. 2A, B -- 2A, second sentence.
 12 A. Yes, I see that.
 13 Q. What -- what activities were to be promoted to
 14 benefit EFG Bank?
 15 A. As I indicated, I -- I don't recall what other
 16 fees or other activities were envisioned by this
 17 agreement. I was not involved in the creation of this
 18 agreement.
 19 Q. Who was involved in creating this agreement?
 20 A. Mr. Campano.
 21 Q. Did you negotiate its terms at all? Did you
 22 negotiate the terms --
 23 A. I'm sorry, what -- negotiate whose terms?
 24 Q. In terms of this agreement, did you negotiate
 25 the terms in this agreement?

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1 A. I was not involved in the preparation of this
 2 agreement.
 3 Q. So you didn't negotiate the terms of it?
 4 A. I wasn't involved in the preparation of this
 5 agreement.
 6 Q. Did you -- did you negotiate the business
 7 terms?
 8 A. No.
 9 Q. Was -- did EFG Bank -- EFG Private Bank pay
 10 any other fees as defined in Section 2A to EFG Capital
 11 International?
 12 A. I don't know.
 13 Q. If a EFG Capital customer who subscribed to
 14 the Fairfield Sentry fund was referred to EFG Private
 15 Bank, would revenue be shared pursuant to this agreement
 16 for that customer?
 17 A. Once he indicates the areas that would count
 18 towards revenue, and custody fees are in here. So if we
 19 referred a client for custody services, a custody fee
 20 charged by EFG Bank would be included.
 21 Q. You mentioned last week, and we haven't seen
 22 the agreement yet, but that there is a revenue sharing
 23 agreement of some sort between EFG Capital and EFG Asset
 24 Management. Is that right?
 25 A. I believe there is, yes.

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1 Q. If EFG Asset Management refers a customer to
 2 EFG Bank, is the compensation calculated pursuant to
 3 this agreement, Exhibit ??
 4 A. I'm not aware of a -- of an agreement between
 5 EFG Capital Asset Management and EFG Bank of this
 6 nature.
 7 Q. So if -- did EFG Asset refer -- ever refer
 8 customers to EFG Capital or was it the other way around
 9 primarily?
 10 MR. COATES: I'm going to object to the
 11 question. If you can rephrase that.
 12 BY MR. LAWRENCE KELLOGG:
 13 Q. What I'm trying to find out is, if EFG Asset
 14 Management referred a customer to EFG Bank, would EFG
 15 Asset Management receive compensation from EFG Bank?
 16 A. I don't believe EFG Asset -- EFG Capital Asset
 17 Management refers customers, and I don't believe that
 18 EFG Capital Asset Management receives compensation as
 19 envisioned by this agreement.
 20 Q. Okay. So would EFG Asset -- Capital Asset
 21 Management ever refer customers to EFG Capital
 22 International, your company, the broker-dealer, or was
 23 it usually the other way around?
 24 A. Most of the referrals are between EFG Capital
 25 International towards the asset management company, EFG

179	<p>1 Capital Asset Management.</p> <p>2 Q. If EFG Asset Management -- Capital Asset</p> <p>3 Management had a customer under discretionary advising</p> <p>4 and introduced that customer to EFG Private Bank for</p> <p>5 custody purposes, would EFG Capital International</p> <p>6 receive a fee for that?</p> <p>7 MR. COATES: Object to the form.</p> <p>8 You may answer.</p> <p>9 THE WITNESS: EFG Capital International</p> <p>10 typically would have already referred the customer</p> <p>11 to EFG Bank; and as a consequence received a</p> <p>12 custody fee, if any, for that activity.</p> <p>13 If then the same customer is referred to EFG</p> <p>14 Capital Asset Management, the revenue or the -- the</p> <p>15 agreement between EFG Capital Asset Management and</p> <p>16 EFG Capital International would be related to the</p> <p>17 revenues charged by EFG Capital Asset Management</p> <p>18 directly.</p> <p>19 BY MR. LAWRENCE KELLOGG:</p> <p>20 Q. I'm not sure I understood that last part.</p> <p>21 What do you mean?</p> <p>22 A. EFG Capital Asset Management charges a -- an</p> <p>23 asset management fee for its -- to its customers. And</p> <p>24 if it gets referred a customer by EFG Capital</p> <p>25 International, EFG Capital International is entitled to</p>	181	<p>1 Q. Before it was in business was there a</p> <p>2 registered investment advisor in the EFG family of</p> <p>3 companies?</p> <p>4 A. Do you mean the EFG Capital --</p> <p>5 Q. Yes.</p> <p>6 A. -- family of companies?</p> <p>7 Q. Yes.</p> <p>8 A. No.</p> <p>9 Q. Prior --</p> <p>10 A. Well --</p> <p>11 Q. Go ahead.</p> <p>12 A. The registered investment advisor license was</p> <p>13 a result of an acquisition.</p> <p>14 Q. What was the acquisition?</p> <p>15 A. Of a broker-dealer owned by Dresdner Bank in</p> <p>16 Florida.</p> <p>17 Q. By Dresdner?</p> <p>18 A. Dresdner Bank in Florida.</p> <p>19 Q. Do you recall when the acquisition was?</p> <p>20 A. I believe it was '05.</p> <p>21 Q. Prior to that acquisition did EFG Capital or</p> <p>22 any EFG Capital affiliate provide discretionary</p> <p>23 management services to customers?</p> <p>24 A. No.</p> <p>25 Q. If -- if a customer wanted an investment</p>
180	<p>1 a fee sharing.</p> <p>2 Q. What percentage of the revenues are shared</p> <p>3 between Capital Asset Management and EFG Capital</p> <p>4 International?</p> <p>5 A. Of -- I'm sorry -- of --</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. Do you understand it?</p> <p>10 A. No.</p> <p>11 Q. Okay.</p> <p>12 MR. COATES: That -- that was the basis of my</p> <p>13 objection.</p> <p>14 BY MR. LAWRENCE KELLOGG:</p> <p>15 Q. All right. If -- if EFG Capital Asset</p> <p>16 Management is referred a customer, it pays a percentage</p> <p>17 of the revenue generated to EFG Capital International,</p> <p>18 the broker-dealer. Correct?</p> <p>19 A. Yes.</p> <p>20 Q. What's the percentage that's shared?</p> <p>21 A. I -- I don't recall precisely, but it may</p> <p>22 be -- it may be 70 percent.</p> <p>23 Q. How long has EFG Capital Asset Management been</p> <p>24 in business?</p> <p>25 A. Less than five years.</p>	182	<p>1 advisor to provide discretionary management services,</p> <p>2 would EFG Capital refer that person to somewhere else?</p> <p>3 What -- how would it be handled?</p> <p>4 A. In what time period?</p> <p>5 Q. Before the acquisition.</p> <p>6 A. It could have been referred to an affiliate of</p> <p>7 EFG.</p> <p>8 Q. Which affiliate was that?</p> <p>9 A. It could have been EFG Bank or EFG Private</p> <p>10 Bank at the time.</p> <p>11 Q. Okay. Did EFG Private Bank provide</p> <p>12 discretionary management services -- or discretionary</p> <p>13 investment services, I should say, for customers prior</p> <p>14 to 2005?</p> <p>15 A. Yes.</p> <p>16 Q. And does it do so today?</p> <p>17 A. Yes.</p> <p>18 Q. If a customer wants discretionary investment</p> <p>19 services, how is it determined which company, EFG Bank</p> <p>20 or EFG Capital Asset Management, gives the referral?</p> <p>21 A. Depends on the specific requirements of that</p> <p>22 customer.</p> <p>23 Q. Give us some examples, please.</p> <p>24 A. If a customer would like to have face-to-face</p> <p>25 interaction with a portfolio management team during --</p>

183	<p>1 on his business to Miami, we have an on-site portfolio 2 management team at EFG Capital Asset Management. 3 Q. What other factors might go into which company 4 gets the referral? 5 A. Specific investment strategy that the -- a 6 customer may want -- may want to pursue. Specific 7 limitations on the mandate. 8 Q. If the -- if the customer were to be referred 9 to EFG Bank for discretionary investment services and 10 advice, would the compensation shared be pursuant to the 11 business introducing revenue agreement and its 12 successors or would there be a separate agreement for 13 that sort of referral? 14 A. I don't know which agreement would cover that. 15 Q. You mentioned before that you believe the 16 referral fee to EF -- EFG Capital Asset would be 17 70 percent of the revenues generated. Is that the same 18 number for investment management services that are 19 referred to EFG Bank? 20 A. By EFG Capital? 21 Q. Yes. 22 A. I don't believe so, but I don't -- I'm not 23 sure what agreement would cover that. 24 (Thereupon, the referred-to document was 25 marked by the court reporter for Identification as</p>	185	<p>1 Q. You talking about the second recital -- 2 A. Yes. 3 Q. -- on page -- the second page of this exhibit? 4 Is that right? 5 A. Yes. 6 Q. And the first term of the agreement on page 3, 7 Bates-labeled 1949, says: "EFGI..." that's EFG 8 International "... shall assume all obligations of 9 EFGZ..." which is EFG Bank "... to make payments 10 under the existing agreement other than the revenue 11 fee." 12 What is the purpose of this change? 13 A. I -- I don't know precisely. 14 (Thereupon, the referred-to document was 15 marked by the court reporter for Identification as 16 Plaintiff's Exhibit 9.) 17 BY MR. LAWRENCE KELLOGG: 18 Q. Now let me show you what I'll mark as Exhibit 19 9, which is a Business Introducing and Revenue Agreement 20 dated -- effective as of January 1, 2005. It's EFG 21 Capital Bates Numbers 1953 through 1955. 22 MR. COATES: Thanks, Larry. 23 BY MR. LAWRENCE KELLOGG: 24 Q. Does your signature appear on this exhibit? 25 A. Yes, it does.</p>
184	<p>1 Plaintiff's Exhibit 8.) 2 BY MR. LAWRENCE KELLOGG: 3 Q. Let me show you what I've marked as Exhibit 8. 4 This is EFG Capital 1947 through 1952. It's a Novation 5 Agreement Relating to Revenue Agreement Between EFG and 6 EFG Capital. 7 Do you recognize either of the signatures on 8 this agreement? 9 A. Sixto Campano's and myself. 10 Q. Is it -- was this agreement executed by EFG 11 Bank and EFG International, to your knowledge? 12 A. I don't know. It may have been. 13 Q. Has -- was this novation agreement ever made 14 effective and performed? 15 A. It - it may have been. 16 Q. Well, do you know one way or the other? 17 A. With certainty, no. 18 Q. How did this novation agreement come about? 19 What caused this to happen? 20 A. I believe as a result of a reorganization in 21 Switzerland. 22 Q. How did the reorganization in Switzerland 23 result in this agreement? 24 A. I don't recall precisely, but I think Section 25 B addresses that issue.</p>	186	<p>1 Q. Now if you look at Exhibit 8 and compare it to 2 Exhibit 9, Exhibit 8 in the first recital refers to a 3 January 1, 2005, agreement, which appears to be 4 Exhibit 9. Is that correct? 5 A. What section are you referring to? I'm sorry. 6 Q. First recital says that EFG Bank and EFG 7 Capital entered into an agreement on January 1, 2005, 8 called a Business Introducing and Revenue Agreement. 9 A. Okay. 10 Q. And what I'm showing you as Exhibit 9, is that 11 the same agreement? 12 A. Okay. 13 Q. So the Novation Agreement was actually 14 changing Exhibit 9 in some fashion. Is that right? 15 A. With payments other than revenue fees, it 16 seems to be the only change. 17 Q. Okay. What services was EFG International 18 providing that would cause it to be obligated for all 19 payments other than revenue fees? 20 A. I -- I -- I was not involved in the 21 negotiation of either one of these agreements, either 22 the Business Introducing and Revenue Agreement or the 23 Novation Agreement, so I cannot recall precisely what 24 services EFG International may have been providing. 25 Q. Who is the person at EFG Capital who I should</p>

187	<p>1 ask questions about these two agreements, who was 2 involved? 3 A. Sixto Campano. 4 Q. Since the Novation Agreement, Exhibit 8, has 5 EFG Capital paid -- been paid any fees from EFG 6 International regarding referrals of customers? 7 A. I don't know what basis they may have 8 gotten -- EFG Capital may have received payment, whether 9 it was for all customers or something else, but I 10 believe that in the statement of income you showed me 11 there were payments reflected (here. 12 Q. From EFG International? 13 A. I can't recall, but I think you showed me a -- 14 an income statement to that effect. 15 (Thereupon, the referred-to document was 16 marked by the court reporter for Identification as 17 Plaintiff's Exhibit 10.) 18 BY MR. LAWRENCE KELLOGG: 19 Q. Let me show you what I've marked as Exhibit 20 10, which is an Amendment Relating to Business 21 Introducing and Revenue Agreement and Subsequent 22 Novation Agreement between EFG Bank, EFG International 23 and EFG Capital International. 24 This is dated as of December 31 -- well, it's 25 dated February 21, 2007, effective December 31, 2006.</p>	189	<p>1 Is that your understanding? 2 A. Is that -- what section is that that you're 3 referring to? 4 Q. Section 1.2. 5 A. Yes, in general terms. 6 Q. It says here, among services provided are 7 back-office work flow and process advice. 8 What does that mean? 9 A. I was not party to the creation of this 10 agreement and not aware as to how it was technically 11 implemented with EFG Capital. 12 Q. Well, what -- what, if any, back-office work 13 flow advice or services are provided by EFG Bank to EFG 14 Capital International? 15 A. I don't know under this agreement. 16 Q. Do you know what risk management support and 17 advice is provided? 18 A. No. 19 Q. Do you know what financial and accounting 20 supporting advice is provided? 21 A. No. 22 Q. Do you know what treasury management support 23 and advice is provided? 24 A. Nope. 25 Q. Do you know what compliance and legal support</p>
188	<p>1 Have you seen this agreement before? 2 A. Yes. 3 Q. Apparently from this agreement the commissions 4 to be paid to EFG Capital were increased from 30 percent 5 to 50 percent. Is that right? 6 A. That's what it indicates in Section B. 7 Q. Has it been increased since that date? 8 A. I don't believe so, but I was not involved in 9 the negotiation of this agreement. 10 (Thereupon, the referred-to document was 11 marked by the court reporter for Identification as 12 Plaintiff's Exhibit 11.) 13 BY MR. LAWRENCE KELLOGG: 14 Q. Let me show what I've marked as Exhibit 11, 15 which is something called an Operational Advice and 16 Support Services Agreement between EFG Bank and EFG 17 Capital International. It's Bates Numbers EFG Capital 18 1959 through 1968. 19 Have you seen this agreement before? 20 A. I may have seen it before. 21 Q. Now, this agreement appears to provide that 22 EFG Bank is going to provide certain operational advice 23 and support services to EFG International Group 24 companies including EFG Capital International 25 Corporation.</p>	190	<p>1 and advice is provided? 2 A. Not specifically. 3 Q. Do you know generally? 4 A. Not unless they give us guidance as to an 5 issue that they may want to give us guidance on or -- 6 Q. Give us an example. 7 A. Or we -- or we seek guidance. 8 Q. Give us an example. 9 A. I can't think of a specific example, but EFG 10 International is the parent of EFG Capital. So there 11 may be instances where we may seek the advice of 12 in-house counsel regarding a transaction that we could 13 contemplate. 14 MR. COATES: You can -- you can discuss in 15 general terms the topic, but I am going to instruct 16 you not to answer any specific questions as to 17 advice you received from counsel. 18 BY MR. LAWRENCE KELLOGG: 19 Q. Well, would you be seeking that advice from 20 EFG International's counsel or EFG Bank's counsel or 21 both? 22 MR. COATES: Object to the form of the 23 question. 24 BY MR. LAWRENCE KELLOGG: 25 Q. You can answer.</p>

191	<p>1 A. Depends on the -- on the situation.</p> <p>2 Q. Do you know what internal audit advice or</p> <p>3 services are provided to EFG Capital from EFG Bank?</p> <p>4 A. Internal audit audits EFG Capital on a</p> <p>5 periodic basis.</p> <p>6 Q. Are these financial audits, operating --</p> <p>7 operational audits or both or others?</p> <p>8 MR. COATES: Object to the form.</p> <p>9 THE WITNESS: Audits of the different</p> <p>10 functions within EFG Capital.</p> <p>11 BY MR. LAWRENCE KELLOGG:</p> <p>12 Q. Are you provided with -- with copies of these</p> <p>13 audits?</p> <p>14 A. Yes.</p> <p>15 Q. And do you review them?</p> <p>16 A. Yes.</p> <p>17 Q. Have there been any audits done of the</p> <p>18 Fairfield Sentry/Bernie Madoff situation?</p> <p>19 A. I don't recall specifically.</p> <p>20 Q. Did anybody from EFG Bank or EFG Capital come</p> <p>21 in and audit your EFG Capital International as to what</p> <p>22 happened?</p> <p>23 A. Not that I'm aware of.</p> <p>24 Q. Was there any audit or report done on the --</p> <p>25 on the due diligence procedures employed by EFG Capital</p>	193	<p>1 THE WITNESS: Could you be more --</p> <p>2 BY MR. LAWRENCE KELLOGG:</p> <p>3 Q. Bad question.</p> <p>4 You said you haven't seen any internal or</p> <p>5 external audits done of the due diligence that EFG</p> <p>6 Capital did on Fairfield Sentry and Madoff. That's</p> <p>7 right?</p> <p>8 A. That's correct.</p> <p>9 Q. All right. Have you seen any analysis,</p> <p>10 whether you call them audits or not, any analysis done</p> <p>11 of the due diligence that EFG Capital did on Fairfield</p> <p>12 Sentry and/or Madoff?</p> <p>13 A. No.</p> <p>14 Q. Have there been any recommendations from</p> <p>15 anyone at EFG International or any of its affiliates</p> <p>16 regarding changes in your due diligence procedures that</p> <p>17 should result from the fact that the Fairfield and</p> <p>18 Madoff investment turned out to be worthless?</p> <p>19 MR. COATES: I'm going to object to the form</p> <p>20 of that question.</p> <p>21 BY MR. LAWRENCE KELLOGG:</p> <p>22 Q. You may answer.</p> <p>23 A. I don't believe there's been any significant</p> <p>24 changes in our due diligence procedures in the last two</p> <p>25 years.</p>
192	<p>1 in connection with Fairfield Sentry and Madoff?</p> <p>2 A. Not that I'm aware.</p> <p>3 Q. Have there been any reports generated on that</p> <p>4 topic that you have reviewed?</p> <p>5 A. On which --</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. On which topic?</p> <p>11 Q. On the topic of the due diligence procedures</p> <p>12 conducted by EFG Capital International on Fairfield</p> <p>13 Sentry and/or Madoff.</p> <p>14 A. For internal audit?</p> <p>15 Q. Yes.</p> <p>16 A. Not that I'm aware of.</p> <p>17 Q. How about an external audit? Was an external</p> <p>18 auditor brought in to look at those topics?</p> <p>19 A. No.</p> <p>20 Q. Have you seen any -- any reports at all or any</p> <p>21 analysis at all done from any EFG internal or external</p> <p>22 person about the due diligence procedures at EFG Capital</p> <p>23 and/or Madoff?</p> <p>24 MR. COATES: Object to the form of the</p> <p>25 question.</p>	194	<p>1 Q. Since Madoff was revealed as a fraud, have</p> <p>2 there been any significant changes in the due diligence</p> <p>3 procedures?</p> <p>4 A. I think --</p> <p>5 MR. COATES: Object to the form of the</p> <p>6 question.</p> <p>7 BY MR. LAWRENCE KELLOGG:</p> <p>8 Q. You said two years, you know, I -- does</p> <p>9 that -- does that predate Madoff?</p> <p>10 A. I think I was referring to the two</p> <p>11 years -- almost two years since.</p> <p>12 Q. Okay. Madoff was revealed in December of</p> <p>13 2008. Is that right?</p> <p>14 A. Correct.</p> <p>15 Q. So since then there have been no significant</p> <p>16 changes in your due diligence procedures at the company?</p> <p>17 A. I don't believe so.</p> <p>18 Q. All right. Other than the agreements we've</p> <p>19 gone over, the revenue sharing agreements, are there any</p> <p>20 other agreements, to your knowledge, pursuant to which</p> <p>21 EFG Capital International shares revenue with any other</p> <p>22 EFG-related company?</p> <p>23 A. Not that I can recall.</p> <p>24 (Thereupon, the referred-to document was</p> <p>25 marked by the court reporter for Identification as</p>

195	<p>1 Plaintiff's Exhibit 13.)</p> <p>2 BY MR. LAWRENCE KELLOGG:</p> <p>3 Q. Let me mark as Exhibit 13 something called</p> <p>4 Fairfield Sentry Limited Semiannual Update. It's Bates</p> <p>5 Numbers EFG Capital 1703 through 1712.</p> <p>6 Do you recognize this document?</p> <p>7 A. Could you show me the document?</p> <p>8 Q. Oh, I'm sorry. I thought I gave it to you.</p> <p>9 I'm sorry.</p> <p>10 A. I don't recall this document.</p> <p>11 Q. Okay. Let me refer -- these may be separate</p> <p>12 documents.</p> <p>13 MR. COATES: Excuse me?</p> <p>14 MR. LAWRENCE KELLOGG: These may be separate</p> <p>15 documents, as I'm looking at them here.</p> <p>16 MR. COATES: Yeah, I think they are.</p> <p>17 BY MR. LAWRENCE KELLOGG:</p> <p>18 Q. But if you -- I'm looking particularly at</p> <p>19 Bates Number 1710. This is called --</p> <p>20 MR. COATES: Those are the last two pages?</p> <p>21 MR. LAWRENCE KELLOGG: Yeah, the last three</p> <p>22 pages actually should be.</p> <p>23 BY MR. LAWRENCE KELLOGG:</p> <p>24 Q. This is called Fairfield Sentry Limited</p> <p>25 Monthly Strategy Review June 2008. It's on the heading</p>	197	<p>1 Plaintiff's Exhibit 12.)</p> <p>2 BY MR. LAWRENCE KELLOGG:</p> <p>3 Q. Exhibit 12 is a document entitled "Fairfield</p> <p>4 Sentry Limited Monthly Strategy Review." It's a</p> <p>5 three-page document Bates-labeled EFG Capital 1710</p> <p>6 through 1712. Ask if you recognize --</p> <p>7 MR. COATES: Excuse me, Larry, I don't want to</p> <p>8 interrupt you, but I think we already have -- had a</p> <p>9 12.</p> <p>10 MR. LAWRENCE KELLOGG: You don't. You have</p> <p>11 13. I skipped the 12.</p> <p>12 MR. COATES: What was the operational device?</p> <p>13 MR. LAWRENCE KELLOGG: That was 11. 11, I</p> <p>14 believe.</p> <p>15 MR. COATES: Okay. 13. All right. Well, in</p> <p>16 any event, I'm sorry for interrupting you.</p> <p>17 BY MR. LAWRENCE KELLOGG:</p> <p>18 Q. Do you recognize Exhibit 12?</p> <p>19 A. I may have seen a report like this, but I</p> <p>20 don't recall specifically this report.</p> <p>21 Q. Did there come a point in time when Fairfield</p> <p>22 Greenwich Group or Fairfield Sentry would provide</p> <p>23 monthly and semiannual or perhaps annual reviews of</p> <p>24 their performance and strategy?</p> <p>25 A. I think Fairfield Greenwich provided similar</p>
196	<p>1 of EFG Capital.</p> <p>2 Do you recognize this document?</p> <p>3 MR. COATES: I'm going to just make an</p> <p>4 observation. I think 17 -- Bates Number 1712</p> <p>5 doesn't appear like it goes with 1711 -- 1710.</p> <p>6 There's a 1711 missing here.</p> <p>7 MR. LAWRENCE KELLOGG: 1711 is not in your</p> <p>8 copy?</p> <p>9 MR. COATES: No.</p> <p>10 MR. JASON KELLOGG: It's in here, this.</p> <p>11 MR. LAWRENCE KELLOGG: Yeah. It's in mine.</p> <p>12 All right. Let's go off the record for a</p> <p>13 second, please.</p> <p>14 THE VIDEOGRAPHER: Going off the record. The</p> <p>15 time is 10:30.</p> <p>16 (Thereupon, a recess was taken from 10:31 a.m.</p> <p>17 to 10:36 a.m.)</p> <p>18 THE VIDEOGRAPHER: All right. We're now back</p> <p>19 on the record. The time is 10:36.</p> <p>20 BY MR. LAWRENCE KELLOGG:</p> <p>21 Q. All right. While we were off the record I</p> <p>22 found the correct document and I copied it and I marked</p> <p>23 it as Exhibit 12.</p> <p>24 (Thereupon, the referred-to document was</p> <p>25 marked by the court reporter for identification as</p>	198	<p>1 information on a periodic basis for many years.</p> <p>2 Q. All right. When -- when that was provided to</p> <p>3 EFG Capital International, would they in turn send it</p> <p>4 out to the clients who were invested in Fairfield?</p> <p>5 A. It depends whether the document was intended</p> <p>6 for distributors or intended for shareholders.</p> <p>7 Q. If you look at the first page of Exhibit 12,</p> <p>8 this appears to be on your company's letterhead, EFG</p> <p>9 Capital.</p> <p>10 A. Yes.</p> <p>11 Q. Was -- was there -- were there persons in your</p> <p>12 company who were in charge of putting together notices</p> <p>13 like this and sending them out to customers?</p> <p>14 A. Obviously someone was responsible for this,</p> <p>15 but I can't recall who in particular was responsible.</p> <p>16 Q. All right. Was there a department or job</p> <p>17 function whose responsibility was to prepare and</p> <p>18 disseminate information such as this, in Exhibit 12?</p> <p>19 A. That activity would have reported to Sixto</p> <p>20 Campano.</p> <p>21 Q. If you look at -- and -- so do you -- you</p> <p>22 don't know who would have prepared or what job function</p> <p>23 would have prepared the language contained in the first</p> <p>24 page of Exhibit 12, do you?</p> <p>25 A. No.</p>

199	<p>1 Q. All right. Under the term "general notice,"</p> <p>2 about middle of the page, first page of Exhibit 12, it</p> <p>3 says: "EFG Capital is the marketing name for the</p> <p>4 securities and investment advisory businesses of EFG</p> <p>5 Capital International Corp. and its affiliates</p> <p>6 worldwide."</p> <p>7 Is that correct?</p> <p>8 A. It's correct with the extent of EFG Capital</p> <p>9 companies.</p> <p>10 Q. What do you mean?</p> <p>11 A. So EFG Capital, rather than referring to "EFG</p> <p>12 Capital International Corp.," is often referred to as</p> <p>13 just "EFG Capital."</p> <p>14 Q. Well, up at the top here it says "EFG</p> <p>15 Capital." Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And it defines EFG Capital as the marketing</p> <p>18 name for the securities and investment advisory</p> <p>19 businesses of EFG Capital International and its</p> <p>20 affiliates worldwide.</p> <p>21 And my question is, is that true?</p> <p>22 A. Its affiliates meaning the entities part of</p> <p>23 EFG Capital Holdings.</p> <p>24 Q. Okay. So all those that are part of EFG</p> <p>25 Capital Holdings or all of those that are part of EFG</p>	201	<p>1 out to your customers?</p> <p>2 MR. COATES: Object to the form.</p> <p>3 THE WITNESS: I don't believe so.</p> <p>4 BY MR. LAWRENCE KELLOGG:</p> <p>5 Q. Do you know who would be responsible for</p> <p>6 approving the language in these notices?</p> <p>7 A. Possibly consulted with external counsel in</p> <p>8 Florida.</p> <p>9 Q. That would be Holland & Knight?</p> <p>10 A. Holland & Knight or Morgan Lewis.</p> <p>11 Q. All right. We spoke briefly last week about</p> <p>12 agreements between Fairfield Sentry or Fairfield</p> <p>13 Greenwich, or Fairfield and EFG Capital regarding</p> <p>14 rebates.</p> <p>15 Do you recall that testimony?</p> <p>16 A. Yes.</p> <p>17 (Thereupon, the referred-to document was</p> <p>18 marked by the court reporter for identification as</p> <p>19 Plaintiff's Exhibit 14.)</p> <p>20 BY MR. LAWRENCE KELLOGG:</p> <p>21 Q. Since then we've been given some more</p> <p>22 information from you. Let me mark as Exhibit 14 a fax</p> <p>23 to you from Ms. Lourdes Barreneche dated May 6th, two-</p> <p>24 -- May 6th, 1999. It's EFG Capital Bates Number 1924.</p> <p>25 It says: "Dear Victor, I would like to</p>
200	<p>1 International?</p> <p>2 MR. COATES: Object to the form.</p> <p>3 THE WITNESS: This notice refers specifically</p> <p>4 to companies within EFG Capital Holdings.</p> <p>5 BY MR. LAWRENCE KELLOGG:</p> <p>6 Q. Where does it say that? Where does it say</p> <p>7 that?</p> <p>8 A. I-- I don't think it says that anywhere.</p> <p>9 Q. Okay. So your -- your understanding is this</p> <p>10 only refers to EFG Holdings-related companies. Is that</p> <p>11 right?</p> <p>12 A. Correct.</p> <p>13 Q. And what are the EFG Holdings-related</p> <p>14 companies that are worldwide affiliates of EFG Capital</p> <p>15 International Corp.?</p> <p>16 A. EFG Capital International, the broker-dealer;</p> <p>17 EFG Capital Asset Management, the registered investor</p> <p>18 advisor. The two companies named here.</p> <p>19 Q. So the only worldwide affiliates referred to</p> <p>20 here are the ones here in the United States. Is that</p> <p>21 right? Is that your testimony?</p> <p>22 A. As to what EFG Capital refers to.</p> <p>23 Q. Did -- did anyone in legal or compliance at</p> <p>24 EFG Bank or EFG International approve language that</p> <p>25 would be contained in notices like this that you sent</p>	202	<p>1 confirm the following with regard to the rebate fees</p> <p>2 payable to EFG Capital International in the Fairfield</p> <p>3 Sentry: The new rebate applicable for the year 1999</p> <p>4 will be 25 percent of the management fee. By the end of</p> <p>5 the second quarter EFG will receive 10 percent (increase</p> <p>6 of 15 percent to 25 percent) for the first quarter 1999</p> <p>7 in addition to the second quarter rebate."</p> <p>8 Do you see that?</p> <p>9 A. Yes, I do.</p> <p>10 Q. Does this refresh your memory that prior to</p> <p>11 1999, EFG was receiving 15 percent of the management fee</p> <p>12 that Fairfield was charging to the fund for managing it?</p> <p>13 A. That's correct.</p> <p>14 Q. And then in 1999, effective January 1,</p> <p>15 apparently, that fee was increased from 15 percent to</p> <p>16 25 percent?</p> <p>17 A. That's correct.</p> <p>18 Q. Was that something negotiated by you?</p> <p>19 A. Possibly.</p> <p>20 Q. Well, do you have any recollection of</p> <p>21 negotiating?</p> <p>22 A. I recall discussing this issue with Lourdes</p> <p>23 Barreneche and Jeffrey Tucker.</p> <p>24 Q. When did you discuss the issue?</p> <p>25 A. Possibly in 1999.</p>

203	<p>1 Q. What caused you to do that?</p> <p>2 A. I can't recall specifically.</p> <p>3 Q. Was this something that you discussed with</p> <p>4 Mr. Howell in advance?</p> <p>5 A. Discuss what aspects? Sorry.</p> <p>6 Q. That you were going to try to get the</p> <p>7 management fee percentage increased from 15 to 25 or</p> <p>8 somewhere?</p> <p>9 A. I may have informed him.</p> <p>10 Q. Was anybody else involved in those discussions</p> <p>11 for EFG Capital International?</p> <p>12 A. In that time frame, probably, yeah, Mark</p> <p>13 McCluskey would have been involved.</p> <p>14 Q. Was the discussion at a face-to-face meeting?</p> <p>15 A. I can't recall. It -- it may have been in New</p> <p>16 York.</p> <p>17 Q. Did Mr. Howell ever attend any meetings with</p> <p>18 Fairfield?</p> <p>19 A. He may have.</p> <p>20 Q. Do you recall him attending meetings with</p> <p>21 Fairfield?</p> <p>22 A. Specifically with -- with EFG Capital or -- I</p> <p>23 mean, I'm not sure you're --</p> <p>24 Q. Well, he -- let's start with EFG Capital.</p> <p>25 Did you ever attend a meeting with Mr. Howell</p>	205	<p>1 A. When it was formed in 2005.</p> <p>2 Q. What is his actual job title, if you know it?</p> <p>3 A. He is chief executive of EFG International.</p> <p>4 Q. And prior to that he was chief executive of</p> <p>5 EFG Private Bank. Is that right?</p> <p>6 A. I believe so.</p> <p>7 Q. Does -- does Mr. Howell or has Mr. Howell</p> <p>8 participated in setting your compensation?</p> <p>9 A. In setting my direct compensation? Yes.</p> <p>10 Q. How does -- how -- how -- what is his</p> <p>11 participation in your compensation?</p> <p>12 A. He agreed to the initial compensation when I</p> <p>13 was hired in 1996.</p> <p>14 Q. Do you -- as part of your compensation over</p> <p>15 the years have you been -- have you received incentive</p> <p>16 bonuses or bonuses of any kind?</p> <p>17 A. I do receive bonuses.</p> <p>18 Q. Are your bonuses at all tied to the</p> <p>19 performance of EFG Capital International?</p> <p>20 A. Yes, they are.</p> <p>21 Q. How is it tied to that performance?</p> <p>22 A. Formulaic. Formulaic.</p> <p>23 Q. Formulaic. What is the formula?</p> <p>24 A. A percentage of the net revenues generated by</p> <p>25 the businesses within that.</p>
204	<p>1 and Fairfield?</p> <p>2 A. I -- I really can't recall.</p> <p>3 Q. Did Mr. Howell, without you or without EFG</p> <p>4 Capital, have meetings with Fairfield?</p> <p>5 A. He may have.</p> <p>6 Q. Do you know whether those meetings took place</p> <p>7 in the United States?</p> <p>8 A. I -- I don't know.</p> <p>9 Q. Would Mr. Howell periodically come to the</p> <p>10 United States for business meetings with you?</p> <p>11 A. With EFG Capital, yes.</p> <p>12 Q. Yes.</p> <p>13 How often would that occur?</p> <p>14 A. Depends on the year. Once, twice.</p> <p>15 Q. What would be the purpose of his visits,</p> <p>16 generally speaking, business discussions?</p> <p>17 A. Review business activities.</p> <p>18 Q. I think you said last time that you have</p> <p>19 always reported to Mr. Howell. Is that right?</p> <p>20 A. That's correct.</p> <p>21 Q. So during 1996 until today you've reported to</p> <p>22 Mr. Howell?</p> <p>23 A. That's correct.</p> <p>24 Q. When did Mr. Howell become the head of EFG</p> <p>25 International?</p>	206	<p>1 Q. So when you say "the businesses" -- "the</p> <p>2 businesses within that," do you include EFG Capital</p> <p>3 Asset Management?</p> <p>4 A. EFG Capital Holdings' companies.</p> <p>5 Q. And that would include the asset management</p> <p>6 business. Is that right?</p> <p>7 A. Yes, it would.</p> <p>8 Q. Does EFG Capital Holdings have separate</p> <p>9 consolidated financial statements?</p> <p>10 A. Apart from?</p> <p>11 Q. Apart from we've -- do they have -- do they --</p> <p>12 does EFG Capital Holdings consolidate the business</p> <p>13 operations of its subsidiaries into one consolidated</p> <p>14 financial statement?</p> <p>15 A. I believe so.</p> <p>16 Q. What -- what is the percentage of the net</p> <p>17 revenues that are used to calculate your bonus?</p> <p>18 A. Five percent.</p> <p>19 Q. Does any part of your compensation depend upon</p> <p>20 the performance of EFG Bank?</p> <p>21 A. No.</p> <p>22 Q. Does any part of your compensation depend upon</p> <p>23 the performance of EFG International?</p> <p>24 A. No.</p> <p>25 Q. Does Mr. Howell approve the compensation of</p>

207	<p>1 Mr. Campano?</p> <p>2 A. Yes.</p> <p>3 Q. Does he approve the compensation of all the</p> <p>4 senior executives of EFG Holdings?</p> <p>5 MR. COATES: I'm going to object to the form</p> <p>6 of the question.</p> <p>7 BY MR. LAWRENCE KELLOGG:</p> <p>8 Q. You can answer.</p> <p>9 A. I'm -- yes, I'm -- I'm trying to recall.</p> <p>10 Q. Okay.</p> <p>11 A. No, he would only approve the compensation of</p> <p>12 Mr. Campano and myself.</p> <p>13 Q. Does Mr. Howell approve the budget of -- is</p> <p>14 there a consolidated budget of EFG Holdings?</p> <p>15 MR. COATES: I'm going to object to the form</p> <p>16 of those questions. I believe these -- these</p> <p>17 questions were asked last time.</p> <p>18 MR. LAWRENCE KELLOGG: I don't think so.</p> <p>19 MR. COATES: Excuse me?</p> <p>20 MR. LAWRENCE KELLOGG: I don't think so. I --</p> <p>21 I have no intention or desire to redo my</p> <p>22 deposition.</p> <p>23 MR. COATES: Sure.</p> <p>24 MR. LAWRENCE KELLOGG: I don't. I mean, I'm</p> <p>25 not trying to, but I know -- maybe I did. If I</p>	209	<p>1 Q. Well, we've talked about various companies</p> <p>2 under EFG Holdings, which would be Capital Asset</p> <p>3 Management --</p> <p>4 MR. COATES: Hold. Wait.</p> <p>5 BY MR. LAWRENCE KELLOGG:</p> <p>6 Q. -- EFG Capital International --</p> <p>7 MR. COATES: Just so the record's clear, I</p> <p>8 think it's "EFG Capital Holdings." You keep saying</p> <p>9 "EFG Holdings" --</p> <p>10 MR. LAWRENCE KELLOGG: All right. I'm sorry.</p> <p>11 MR. COATES: -- and we want to be precise.</p> <p>12 MR. LAWRENCE KELLOGG: Does that -- I hope</p> <p>13 that doesn't change any of the -- I'm sorry.</p> <p>14 THE WITNESS: I -- I don't even know if a EFG</p> <p>15 Holdings exists.</p> <p>16 BY MR. LAWRENCE KELLOGG:</p> <p>17 Q. Okay. There's an EFG Capital Holdings,</p> <p>18 though, isn't there?</p> <p>19 A. Yes, there is.</p> <p>20 Q. All right.</p> <p>21 A. It did not exist in 1999.</p> <p>22 Q. Okay. In 1999 -- from 1999 forward, any</p> <p>23 rebates that were paid by Fairfield Sentry, would -- did</p> <p>24 they all go to EFG Capital International or were they</p> <p>25 spread out among other companies that might be</p>
208	<p>1 did, I apologize.</p> <p>2 BY MR. LAWRENCE KELLOGG:</p> <p>3 Q. But is there a -- is there a consolidated -- I</p> <p>4 know we talked about budgets, but is there a</p> <p>5 consolidated budget done every year of EFG Holdings and</p> <p>6 all of its companies?</p> <p>7 A. There are -- there is certainly a budget done</p> <p>8 of the broker-dealer and of the asset management</p> <p>9 company.</p> <p>10 Q. Are they separate or are they a consolidated</p> <p>11 budget?</p> <p>12 A. They are for each company.</p> <p>13 Q. Are those budgets reviewed -- before they are</p> <p>14 approved, are they reviewed by Mr. Howell?</p> <p>15 A. They are approved locally.</p> <p>16 Q. Are they reviewed by Mr. Howell?</p> <p>17 A. I don't know.</p> <p>18 Q. All right. As of May 1999, Exhibit 14, we</p> <p>19 were talking about the increase in the rebate from</p> <p>20 Fairfield Sentry to EFG Capital.</p> <p>21 Just so I understand, any customer that would</p> <p>22 be referred to by any EFG Holdings-related entity, to</p> <p>23 Fairfield, would be covered by this rebate. Is that</p> <p>24 right?</p> <p>25 A. I'm not sure what you mean by "EFG Holdings."</p>	210	<p>1 referring -- EFG companies that might be referring</p> <p>2 customers to them?</p> <p>3 MR. COATES: Object to the form of the</p> <p>4 question.</p> <p>5 THE WITNESS: I'm only aware of the agreement</p> <p>6 signed between EFG Capital and the Fairfield</p> <p>7 Greenwich Group for distribution of this fund and</p> <p>8 other funds that they also sponsored.</p> <p>9 BY MR. LAWRENCE KELLOGG:</p> <p>10 Q. So would -- if a customer of EFG Asset</p> <p>11 Management was referred, would the rebate fee be paid to</p> <p>12 EFG Capital International?</p> <p>13 MR. COATES: I'm going to object to the form</p> <p>14 of the question.</p> <p>15 You may answer, sir.</p> <p>16 THE WITNESS: I answered as far as EFG Capital</p> <p>17 International.</p> <p>18 EFG Capital Asset Management didn't exist in</p> <p>19 1999.</p> <p>20 BY MR. LAWRENCE KELLOGG:</p> <p>21 Q. Okay. It was formed or acquired five years</p> <p>22 ago.</p> <p>23 At -- subsequent to that time, would -- would</p> <p>24 any fees or any customers who were referred by EFG</p> <p>25 Capital Asset Management, would rebates be paid to EFG</p>

211	<p>1 Capital International?</p> <p>2 MR. COATES: Object to the form.</p> <p>3 You may answer.</p> <p>4 THE WITNESS: The -- the agreement that I'm</p> <p>5 aware of is between EFG Capital International and</p> <p>6 the Fairfield Greenwich Group as sponsor of</p> <p>7 Fairfield Sentry and other funds.</p> <p>8 I don't recall whether that also affected EFG</p> <p>9 Capital Asset Management.</p> <p>10 BY MR. LAWRENCE KELLOGG:</p> <p>11 Q. Did EFG Capital Asset Management, in its</p> <p>12 discretionary accounts, subscribe to Fairfield Sentry</p> <p>13 for customers?</p> <p>14 A. I don't believe so.</p> <p>15 Q. So -- and none of those discretionary-managed</p> <p>16 accounts had Fairfield Sentry investments in it? Is</p> <p>17 that right?</p> <p>18 A. They may have had through a multi-manager</p> <p>19 fund. They may have had through a multi-manager fund</p> <p>20 Q. What does that mean?</p> <p>21 A. If they purchased a fund, a hedge fund, which</p> <p>22 invested in multi-manager, multi-asset class hedge funds</p> <p>23 and one of the underlying holdings was Fairfield Sentry,</p> <p>24 they would have had indirect exposure to Fairfield</p> <p>25 Sentry.</p>	213	<p>1 Q. Do you know why that is?</p> <p>2 A. No.</p> <p>3 Q. How do you know that there -- there wasn't</p> <p>4 any?</p> <p>5 A. I don't recall having seen that.</p> <p>6 Q. How would you have come to see that?</p> <p>7 A. Through periodic investment review committees.</p> <p>8 Q. What are those?</p> <p>9 A. Senior management reviews on a periodic basis</p> <p>10 the activities of the -- of EFG Capital Asset</p> <p>11 Management. And that would include review of specific</p> <p>12 accounts on a periodic basis.</p> <p>13 Q. Do you know whether EFG Bank or EFG Private</p> <p>14 Bank, when it was managing its clients' investments,</p> <p>15 invested directly in Fairfield Sentry?</p> <p>16 A. I have no knowledge of that.</p> <p>17 Q. Do you know whether EFG Capital Asset</p> <p>18 Management invested any of its discretionary accounts in</p> <p>19 any other Madoff feeder funds?</p> <p>20 A. The only one I'm aware of is a multi-manager</p> <p>21 fund that may have had exposure through Fairfield --</p> <p>22 through Fairfield Sentry.</p> <p>23 Q. What was the multi-manager fund you're</p> <p>24 referring to?</p> <p>25 A. I believe it was called Irongate.</p>
212	<p>1 Q. But if it was -- there were -- to your</p> <p>2 knowledge there were no direct subscriptions of managed</p> <p>3 money into Fairfield Sentry? Is that right?</p> <p>4 A. By the asset management company? That's what</p> <p>5 I recall.</p> <p>6 Q. Was there a policy or a decision not to do</p> <p>7 that internally?</p> <p>8 A. No.</p> <p>9 Q. Would someone else do it on behalf of the</p> <p>10 asset management company?</p> <p>11 MR. COATES: Object to the form of the</p> <p>12 question.</p> <p>13 THE WITNESS: I don't understand the question.</p> <p>14 BY MR. LAWRENCE KELLOGG:</p> <p>15 Q. The way you phrased your answer, I'm wondering</p> <p>16 whether -- whether the discretionary accounts --</p> <p>17 A. Uh-huh.</p> <p>18 Q. -- and you mentioned they -- they may have</p> <p>19 invested in a fund of funds that would have Fairfield</p> <p>20 Sentry in it; but to your knowledge, there were no</p> <p>21 direct investments into Fairfield Sentry by the</p> <p>22 discretionary managers at EFG Asset -- Capital --</p> <p>23 A. EFG --</p> <p>24 Q. -- Asset, right?</p> <p>25 A. Correct.</p>	214	<p>1 Q. Do you know generally the amount of losses</p> <p>2 suffered by EFG Capital Asset Management customers from</p> <p>3 their investments in Irongate?</p> <p>4 A. No.</p> <p>5 Q. Do you have a general idea?</p> <p>6 A. No.</p> <p>7 Q. When you mentioned the investment review</p> <p>8 committees, would -- would the investment review</p> <p>9 committee approve or have any input in the approval of</p> <p>10 what funds might be appropriate for investment of</p> <p>11 managed money?</p> <p>12 MR. COATES: I'm going to object to the form.</p> <p>13 You may answer.</p> <p>14 THE WITNESS: The investment review committee</p> <p>15 is not involved in the approval of the funds,</p> <p>16 rather the review of the accounts being managed on</p> <p>17 a discretionary basis.</p> <p>18 BY MR. LAWRENCE KELLOGG:</p> <p>19 Q. What would be the purpose of the review?</p> <p>20 A. To ascertain whether they're being managed in</p> <p>21 accordance with the mandates provided by the clients.</p> <p>22 Q. Was a decision made that Fairfield Sentry</p> <p>23 would -- investments of managed money in Fairfield</p> <p>24 Sentry would not be in accordance with the mandates of</p> <p>25 the clients?</p>

215	<p>1 A. No.</p> <p>2 Q. Was there any rebate paid by Irongate, to your</p> <p>3 knowledge?</p> <p>4 A. I-- I don't recall, but there may have been.</p> <p>5 We had a distribution agreement with a number of funds</p> <p>6 sponsored by Fairfield Greenwich.</p> <p>7 Q. Was Irongate sponsored by Fairfield Greenwich?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 (Thereupon, the referred-to document was</p> <p>11 marked by the court reporter for Identification as</p> <p>12 Plaintiff's Exhibit 15.)</p> <p>13 BY MR. LAWRENCE KELLOGG:</p> <p>14 Q. I'll show you what I'll mark as Exhibit 15,</p> <p>15 which is Bates-labeled EFG Capital 1925 through 1928,</p> <p>16 dated February 21, 2001, a Letter of Understanding.</p> <p>17 Does your signature appear on Exhibit 15?</p> <p>18 A. Yes, it does.</p> <p>19 Q. Did you have anything to do with negotiating</p> <p>20 this agreement?</p> <p>21 A. I was probably involved in some aspects of it,</p> <p>22 yes.</p> <p>23 Q. Well, how did this agreement come about?</p> <p>24 A. I'm sorry?</p> <p>25 Q. How did this come about, this agreement?</p>	217	<p>1 provided in Exhibit 16 on behalf of EFG Capital</p> <p>2 International?</p> <p>3 A. Yes.</p> <p>4 Q. Now, this one lists Fairfield Sentry Limited</p> <p>5 Fund (Class B). Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And it says that for that fund EFG Capital</p> <p>8 International is going to be paid 20 basis points from</p> <p>9 the management fee and 20 percent of the incentive fee</p> <p>10 per annum, meaning every year. Is that right?</p> <p>11 A. That's correct.</p> <p>12 Q. Were -- were these fees paid on an annual</p> <p>13 basis or a quarterly basis?</p> <p>14 A. I cannot recall when exactly they paid them</p> <p>15 throughout the year.</p> <p>16 Q. And what's the difference between the</p> <p>17 management fee and the incentive fee in your</p> <p>18 understanding?</p> <p>19 A. I'm sorry. For which one of the two Fairfield</p> <p>20 Sentry funds? I'm not sure there's a difference.</p> <p>21 I'm --</p> <p>22 Q. Fairfield Sentry Limited Fund (Class B).</p> <p>23 Let's start with that one.</p> <p>24 A. I'm not sure what -- what the Class B was of</p> <p>25 that fund.</p>
216	<p>1 A. I can't recall whether Fairfield Greenwich</p> <p>2 increased the number of funds they were sponsoring and</p> <p>3 they wanted to have an agreement with us as distributors</p> <p>4 for a larger number of funds that they were sponsoring.</p> <p>5 Q. On page 2 there's a list of various funds.</p> <p>6 Were any of the funds listed on page 2 Madoff feeder</p> <p>7 funds?</p> <p>8 A. I-- I don't believe so, but I cannot be</p> <p>9 certain about every single one of them.</p> <p>10 Q. Do you know whether EFG Capital International</p> <p>11 drafted this agreement or Fairfield drafted it or was it</p> <p>12 a combination of both?</p> <p>13 A. I believe this was drafted by Fairfield</p> <p>14 Greenwich.</p> <p>15 (Thereupon, the referred-to document was</p> <p>16 marked by the court reporter for Identification as</p> <p>17 Plaintiff's Exhibit 16.)</p> <p>18 BY MR. LAWRENCE KELLOGG:</p> <p>19 Q. I'll show you what I'm going to mark as</p> <p>20 Exhibit 16, which is a November 1, 2004, letter --</p> <p>21 sorry -- from Fairfield to EFG Capital International,</p> <p>22 Bates Number EFG Capital 1929.</p> <p>23 Is this your signature at the bottom of this?</p> <p>24 A. Yes, it is.</p> <p>25 Q. And you have agreed and accepted the terms</p>	218	<p>1 Q. All right.</p> <p>2 A. Okay.</p> <p>3 Q. Did you have an understanding of the fees that</p> <p>4 EFG Capital --</p> <p>5 A. Yes.</p> <p>6 Q. -- was being rebated?</p> <p>7 A. Yes.</p> <p>8 Q. What's the difference between a management fee</p> <p>9 and an incentive fee?</p> <p>10 A. The management fee was a fixed management fee</p> <p>11 which is sponsored or charged to the fund. And the</p> <p>12 incentive fee was part of the managed fee which was not</p> <p>13 fixed which was based on performance of the fund.</p> <p>14 (Thereupon, the referred-to document was</p> <p>15 marked by the court reporter for Identification as</p> <p>16 Plaintiff's Exhibit 17.)</p> <p>17 BY MR. LAWRENCE KELLOGG:</p> <p>18 Q. I'll show you what I'll mark as Exhibit 17,</p> <p>19 which is a May 18, 2006, letter to you from Fairfield.</p> <p>20 It's Bates Numbers EFG Capital 1930 to 1932.</p> <p>21 Ask if you recognize this agreement. Do you</p> <p>22 recognize it?</p> <p>23 A. Yes.</p> <p>24 Q. Does your signature appear on it?</p> <p>25 A. Yes, it does.</p>

219	<p>1 Q. Now, this amends the prior letter agreement we 2 just looked at from February of 2001. Do you see that? 3 A. It refers to it, yes. 4 Q. And it replaces Section I with the following: 5 Quote: In relation to subscriptions by 6 clients introduced by EFG Capital International Corp., 7 EFG Bank, or any of their respective offices or 8 branches, directly or indirectly, the fees shall be 9 calculated as described in Annex I. 10 Then it says, "Payment will be effected 11 quarterly," et cetera. 12 A. Okay. 13 Q. Why was EFG Bank added to this arrangement at 14 this point? 15 A. I'm not certain. 16 Q. Were you authorized to -- to sign this on 17 behalf of EFG Bank? 18 A. The agreement's addressed to EFG Capital. 19 Q. Were you authorized by EFG Bank -- 20 A. And -- 21 Q. I'm sorry. Go ahead. 22 MR. COATES: Let him finish. 23 THE WITNESS: I -- I don't recall whether EFG 24 Bank had a separate agreement or not. 25</p>	221	<p>1 Limited. Do you know what Sigma and Lambda are or were? 2 A. Yes, they're two other Fairfield Sentry funds 3 denominated in different currencies. 4 Q. When you say "denominated in different 5 currencies," you mean other than U.S. dollars? 6 A. Correct. 7 Q. Did -- Did EFG Capital International refer 8 customers to the Sigma and Lambda funds? 9 A. We may have. I'm not ... 10 Q. Was there any separate due diligence done of 11 Sigma or Lambda funds? 12 A. My understanding is that the strategy is the 13 same for all three funds and the only difference was the 14 currency denomination of the underlying shares of the 15 fund. 16 Q. So for that reason, whatever due diligence was 17 performed on Fairfield Sentry applied to the other two 18 funds? 19 A. Correct. 20 Q. Now, there are different compensation 21 structures for the different funds listed on Exhibit 17. 22 Do you see that? 23 A. You said Exhibit 17? I'm sorry. 24 Q. Yes, the -- the letter agreement May 18, 2006, 25 has a schedule attached to it --</p>
220	<p>1 BY MR. LAWRENCE KELLOGG: 2 Q. All right. Would you agree with me that 3 this -- this section says that the agreement dated 4 February 21, 2001, is going to apply to clients 5 introduced by EFG Bank? 6 MR. COATES: I'm going to object to the form 7 of the question. 8 THE WITNESS: I don't know. I'm - I am 9 agreeing -- the letter's addressed to EFG Capital, 10 signed by EFG Capital, and the funds are different 11 than in the prior two letters you showed me. So 12 there are -- there's an expanded list of funds for 13 which we have, I guess, discussed rebates. 14 So I can't recall whether the purpose was to 15 add parties to the agreement or just expand the 16 list of funds referred to in the agreements. 17 BY MR. LAWRENCE KELLOGG: 18 Q. Before you signed this agreement, did you 19 discuss the issue with Mr. Howell or anyone at EFG Bank 20 that you were going to be signing an agreement saying 21 that any clients introduced by EFG Bank are going to be 22 subject to a rebate on a schedule? 23 A. I don't recall. 24 Q. Now, the -- the funds that are on the 25 schedule, the first one is Fairfield Sentry/Sigma/Lambda</p>	222	<p>1 A. Yes. 2 Q. -- that has various funds on it. There are 3 different rebate formulas for the different funds. Is 4 that right? 5 A. Yes. 6 Q. Were these rebate formulas negotiated by you 7 or by somebody at EFG Capital? 8 A. In 2006, I guess, this would have been 9 reviewed by myself and Sixto Campano. 10 Q. Well, did -- do you recall having a meeting 11 with Fairfield where you negotiated for the different 12 funds what the rebate might be? 13 A. I'm not sure we had specific -- a specific 14 meeting to discuss all the funds at one time. We may 15 have discussed different points at different points in 16 time. 17 I'm not even certain that we distributed all 18 of their funds. 19 Q. All right. How many funds of Fairfield were 20 actually distributed or sold to EFG Capital customers 21 through your company? 22 A. You mean Fairfield Greenwich-sponsored funds? 23 Q. Yes, that's fine. 24 A. Well, clearly here in this document there are 25 one, two, three, four, five, six -- eight, nine --</p>

223	<p>1 there's at least ten in this document where they offered</p> <p>2 us a distribution agreement and rebates. I can't tell</p> <p>3 you right now whether we actually distributed all ten of</p> <p>4 them.</p> <p>5 Q. Did you have -- do you know, as you look at</p> <p>6 any of these, do you know any of them that you are</p> <p>7 certain that -- other than Fairfield Sentry/Sigma/Lambda</p> <p>8 -- that you are certain that you distributed?</p> <p>9 A. Yes, we distributed Fairfield Renaissance and</p> <p>10 Fairfield Redstone.</p> <p>11 THE COURT REPORTER: "Fairfield"?</p> <p>12 THE WITNESS: Redstone.</p> <p>13 I can't recall the rest.</p> <p>14 BY MR. LAWRENCE KELLOGG:</p> <p>15 Q. Were either Fairfield Renaissance or Fairfield</p> <p>16 Redstone Madoff feeder funds?</p> <p>17 A. No.</p> <p>18 Q. Did EFG Capital International distribute</p> <p>19 Irongate?</p> <p>20 A. Yes.</p> <p>21 Q. Now, I don't see Irongate on this schedule.</p> <p>22 You said Irongate was a Fairfield-sponsored fund, or am</p> <p>23 I wrong about that?</p> <p>24 A. You're correct. It was a Fairfield-sponsored</p> <p>25 fund.</p>	225	<p>1 (A portion of the record was read by the</p> <p>2 reporter.)</p> <p>3 THE WITNESS: Your question was whether I</p> <p>4 recognize this document?</p> <p>5 BY MR. LAWRENCE KELLOGG:</p> <p>6 Q. Yes.</p> <p>7 A. Not necessarily this document.</p> <p>8 Q. All right. Do you remember that in early 2006</p> <p>9 Fairfield made a presentation at EFG Capital about other</p> <p>10 funds?</p> <p>11 A. They made numerous presentations throughout</p> <p>12 the years about numerous funds.</p> <p>13 Q. So you don't particularly recall this one?</p> <p>14 A. No.</p> <p>15 Q. All right. If you turn to page 332 in Exhibit</p> <p>16 18.</p> <p>17 A. What page?</p> <p>18 Q. 332, Bates-labeled 332 at the bottom.</p> <p>19 A. Uh-huh.</p> <p>20 Q. It says here that. Fairfield funds currently</p> <p>21 on the EFG recommended list are Chester Global Strategy</p> <p>22 Limited Fund, Irongate, Fairfield Sentry, Fairfield</p> <p>23 Redstone, and Arlington International Limited.</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>
224	<p>1 Q. What was the rebate, if any, calculated on the</p> <p>2 Irongate?</p> <p>3 A. I can't recall.</p> <p>4 Q. Was it different than Fairfield Sentry, Sigma</p> <p>5 and Lambda?</p> <p>6 A. I can't recall.</p> <p>7 Q. Do you know whether there was a separate</p> <p>8 agreement covering Irongate?</p> <p>9 A. I don't know when Irongate was launched,</p> <p>10 whether it existed in '06 or not.</p> <p>11 Q. Was there any separate due diligence done on</p> <p>12 the Irongate Fund?</p> <p>13 A. I don't recall.</p> <p>14 Q. You don't recall one way or another?</p> <p>15 A. I don't recall.</p> <p>16 (Thereupon, the referred-to document was</p> <p>17 marked by the court reporter for identification as</p> <p>18 Plaintiff's Exhibit 18.)</p> <p>19 BY MR. LAWRENCE KELLOGG:</p> <p>20 Q. Let me mark as Exhibit 18 a document, EFG</p> <p>21 Capital 325 through 338, January 2006 presentation on</p> <p>22 alternative investment funds.</p> <p>23 Ask if you recognize it.</p> <p>24 MR. COATES: Can you just repeat what he --</p> <p>25 counsel just read into the record?</p>	226	<p>1 Q. Does that refresh your memory that at least</p> <p>2 these five Fairfield-sponsored funds were recommended by</p> <p>3 EFG at one -- at least as of 2006?</p> <p>4 A. This is a Fairfield Greenwich document, not an</p> <p>5 EFG Capital document, so it's -- it's what they</p> <p>6 indicate.</p> <p>7 Q. I'm asking --</p> <p>8 A. I -- I can't -- I can't be a hundred percent</p> <p>9 certain if their document was accurate with what may</p> <p>10 have been on our approved list.</p> <p>11 Q. Does this refresh your memory as to what was</p> <p>12 on the approved list?</p> <p>13 A. I think I indicated that we distributed</p> <p>14 Redstone already. I indicated that we distributed</p> <p>15 Sentry. And I indicated that we distributed Irongate</p> <p>16 already.</p> <p>17 Q. Okay. What was Chester Global Strategy?</p> <p>18 A. It was another multi-manager, multi-strategy</p> <p>19 fund sponsored by Fairfield Greenwich.</p> <p>20 Q. Was that also a Madoff feeder fund, to your</p> <p>21 knowledge?</p> <p>22 A. I don't recall whether it had Fairfield Sentry</p> <p>23 in it or not. It was a multi-manager, multi-asset class</p> <p>24 fund.</p> <p>25 Q. What was Fairfield Redstone Limited, if you</p>

227	<p>1 recall?</p> <p>2 A. I think it was a -- a -- an equity -- an</p> <p>3 equity hedge fund, but I can't recall the exact</p> <p>4 strategy.</p> <p>5 Q. Was that a split-strike conversion strategy</p> <p>6 again?</p> <p>7 A. No.</p> <p>8 Q. Okay. Was that a Madoff feeder fund, to your</p> <p>9 knowledge?</p> <p>10 A. No.</p> <p>11 Q. All right. Arlington International Limited,</p> <p>12 do you know what that was? Was that a Madoff fund?</p> <p>13 A. I don't recall precisely, but I don't believe</p> <p>14 that was a Madoff fund.</p> <p>15 Q. And then it says, under review is Fairfield</p> <p>16 Briscoe Senior Capital Limited and Fairfield Trafalgar</p> <p>17 Limited.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know if those funds were Madoff feeder</p> <p>21 funds?</p> <p>22 A. I don't believe so, but that was, again,</p> <p>23 Fairfield Greenwich's statements that we were reviewing</p> <p>24 those. I don't recall whether, in fact, we were or not</p> <p>25 at the time.</p>	229	<p>1 Understanding regarding Chester Management, Fairfield</p> <p>2 Greenwich Limited, Fairfield Gren- -- various different</p> <p>3 agreements that you see here.</p> <p>4 To your recollection, were there different</p> <p>5 agreements covering different funds that were</p> <p>6 distributed for Fairfield by EFG Capital?</p> <p>7 A. I don't recall specifically.</p> <p>8 Q. Paragraph 1 refers to "Compensation," and it</p> <p>9 says the fees are going to be calculated as described in</p> <p>10 the attachment --</p> <p>11 A. Okay.</p> <p>12 Q. -- the Annex 1. It says that, however,</p> <p>13 the -- "No fees shall be payable for any quarter unless</p> <p>14 the sum of the investments made by clients introduced by</p> <p>15 the agency, net of redemptions, excluding the funds of</p> <p>16 funds, equals or exceeds \$2 million."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Was there a \$2 million threshold before</p> <p>20 rebates were effective? How did that work?</p> <p>21 MR. COATES: I'm going to object to the form.</p> <p>22 THE WITNESS: It is not unusual in the hedge</p> <p>23 fund world or mutual fund world to have to reach</p> <p>24 minimum thresholds before rebates are paid to</p> <p>25 distributors.</p>
228	<p>1 Q. Okay. Do you know whether they ever made it</p> <p>2 to the approved list?</p> <p>3 A. I can't recall.</p> <p>4 Q. Let me mark as Exhibit 19 a November 29, 2007,</p> <p>5 Letter of Understanding, which is EFG Capital 1933</p> <p>6 through 1941.</p> <p>7 (Thereupon, the referred-to document was</p> <p>8 marked by the court reporter for Identification as</p> <p>9 Plaintiff's Exhibit 19.)</p> <p>10 BY MR. LAWRENCE KELLOGG:</p> <p>11 Q. Ask if you recognize this document?</p> <p>12 A. Not necessarily.</p> <p>13 Q. Do you recall in the end of 2007 that there</p> <p>14 was a modified Letter of Understanding between Fairfield</p> <p>15 Sentry and EFG Capital regarding rebates?</p> <p>16 A. Is this a document you showed me prior to this</p> <p>17 one or are you asking me to recall something else?</p> <p>18 Q. No, do you recall that in the end of 2007 a</p> <p>19 new agreement was entered into?</p> <p>20 A. Not necessarily.</p> <p>21 Q. Does your signature appear? The signatures</p> <p>22 are on page 1937.</p> <p>23 A. Yes, it does.</p> <p>24 Q. Okay. In the first paragraph this -- this</p> <p>25 Letter of Understanding refers to some other Letters of</p>	230	<p>1 BY MR. LAWRENCE KELLOGG:</p> <p>2 Q. And so in this instance, the -- the threshold</p> <p>3 was \$2 million?</p> <p>4 A. It seems that way.</p> <p>5 Q. Was there -- were there periodic</p> <p>6 reconciliations between Fairfield and EFG Capital as to</p> <p>7 what monies were owed?</p> <p>8 A. I -- I don't know. I mean, EFG Capital has</p> <p>9 maybe hundreds of distribution agreements. So I'm not</p> <p>10 sure that we reconciled the one more than the other, I</p> <p>11 mean . . .</p> <p>12 Q. Well, was there a department that would do</p> <p>13 nothing but reconcile these rebates?</p> <p>14 A. No.</p> <p>15 Q. Was there a person whose function included</p> <p>16 that task?</p> <p>17 A. Reconciliations would have been done under</p> <p>18 accounting.</p> <p>19 Q. Did -- did EFG Capital meet its \$2 million</p> <p>20 threshold for the Fairfield Sentry rebates?</p> <p>21 A. Is this document for Fairfield Sentry or for</p> <p>22 other funds?</p> <p>23 Q. It includes Fairfield Sentry.</p> <p>24 A. I don't know if this compensation agreement is</p> <p>25 for per fund or for all the funds within the family</p>

231	<p>1 sponsored by Fairfield Greenwich.</p> <p>2 Q. Well, when you say that, you mean you don't --</p> <p>3 you don't know whether you have to have \$2 million per</p> <p>4 fund or whether it's the aggregate of all the funds?</p> <p>5 A. It's unclear to me right now. I'd have to</p> <p>6 reread it.</p> <p>7 Q. And as without reading that document, you</p> <p>8 don't have any recollection as to whether you had to</p> <p>9 meet a \$2 million threshold on a macro basis or a</p> <p>10 per-fund basis?</p> <p>11 A. I -- I don't recall.</p> <p>12 Q. Is that another function that Mr. Campano may</p> <p>13 be more familiar than you?</p> <p>14 A. He may or may not be.</p> <p>15 Q. Okay.</p> <p>16 (Thereupon, the referred-to document was</p> <p>17 marked by the court reporter for Identification as</p> <p>18 Plaintiff's Exhibit 20.)</p> <p>19 BY MR. LAWRENCE KELLOGG:</p> <p>20 Q. I'm going to show you Exhibit 20, which is a</p> <p>21 June 12, 2008, letter to Mr. Echevarria from Fairfield</p> <p>22 Greenwich. Do you recall Exhibit 20? It's</p> <p>23 Bates-labeled EFG Capital 1942 through 1943.</p> <p>24 A. Not necessarily.</p> <p>25 Q. This says that the agreements are going to be</p>	233	<p>1 diligence of Madoff and his activities?</p> <p>2 A. Fairfield Greenwich and Fairfield Sentry was</p> <p>3 monitoring the activities of all the external providers</p> <p>4 to the fund.</p> <p>5 Q. Would that include Mr. Madoff?</p> <p>6 A. It would include its subadvisor, Madoff</p> <p>7 Securities; it would include PWC, the external auditor;</p> <p>8 and Citco, the custodian.</p> <p>9 Q. And for that service, was Fairfield Greenwich</p> <p>10 or Fairfield Greenwich Bermuda, the investment manager,</p> <p>11 being paid a fee from the fund?</p> <p>12 A. I don't --</p> <p>13 MR. COATES: Object to the form.</p> <p>14 THE WITNESS: I don't recall which entity was</p> <p>15 the precise fund manager or fund sponsor; but</p> <p>16 certainly there is a fund management fee taken by a</p> <p>17 Fairfield Greenwich entity for the --</p> <p>18 BY MR. LAWRENCE KELLOGG:</p> <p>19 Q. And that was -- go ahead.</p> <p>20 A. -- for the management and -- and the running</p> <p>21 of that fund.</p> <p>22 Q. Now, the incentive performance fee that was</p> <p>23 paid, was that in return for some of the ongoing due</p> <p>24 diligence and monitoring that Fairfield Sentry was</p> <p>25 supposedly performing on Mr. Madoff's company?</p>
232	<p>1 modified to make the threshold \$3 million. Do you see</p> <p>2 that?</p> <p>3 A. Yes.</p> <p>4 Q. Do you recall that change being made?</p> <p>5 A. Not really.</p> <p>6 Q. Did -- did EFG Capital have more than</p> <p>7 \$3 million of its customers' money in Fairfield Sentry?</p> <p>8 A. Again, the letter refers -- I'm not sure it</p> <p>9 refers fund by fund or for all of the funds sponsored by</p> <p>10 Fairfield Greenwich.</p> <p>11 Q. Okay. But my question to you is, as you sit</p> <p>12 here today, did EFG Capital have more than \$3 million of</p> <p>13 its customers' money in EFG -- in Fairfield Sentry hedge</p> <p>14 fund?</p> <p>15 A. There was, I think -- I believe the</p> <p>16 subscriptions exceeded \$3 million.</p> <p>17 Q. Do you recall the dollar volume level that --</p> <p>18 that existed as of December 2008?</p> <p>19 A. As of December 2008?</p> <p>20 Q. Yes, when the fraud was revealed.</p> <p>21 A. Less than 50 million.</p> <p>22 Q. Do you have an exact figure?</p> <p>23 A. No.</p> <p>24 Q. Was it your understanding that Fairfield</p> <p>25 Sentry was monitoring and performing ongoing due</p>	234	<p>1 MR. COATES: Object to the form of the</p> <p>2 question.</p> <p>3 THE WITNESS: I don't believe that the</p> <p>4 incentive fee and management fee were separate. In</p> <p>5 other words, the management -- the fixed component</p> <p>6 and -- fixed component and the variable component</p> <p>7 were just the sum of the management fee.</p> <p>8 BY MR. LAWRENCE KELLOGG:</p> <p>9 Q. So you -- you viewed those as both management</p> <p>10 fees. Is that right?</p> <p>11 A. That's correct.</p> <p>12 Q. And those fees in part were paid in return for</p> <p>13 Fairfield, the manager, whichever entity that was,</p> <p>14 monitoring and doing due diligence on Mr. Madoff. Is</p> <p>15 that right?</p> <p>16 MR. COATES: Object to the form of the</p> <p>17 question.</p> <p>18 THE WITNESS: I think the -- the fee is paid</p> <p>19 for managing the fund and whatever that implies</p> <p>20 from fund to fund.</p> <p>21 BY MR. LAWRENCE KELLOGG:</p> <p>22 Q. Well, in your view -- in your view, did you</p> <p>23 expect Fairfield, the manager, to be performing ongoing</p> <p>24 due diligence of Mr. Madoff?</p> <p>25 A. I don't know if the word is "due diligence,"</p>

235	<p>1 but certainly reviews of the performance and reviews of</p> <p>2 transactions undertaken by the fund in accordance with</p> <p>3 the mandate given by the fund to its advisor.</p> <p>4 Q. And EFG Capital was sharing in that fee, was</p> <p>5 it not?</p> <p>6 A. I'm sorry?</p> <p>7 Q. EFG Capital was sharing in that fee, was it</p> <p>8 not?</p> <p>9 MR. COATES: Object to the form of the</p> <p>10 question.</p> <p>11 THE WITNESS: Distributors were offered a fee</p> <p>12 to place the fund.</p> <p>13 BY MR. LAWRENCE KELLOGG:</p> <p>14 Q. EFG Capital was paid 20 percent of the</p> <p>15 management fee and -- and 20 basis points -- 20 percent</p> <p>16 of the incentive management fee and 20 basis points of</p> <p>17 the fixed management fee. Is that correct?</p> <p>18 MR. COATES: Object to the form.</p> <p>19 BY MR. LAWRENCE KELLOGG:</p> <p>20 Q. You can answer.</p> <p>21 A. EFG Capital was paid a percentage of the fixed</p> <p>22 fee and a percentage of the variable fee or incentive</p> <p>23 fee for distribution of the fund.</p> <p>24 Q. Did you consider EFG Capital to be the agent</p> <p>25 of Fairfield Greenwich Limited for distribution of these</p>	237	<p>1 Q. Did you ever refuse to sign any of the</p> <p>2 agreements with Fairfield because they made your company</p> <p>3 the agent of the fund?</p> <p>4 MR. COATES: Object to the form of the</p> <p>5 question.</p> <p>6 BY MR. LAWRENCE KELLOGG:</p> <p>7 Q. You can answer.</p> <p>8 A. I don't recall.</p> <p>9 Q. Did you ever try to negotiate with them and</p> <p>10 say, Look, I -- I don't want to sign a contract saying</p> <p>11 my company's your agent, because we're not?</p> <p>12 MR. COATES: Object to the form.</p> <p>13 BY MR. LAWRENCE KELLOGG:</p> <p>14 Q. Anything like that?</p> <p>15 MR. COATES: It mischaracterizes the</p> <p>16 document --</p> <p>17 BY MR. LAWRENCE KELLOGG:</p> <p>18 Q. You can answer.</p> <p>19 MR. COATES: -- and his testimony.</p> <p>20 THE WITNESS: The document which I signed on</p> <p>21 behalf of EFG Capital was a distribution agreement,</p> <p>22 and fund sponsors or wholesalers typically don't</p> <p>23 negotiate the terms of a distribution agreement as</p> <p>24 far as language.</p> <p>25</p>
236	<p>1 funds?</p> <p>2 MR. COATES: I'm going to object to the form</p> <p>3 of the question.</p> <p>4 BY MR. LAWRENCE KELLOGG:</p> <p>5 Q. You can answer.</p> <p>6 A. I believe that the distribution agreement</p> <p>7 refers to distributors as agencies, but at no time did</p> <p>8 we believe there would be -- do I believe that a</p> <p>9 distributor is necessarily an agent of a fund.</p> <p>10 Q. Well, the agreements say "agency." Correct?</p> <p>11 A. Correct.</p> <p>12 Q. But you don't think you're an agent. Is that</p> <p>13 your position?</p> <p>14 A. I think --</p> <p>15 MR. COATES: Object to the form of the</p> <p>16 question.</p> <p>17 You may you answer.</p> <p>18 BY MR. LAWRENCE KELLOGG:</p> <p>19 Q. I'm just trying to understand what you just</p> <p>20 said.</p> <p>21 A. I think --</p> <p>22 Q. Go ahead.</p> <p>23 A. I believe that we were a distributor of the</p> <p>24 fund as we are a distributor for tens of mutual funds</p> <p>25 and hedge funds domiciled throughout the world.</p>	238	<p>1 BY MR. LAWRENCE KELLOGG:</p> <p>2 Q. To your knowledge did anyone at EFG Capital,</p> <p>3 including yourself, ever send a letter to Fairfield</p> <p>4 Greenwich saying, "We are not your agent"?</p> <p>5 MR. COATES: Object to the form of the</p> <p>6 question.</p> <p>7 BY MR. LAWRENCE KELLOGG:</p> <p>8 Q. You can answer.</p> <p>9 A. I don't recall a letter going out as we were</p> <p>10 comfortable with the relationship of a distributor.</p> <p>11 MR. LAWRENCE KELLOGG: Why don't we go off the</p> <p>12 record and take a break.</p> <p>13 MR. COATES: Thank you.</p> <p>14 THE VIDEOGRAPHER: Going off the record. The</p> <p>15 time is 11:35.</p> <p>16 (Thereupon, a recess was taken from 11:35 a.m.</p> <p>17 to 12:01 p.m.)</p> <p>18 THE VIDEOGRAPHER: All right. We're now back</p> <p>19 on the record. The time is 12:01.</p> <p>20 BY MR. LAWRENCE KELLOGG:</p> <p>21 Q. When Fairfield Sentry was put on the</p> <p>22 recommended list of EFG Capital International,</p> <p>23 approximately how many hedge funds were on that list?</p> <p>24 A. I -- I don't recall exactly how many hedge</p> <p>25 funds we had on our approved list at that time.</p>

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1 Q. Do you have a general idea?
 2 A. No.
 3 Q. Do you have any -- when you say your "approved
 4 list," was there some other list that you -- they might
 5 have been on?
 6 A. No.
 7 Q. Okay. What percentage of assets under
 8 management or assets with your company from customers
 9 were invested in Fairfield Sentry at the peak?
 10 A. I have no -- no recollection of that
 11 whatsoever.
 12 Q. What would you look at to find that out?
 13 A. There is no -- there's no normal report
 14 available on an ongoing basis unless you ask for a
 15 specific search in the database.
 16 Q. Last time you mentioned that there were
 17 offering sheets circulated to sales representatives that
 18 would have approved funds on those sheets.
 19 How often were those circulated?
 20 MR. COATES: I'm going to object to the form.
 21 THE WITNESS: I -- I don't recall how often,
 22 and it probably varied by asset class.
 23 BY MR. LAWRENCE KELLOGG:
 24 Q. For -- for Fairfield Sentry, would there be a
 25 circular prepared by EFG Capital that would have

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1 information about that particular fund, or would these
 2 lists contain say ten or twelve hedge funds at a time?
 3 MR. COATES: Object to the form.
 4 THE WITNESS: There were fact sheets or tear
 5 sheets prepared for all the hedge fund -- hedge
 6 funds on the approved list.
 7 BY MR. LAWRENCE KELLOGG:
 8 Q. Okay. And who would -- who would prepare
 9 those at the company?
 10 A. That responsibility probably varied at
 11 different points in time, and recently would fall under
 12 the responsibility of Sixto Campano or his -- whoever he
 13 delegates.
 14 Q. These -- these would be fact sheets or tear
 15 sheets that would be circulated to salespeople?
 16 A. If requested.
 17 Q. Would they also be circulated to potential
 18 customers or actual customers?
 19 A. They could be shown to customers.
 20 Q. Before the break I asked you how -- what was
 21 the dollar volume of funds that EFG Capital's customers
 22 had in Fairfield Sentry at the time the fraud was
 23 revealed. Did you say 15 million or 50? Less than 50
 24 or 15?
 25 A. I said I recall -- I said I recall less than

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1 5-0, 50.
 2 MR. LAWRENCE KELLOGG: Okay. We had a
 3 disagreement. I thought it was 15. Thank you.
 4 MR. COATES: Notice I did not object to that
 5 question as asked and answered. I understand that
 6 you did have --
 7 MR. LAWRENCE KELLOGG: I just didn't hear it
 8 right.
 9 MR. COATES: -- a question about it.
 10 MR. LAWRENCE KELLOGG: As usual my son is
 11 correct.
 12 BY MR. LAWRENCE KELLOGG:
 13 Q. Since Fairfield Sentry was -- was placed on
 14 the approved list, has any hedge fund been removed from
 15 the approved list?
 16 A. Yes. Funds have been added and removed over
 17 the years.
 18 Q. What would be some of the reasons for removing
 19 a fund?
 20 A. Performance. Change of advisor. Variation in
 21 the existing strategy from the investment objective.
 22 Various reasons.
 23 Q. Was there ever a situation where a fund was
 24 removed because you thought that the operational
 25 structure was deficient? Of the fund.

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1 A. Not to my recollection.
 2 Q. Has a fund ever been considered for approval
 3 and denied because of deficiencies in the operational
 4 structure of the fund?
 5 A. I can't recall.
 6 Q. You don't recall one way or another or you
 7 don't think it happened?
 8 A. I don't recall one way or the other.
 9 Q. Do you have any recollection of -- of
 10 reviewing a fund and determining that the operational
 11 structure is deficient?
 12 A. Not specifically, no.
 13 (Thereupon, the referred-to document was
 14 marked by the court reporter for identification as
 15 Plaintiff's Exhibit 21.)
 16 BY MR. LAWRENCE KELLOGG:
 17 Q. Let me have marked -- let me have marked as
 18 Exhibit 21 a multipage document entitled "EFG Capital
 19 International Due Diligence Memorandum." It's
 20 Bates-labeled EFG Capital 262 through 269.
 21 And ask if you recognize this document.
 22 A. I may have seen it before.
 23 Q. Do you know what it is?
 24 A. It appears to be a review of the Fairfield
 25 Sentry Fund performed in 2005.

243	<p>1 Q. How can you tell it was performed in 2005?</p> <p>2 A. There is indications in here as to statistics</p> <p>3 of March 2005.</p> <p>4 Q. Okay. Where are you referring to?</p> <p>5 A. In the first page.</p> <p>6 Q. I see, where it says, "AUM in Program, March</p> <p>7 2005, \$5.2 billion." Is that what you're referring to?</p> <p>8 A. Yes.</p> <p>9 Q. And do you know who prepared it?</p> <p>10 A. No.</p> <p>11 Q. Do you know who was responsible for due</p> <p>12 diligence at EFG Capital in March of 2005?</p> <p>13 A. It would have been supervised by Sixto</p> <p>14 Campano.</p> <p>15 Q. Do you recognize this as being an EFG Capital</p> <p>16 document, EFG Capital International document?</p> <p>17 A. I believe so. Again, I may have seen this</p> <p>18 document in the past, but I -- I don't have any</p> <p>19 recollections about specifics of this document.</p> <p>20 Q. Do you know why you would have reviewed the</p> <p>21 doc- -- the document?</p> <p>22 A. I'm not saying I reviewed the document. I</p> <p>23 said I may have seen it in the past.</p> <p>24 Q. Okay. Why would you have seen it?</p> <p>25 A. It may -- someone may have shown it to me, but</p>	245	<p>1 Fairfield Sentry in the approved list, and then</p> <p>2 there were periodic reviews performed throughout</p> <p>3 our time.</p> <p>4 BY MR. LAWRENCE KELLOGG:</p> <p>5 Q. Do you know why there was review performed in</p> <p>6 March of 2005?</p> <p>7 A. No.</p> <p>8 Q. Do you have any knowledge of who conducted due</p> <p>9 diligence in 2005?</p> <p>10 A. No, it was under the guidance of Sixto</p> <p>11 Campano.</p> <p>12 Q. All right. If you look at page 266 of</p> <p>13 Exhibit 21, there's a section dealing with custody as</p> <p>14 being a risk factor.</p> <p>15 And it says: "The fund's assets are</p> <p>16 custodized with Bernard L. Madoff Investment Securities,</p> <p>17 rather than with a major international bank (directly or</p> <p>18 through a subsidiary) as is the case with most</p> <p>19 investment funds. Bernard L. Madoff Investment</p> <p>20 Securities had capital as of October 31, 2003, of U.S.</p> <p>21 \$478 million. This is much less than the capital of a</p> <p>22 major international bank; to that extent investing in</p> <p>23 the fund represents one of the risks of investing in the</p> <p>24 fund."</p> <p>25 Do you see that?</p>
244	<p>1 I don't recall this document.</p> <p>2 Q. Okay. So you don't have any specific</p> <p>3 recollection of ever looking at it before?</p> <p>4 A. Absolutely not.</p> <p>5 Q. This refers to, in the second box here, an</p> <p>6 initial due diligence being -- refers to three meetings,</p> <p>7 in August of 1998, June of 1999, and July of 2000. Do</p> <p>8 you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know where that information might have</p> <p>11 come from?</p> <p>12 A. The information that due diligence was</p> <p>13 performed on those dates or that meetings were held on</p> <p>14 those dates?</p> <p>15 Q. Yes.</p> <p>16 A. No, I'm not sure who provided those dates or</p> <p>17 the participants of the meetings.</p> <p>18 Q. In -- in the due diligence process, would</p> <p>19 there be an ongoing database at the company where people</p> <p>20 performing due diligence reviews could input information</p> <p>21 into the database?</p> <p>22 MR. COATES: Object to the form.</p> <p>23 THE WITNESS: I don't know whether we have a</p> <p>24 database or a series of files. There was obviously</p> <p>25 due diligence performed initially to place</p>	246	<p>1 A. Yes.</p> <p>2 Yes.</p> <p>3 Q. At the time were you aware that all of the</p> <p>4 fund's assets were actually in the custody of Mr. Madoff</p> <p>5 rather than with Citco?</p> <p>6 A. Citco was always the custodian of Fairfield</p> <p>7 Sentry Limited. And Citco had the possibility of</p> <p>8 sub-custodizing with third parties, including Bernard</p> <p>9 Madoff Securities, and that was disclosed in the</p> <p>10 offering memorandum.</p> <p>11 Q. And did you understand that prior to March of</p> <p>12 2005 that Mr. Madoff actually had physical custody of</p> <p>13 whatever assets were in the fund?</p> <p>14 A. I'm not sure it was Mr. Madoff; it was his</p> <p>15 firm who had custody, as authorized by Citco, the global</p> <p>16 custodian.</p> <p>17 Q. Did you know that prior to March of 2005?</p> <p>18 A. Yes.</p> <p>19 Q. When did you first learn that?</p> <p>20 A. Probably early on, I -- I can't tell you</p> <p>21 whether it's -- '98, '99, 2000, 2001, early on in the</p> <p>22 relationship. It was disclosed in the offering</p> <p>23 memorandum. It was not a secret.</p> <p>24 Q. Did you consider that to be a risk, that is,</p> <p>25 that Mr. Madoff not only made the investment decisions,</p>

247	<p>1 but had physical custody of the securities? Supposedly 2 purchased. 3 A. It was a risk factor to be considered. 4 Q. And did you consider it when you first 5 approved the hedge fund for inclusion on the approved 6 list? 7 A. Yes. 8 Q. And what did you do to -- to -- well, how 9 would you -- how would you describe -- what was the 10 risk? What was the risk in your mind back then? 11 A. I think the risk is the issue indicated in 12 this report; that the size of the custodian was not the 13 same as a major international bank. 14 Q. So if the custodian went out of business, for 15 example, didn't have enough capital to -- to make good 16 on the securities it was holding? 17 A. It's a risk to consider. 18 Q. And that risk was not enough to -- to persuade 19 EFG Capital not to put Fairfield Sentry on the approved 20 list; correct? 21 A. Again, the custodian was Citco. 22 Q. Citco -- Citco delegated all custodian efforts 23 to the person making the investment decisions; right? 24 MR. COATES: Object to the form. 25</p>	249	<p>1 A. EFG Capital has not. 2 Q. Has EFG Bank or EFG International sued Citco? 3 A. I don't know. 4 Q. Has EFG Capital International considered 5 making demand on Citco for the losses incurred by its 6 customers when the securities went out of its custody? 7 MR. COATES: I'm going to object to the form. 8 THE WITNESS: We have not yet initiated any 9 legal action against different parties of the fund. 10 BY MR. LAWRENCE KELLOGG: 11 Q. Have you made any demands? On Citco. 12 MR. COATES: Excuse me. Could you repeat -- 13 please don't answer. Repeat the question because I 14 didn't hear the question. 15 BY MR. LAWRENCE KELLOGG: 16 Q. Have you made any demands on Citco? 17 A. EFG Capital? 18 Q. Yes. 19 A. As a broker? Because that's our role in this. 20 No. 21 Q. Why not? 22 A. The shareholder of record is EFG Bank at 23 Fairfield Sentry Limited. 24 Q. So you didn't -- for that reason -- 25 A. As -- as -- as --</p>
248	<p>1 BY MR. LAWRENCE KELLOGG: 2 Q. Is that right? 3 A. No, Citco identified a sub-custodian that they 4 were comfortable with and felt that they were reviewing 5 the information and they thought they had elected an 6 appropriate sub-custodian. 7 Q. So you -- did you feel that if Mr. Madoff 8 didn't have enough capital, then maybe Citco did? 9 MR. COATES: Object to the form. 10 THE WITNESS: I think we were comfortable with 11 Citco as a global custodian. They performed that 12 activity for hundreds of funds globally as a 13 custodian and as an administrator. 14 BY MR. LAWRENCE KELLOGG: 15 Q. Did you ever look at any financial statements 16 of Citco? 17 A. I don't recall. 18 Q. Has -- has EFG Capital or EFG Bank on behalf 19 of its customers made demand on Citco to -- to replace 20 the securities that aren't there? 21 MR. COATES: Object to the form. 22 THE WITNESS: I don't recall. 23 BY MR. LAWRENCE KELLOGG: 24 Q. Do you know whether EFG Bank or EFG Capital 25 International has sued Citco?</p>	250	<p>1 Q. -- you think EFG Bank should do it? 2 A. -- as nominee. So that, in fact, should be an 3 activity undertaken by the nominee shareholder of 4 record. 5 Q. Okay. Has EFG Bank made a demand, to your 6 knowledge? 7 A. I don't know. 8 Q. Did you ever -- did you ever ask anyone at 9 Fairfield why custody of the securities was being 10 delegated to Bernard Madoff Investment Securities? 11 A. Yes. 12 Q. Who did you ask? 13 A. Jeffrey Tucker and Lourdes Barreneche. 14 Q. When did you ask -- did you ask them both at 15 the same time or -- 16 A. At different times. Early on in the 17 relationship. 18 Q. So you had at least two conversations about 19 this topic, one with Mr. Tucker and one with Lourdes. 20 Is that right? 21 A. Yes. 22 Q. Why? Why did you ask them about it? 23 A. Because it's a risk that we had identified 24 early on that the fund, Fairfield Sentry Limited, was 25 not -- was using a well-known, highly regarded custodian</p>

251	<p>1 but the custodian had delegated the activity of</p> <p>2 sub-custody to Bernard Madoff Securities which is not</p> <p>3 the size of a major international bank.</p> <p>4 Q. And what did either of them say to you about</p> <p>5 that topic?</p> <p>6 A. They indicated that the advisor, Bernard</p> <p>7 Madoff Securities, wanted to have privacy in its</p> <p>8 investment strategy and felt more comfortable</p> <p>9 sub-custodizing the assets.</p> <p>10 Q. What did you understand that to mean?</p> <p>11 A. They weren't willing to give third parties</p> <p>12 access to its proprietary trading strategy.</p> <p>13 THE COURT REPORTER: "Proprietary"?</p> <p>14 THE WITNESS: Proprietary trading strategy.</p> <p>15 BY MR. LAWRENCE KELLOGG:</p> <p>16 Q. The third party in this instance would be</p> <p>17 Citco?</p> <p>18 A. Would be a -- a different custodian.</p> <p>19 Q. Well, if Citco was the custodian, wouldn't it</p> <p>20 be receiving information as to what trades were being</p> <p>21 made even if it didn't have physical custody?</p> <p>22 A. Yes.</p> <p>23 Q. So I don't understand how privacy would be</p> <p>24 protected in that circumstance. What did you</p> <p>25 understand?</p>	253	<p>1 MR. COATES: Object. Mischaracterizes his</p> <p>2 prior testimony.</p> <p>3 BY MR. LAWRENCE KELLOGG:</p> <p>4 Q. You may answer.</p> <p>5 A. Citco was the custodian of the fund --</p> <p>6 Q. Yes.</p> <p>7 A. -- and Citco was the administrator of the</p> <p>8 fund. As such, Citco is the ultimate determinant of the</p> <p>9 NAV.</p> <p>10 Q. Right.</p> <p>11 A. And we felt comfortable with Citco playing the</p> <p>12 roles of global custodian and administrator for the</p> <p>13 Fairfield Sentry Fund.</p> <p>14 Q. What was your understanding as to how Citco</p> <p>15 was going to calculate the net asset value of the fund</p> <p>16 if it didn't look at the trades?</p> <p>17 A. I don't know they didn't look at the trades.</p> <p>18 Q. All right. So if it was looking at the</p> <p>19 trades, how was it that Mr. Madoff's privacy was being</p> <p>20 protected as to his trading strategy?</p> <p>21 A. I don't know.</p> <p>22 Q. So when you had these discussions with</p> <p>23 Mr. Tucker and Lourdes, did you have any understanding</p> <p>24 as to how it is that allowing Madoff to hold on to the</p> <p>25 securities would protect the privacy of his trading</p>
252	<p>1 A. That's the issue that I -- I recall discussing</p> <p>2 with them more than 10 years ago.</p> <p>3 Q. That Mr. Madoff did not want to disclose his</p> <p>4 proprietary trading strategy and so he preferred to just</p> <p>5 keep hold of the securities himself?</p> <p>6 A. Correct.</p> <p>7 Q. Was it your understanding that Citco was</p> <p>8 reviewing trades at all made by Mr. Madoff for Fairfield</p> <p>9 Sentry?</p> <p>10 A. It was my understanding that Fairfield</p> <p>11 Greenwich was reviewing trades as the sponsor of the</p> <p>12 fund and that Citco clearly had approved Bernard Madoff</p> <p>13 Securities as the sub-custodian for the fund and</p> <p>14 conducted whatever reviews it needed to to approve them</p> <p>15 Q. All right. So do you have any understanding</p> <p>16 that Citco -- or were you ever told that Citco was, when</p> <p>17 it -- for example, when it calculated net asset values</p> <p>18 at the end of the month, that it was actually looking at</p> <p>19 the trades or was it just relying on information given</p> <p>20 to it by Fairfield Greenwich?</p> <p>21 A. I don't recall.</p> <p>22 Q. Did you -- did you -- was that a concern of</p> <p>23 yours, that the party making the net asset value</p> <p>24 calculation at the end of the month wasn't looking at</p> <p>25 the trades?</p>	254	<p>1 strategy, how that would happen?</p> <p>2 A. I don't recall specifically what, you know,</p> <p>3 the exact nature of these discussions were more than 10</p> <p>4 years ago.</p> <p>5 Q. Was it your experience that ordinarily in a</p> <p>6 hedge fund securities are held by a third-party</p> <p>7 custodian, not by the fund itself?</p> <p>8 A. The majority.</p> <p>9 Q. And is it an unusual situation in which the</p> <p>10 fund itself would hold custody of the securities?</p> <p>11 MR. COATES: Object to the form.</p> <p>12 THE WITNESS: I'm not sure that the fund was</p> <p>13 holding custody of the securities.</p> <p>14 Once again, you had an appointed custodian and</p> <p>15 the custodian identified a sub-custodian and both</p> <p>16 activities were disclosed in the offering</p> <p>17 memorandum.</p> <p>18 BY MR. LAWRENCE KELLOGG:</p> <p>19 Q. Well, you have an investment manager of a fund</p> <p>20 who's holding physical custody of the securities. Is</p> <p>21 that right?</p> <p>22 A. I think the investment manager has -- was an</p> <p>23 entity of Fairfield Sentry, and they appointed a -- a</p> <p>24 discretionary manager.</p> <p>25 Q. All right. So you have an investment manager</p>

255	<p>1 which is a Fairfield entity. Is that right?</p> <p>2 A. I believe so.</p> <p>3 Q. And the Fairfield entity as investment manager</p> <p>4 is being paid a fee; correct?</p> <p>5 A. That is correct.</p> <p>6 Q. And that investment manager isn't actually</p> <p>7 making the investment decisions; instead, it's delegated</p> <p>8 that entire authority to Bernard Madoff Investment</p> <p>9 Securities. Is that right?</p> <p>10 A. Yes.</p> <p>11 Q. And you also have a third-party custodian,</p> <p>12 that's Citco. Is that right?</p> <p>13 A. That's correct.</p> <p>14 Q. Citco holds physical possession of the</p> <p>15 securities; right? Is that correct?</p> <p>16 A. I understand that.</p> <p>17 Q. And it is paid a fee as well for holding those</p> <p>18 securities supposedly; correct?</p> <p>19 A. That's correct.</p> <p>20 Q. It, too, has delegated its entire function for</p> <p>21 holding the securities to Bernard Madoff Investment</p> <p>22 Securities. Is that right?</p> <p>23 MR. COATES: Object to the form.</p> <p>24 THE WITNESS: It has engaged a suitable</p> <p>25 sub-custodian.</p>	257	<p>1 BY MR. LAWRENCE KELLOGG:</p> <p>2 Q. You understood that at the time?</p> <p>3 A. What I understood is that specific entities</p> <p>4 performing specific duties of the fund were clearly</p> <p>5 disclosed in the offering memorandum.</p> <p>6 Q. Well, was it your understanding that the</p> <p>7 offering memorandum disclosed that Mr. Madoff was making</p> <p>8 the investment decisions? Or was the disclosure that</p> <p>9 Fairfield's entity, the investment manager, was making</p> <p>10 those decisions?</p> <p>11 A. My understanding is that a Fairfield entity</p> <p>12 was the investment manager; and as investment manager,</p> <p>13 that entity had an account at Bernard Madoff Securities,</p> <p>14 which granted discretion to Bernard Madoff Securities.</p> <p>15 Q. And you believe as you sit here now that that</p> <p>16 was disclosed in the offering statement of the</p> <p>17 prospectus?</p> <p>18 A. In the offering memorandum of the fund, yes.</p> <p>19 Q. Okay. In your experience, was it unusual for</p> <p>20 the investment manager of a fund to also hold physical</p> <p>21 custody of the securities?</p> <p>22 MR. COATES: Object to the form of the</p> <p>23 question.</p> <p>24 BY MR. LAWRENCE KELLOGG:</p> <p>25 Q. You can answer.</p>
256	<p>1 BY MR. LAWRENCE KELLOGG:</p> <p>2 Q. And that's Bernard --</p> <p>3 A. In accordance with this process, and in this</p> <p>4 case it was Bernard Madoff Securities. And the</p> <p>5 activities were reviewed also by PriceWaterhouseCoopers</p> <p>6 as the auditor of Fairfield Sentry Limited, the fund.</p> <p>7 Q. When you first looked at this, did you</p> <p>8 understand that both the financial decisions and the</p> <p>9 custody of the securities was being made by one entity,</p> <p>10 that is, Bernard Madoff Investment Securities?</p> <p>11 A. The sub-custody was done by Bernard Madoff</p> <p>12 Securities, not the custody.</p> <p>13 And the -- Bernard Madoff Securities was</p> <p>14 engaged as a subadvisor, if you will.</p> <p>15 Q. So if I understand -- well, let me ask what</p> <p>16 you understood.</p> <p>17 Did you understand that Mr. Madoff's company</p> <p>18 was making the decisions as to what to invest and Mr.</p> <p>19 Madoff's company was also holding, physically, the</p> <p>20 securities?</p> <p>21 A. That is correct.</p> <p>22 MR. COATES: Object --</p> <p>23 BY MR. LAWRENCE KELLOGG:</p> <p>24 Q. And you understood that at the time?</p> <p>25 MR. COATES: Excuse me. Object to the form.</p>	258	<p>1 A. The majority separate activity, but there</p> <p>2 are -- there are a minority of managers who do share</p> <p>3 custody and advisory functions.</p> <p>4 Q. Okay. Can you name any?</p> <p>5 A. Not offhand, but there were 7,000 hedge funds</p> <p>6 in the world until a couple years ago.</p> <p>7 Q. Can you -- can you name one where the</p> <p>8 investment manager also held custody of the securities?</p> <p>9 A. Not offhand.</p> <p>10 Q. When an investment manager holds custody of</p> <p>11 the securities, does that cause any concern in your mind</p> <p>12 of any particular risks that might be related to that</p> <p>13 situation?</p> <p>14 A. The important fact is that that activity be</p> <p>15 disclosed and identified.</p> <p>16 Q. Okay. Why do you think it should be disclosed</p> <p>17 and identified? What's the risk, in your mind?</p> <p>18 MR. COATES: I'm going to object to the form</p> <p>19 of the question.</p> <p>20 BY MR. LAWRENCE KELLOGG:</p> <p>21 Q. You can answer.</p> <p>22 A. I think the offering memorandum discloses</p> <p>23 numerous risks in investing in hedge funds. Market</p> <p>24 risks, trading risks -- I mean, a whole series of risks.</p> <p>25 Q. But what is -- what is the risk of having an</p>

259	<p>1 investment manager also hold physical custody of the</p> <p>2 securities? In your mind.</p> <p>3 A. It would be, perhaps, safer for the investor</p> <p>4 to have that activity segregated between an investment</p> <p>5 advisor and a separate custodian; but it isn't always</p> <p>6 the case in all funds that are offered.</p> <p>7 Q. On page 266 of Exhibit 21, in the Operations</p> <p>8 section, it says that: "Madoff makes all trading</p> <p>9 decisions and executes all transactions for the fund."</p> <p>10 Transact- --</p> <p>11 A. I'm sorry. What section are we in?</p> <p>12 Q. Operations, the first box.</p> <p>13 A. Okay.</p> <p>14 Q. It says: "Madoff makes all trading decisions</p> <p>15 and executes all transactions for the fund. Transaction</p> <p>16 confirms are sent directly to Citco for processing.</p> <p>17 Copies of the confirmations are sent to Fairfield where</p> <p>18 they are reviewed for reasonableness. Given the nature</p> <p>19 and volume of the transactions, the principal test is to</p> <p>20 verify that the fund's transactions were executed within</p> <p>21 the day's trading range."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you have an understanding or did you at the</p> <p>25 time as to what it means to "review trades for</p>	261	<p>1 A. I don't know.</p> <p>2 Q. -- what -- what were they doing?</p> <p>3 Was it your understanding that some of the</p> <p>4 options that were part of this split-strike conversion</p> <p>5 strategy were traded over the counter and not on an</p> <p>6 exchange?</p> <p>7 A. They may have been, yes.</p> <p>8 Q. Was that your understanding or --</p> <p>9 A. That was my understanding.</p> <p>10 Q. How was -- how was Fairfield confirming those</p> <p>11 trades, or testing?</p> <p>12 A. I -- I personally did not go and review</p> <p>13 Fairfield Greenwich's test for reasonableness at -- at</p> <p>14 any given point in time, but I did ask Jeffrey Tucker</p> <p>15 whether they were being performed. He responded</p> <p>16 affirmatively and assured us that their risk management</p> <p>17 of the advisor activities was good.</p> <p>18 Q. Okay. So you didn't have an understanding as</p> <p>19 to how he did it, but he told you, "I'm doing it"?</p> <p>20 A. I personally did not.</p> <p>21 Q. Did anyone at EFG Capital, to your knowledge,</p> <p>22 have specific understanding as to how this confirmation</p> <p>23 was being performed -- how this review was being</p> <p>24 performed?</p> <p>25 A. Mark McCluskey reviewed it in the early days</p>
260	<p>1 reasonableness"?</p> <p>2 A. This was activity being performed by Fairfield</p> <p>3 Greenwich as a sponsor of the fund.</p> <p>4 Q. Did -- did you have any understanding as to</p> <p>5 what they were reviewing and for what purpose or how</p> <p>6 often or anything -- any details about that?</p> <p>7 A. My understanding is that periodically they</p> <p>8 were reviewing the trade so that the price would conform</p> <p>9 with prices on the day or days that they were executed.</p> <p>10 And that they were also reviewing volumes so that</p> <p>11 they -- to determine whether they were representative of</p> <p>12 the volumes on those days.</p> <p>13 Q. Talks here about whether -- "the principal</p> <p>14 test is to verify that the fund's transactions were</p> <p>15 executed within the day's trading range."</p> <p>16 Do you know what that means, "the trading</p> <p>17 range"?</p> <p>18 A. The prices, I would imagine.</p> <p>19 Q. Prices.</p> <p>20 Did you ever ask Fairfield as to what would be</p> <p>21 an acceptable trading range?</p> <p>22 A. I think the acceptable trading range is the</p> <p>23 ones recorded on any given exchange for that day if they</p> <p>24 were exchange-rate securities.</p> <p>25 Q. What if they were over-the-counter --</p>	262	<p>1 of the history of the fund.</p> <p>2 Marcelo Alvarez may have reviewed it also.</p> <p>3 And I'm not certain who may have reviewed it</p> <p>4 subsequently.</p> <p>5 Q. Did anyone at Fairfield ever explain to you</p> <p>6 what would happen if there was a disagreement with</p> <p>7 Madoff over the reasonableness of a particular day's</p> <p>8 trading?</p> <p>9 MR. COATES: Object to the form.</p> <p>10 THE WITNESS: No.</p> <p>11 BY MR. LAWRENCE KELLOGG:</p> <p>12 Q. Did -- did they ever tell you that they had</p> <p>13 found any trading that had been outside the range of</p> <p>14 reasonableness or within -- outside the trading range</p> <p>15 for a particular day?</p> <p>16 A. Not when I questioned them, no.</p> <p>17 Q. Was this done on a daily basis or every few</p> <p>18 days?</p> <p>19 A. What was done? I'm sorry.</p> <p>20 Q. The review of the confirmations to see if the</p> <p>21 trades were within the trading range.</p> <p>22 A. I personally don't know what frequency they --</p> <p>23 they used for reviews.</p> <p>24 Q. Was it important for you to know that?</p> <p>25 A. It was important for me to know that they</p>

263	<p>1 reviewed the activity.</p> <p>2 Q. And were you relying on their review?</p> <p>3 A. You rely on the sponsor of a fund for many</p> <p>4 activities: To chose a proper custodian, to chose a</p> <p>5 proper accountant, and to chose a proper advisor, and to</p> <p>6 monitor -- and to monitor the investment strategy of the</p> <p>7 fund.</p> <p>8 Q. Did EFG Capital ever do any particular review</p> <p>9 or analysis of Mr. Madoff's operations?</p> <p>10 MR. COATES: Object to the form.</p> <p>11 THE WITNESS: I don't believe EFG Capital did</p> <p>12 any reviews of Bernard Madoff Securities.</p> <p>13 BY MR. LAWRENCE KELLOGG:</p> <p>14 Q. Okay. Did you ever review his trading</p> <p>15 strategy against the market?</p> <p>16 A. Not EFG Capital.</p> <p>17 Q. Did anybody in the EFG family of companies, to</p> <p>18 your knowledge, perform such an analysis?</p> <p>19 A. They may have.</p> <p>20 Q. Do you know whether they did or not?</p> <p>21 A. I believe some EFG entities may have or -- I</p> <p>22 don't know which ones specifically.</p> <p>23 Q. Well, what makes you say some may have?</p> <p>24 A. I believe that EFG Private Bank may have, at</p> <p>25 some point, reviewed the trading strategy on behalf of</p>	265	<p>1 A. I do not know.</p> <p>2 Q. Did you rely on EFG Bank's confirmation of any</p> <p>3 trades done by Fairfield?</p> <p>4 A. No.</p> <p>5 Q. Do you know whether they confirmed any trades</p> <p>6 done by Fairfield or by Madoff?</p> <p>7 A. No, I'm not aware of that. Once again, we</p> <p>8 were distributing a fund, Fairfield Sentry Limited, not</p> <p>9 necessarily reviewing the activities of the sum's fund</p> <p>10 advisor, which would be very unusual for a distributor</p> <p>11 to do.</p> <p>12 Q. Why is that, because you rely on the fund to</p> <p>13 do that?</p> <p>14 A. The fund sponsor reviews its activities in</p> <p>15 wholesaling a fund.</p> <p>16 MR. LAWRENCE KELLOGG: Let's go off the record</p> <p>17 for a second.</p> <p>18 MR. COATES: Let's go off the record.</p> <p>19 THE VIDEOGRAPHER: Off the record. The time</p> <p>20 is 12:38.</p> <p>21 (Thereupon, a luncheon recess was taken from</p> <p>22 12:38 p.m. to 1:12 p.m.)</p> <p>23 THE VIDEOGRAPHER: Okay. We are now back on</p> <p>24 the record. The time is 1:12.</p> <p>25</p>
264	<p>1 their own due diligence.</p> <p>2 Q. Do you know when that happened?</p> <p>3 A. I would say the late '90s.</p> <p>4 Q. And do you know the scope of their review?</p> <p>5 A. No.</p> <p>6 Q. Were you ever given any access to it?</p> <p>7 A. No.</p> <p>8 Q. How do you know it occurred, someone tell you?</p> <p>9 MR. COATES: Well, I'll object to the form of</p> <p>10 the questions.</p> <p>11 THE WITNESS: I don't recall -- recall exactly</p> <p>12 how I became aware of that.</p> <p>13 BY MR. LAWRENCE KELLOGG:</p> <p>14 Q. Do you have a general idea how you became</p> <p>15 aware of it?</p> <p>16 A. A staff member may have informed me of that,</p> <p>17 at that point in time.</p> <p>18 Q. And do you know what EFG Private Bank did</p> <p>19 with -- with respect to reviewing private trading</p> <p>20 strategy --</p> <p>21 A. No.</p> <p>22 Q. -- or trading strategy?</p> <p>23 A. No.</p> <p>24 Q. Do you know if they were given access to</p> <p>25 Mr. Madoff's proprietary strategy?</p>	266	<p>1 BY MR. LAWRENCE KELLOGG:</p> <p>2 Q. Did you ever speak to Citco about the</p> <p>3 sub-custodian relationship they had with Bernard Madoff</p> <p>4 Investment Securities?</p> <p>5 A. I did not.</p> <p>6 Q. Do you know if anyone from EFG Capital ever</p> <p>7 did?</p> <p>8 A. I don't know.</p> <p>9 (Thereupon, the referred-to document was</p> <p>10 marked by the court reporter for Identification as</p> <p>11 Plaintiff's Exhibit 22.)</p> <p>12 BY MR. LAWRENCE KELLOGG:</p> <p>13 Q. Can we mark as Exhibit 22 something called</p> <p>14 Notice to Clients, it's Bates-labeled EFG Capital 1066.</p> <p>15 Have you seen Exhibit 22 before?</p> <p>16 A. Yes, I have.</p> <p>17 Q. What is it?</p> <p>18 A. A Notice to Clients regarding Fairfield Sentry</p> <p>19 Limited.</p> <p>20 Q. Now, this is an unsigned and undated notice.</p> <p>21 Do you know whether this notice or something like it</p> <p>22 went out to customers of EFG Capital International?</p> <p>23 A. I believe it went out around 2- -- around year</p> <p>24 2000.</p> <p>25 Q. How did it come about that this notice went</p>

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<p>1 out?</p> <p>2 A. I believe it came about in the -- along with</p> <p>3 a -- an update of the offering memorandum that we sent</p> <p>4 to our clients, and we wanted to remind them of the size</p> <p>5 of the subadvisor of -- I shouldn't -- sorry. Not the</p> <p>6 subadvisor, the sub-custodian being smaller than many</p> <p>7 international banks.</p> <p>8 Q. It says here: "The fund's performance speaks</p> <p>9 for itself; however, we would like to highlight the fact</p> <p>10 that the fund's assets are custodized with its</p> <p>11 investment advisor, Bernard L. Madoff Investment</p> <p>12 Securities, rather than with a major international bank</p> <p>13 (directly or through a subsidiary) as is the case with</p> <p>14 most investment funds. Bernard L. Madoff Investment</p> <p>15 Securities had capital as of October 31, 2003, of U.S.</p> <p>16 \$478 million. This is much less than the capital of a</p> <p>17 major international bank; to that extent investing in</p> <p>18 the fund represents one of the risks of investing in the</p> <p>19 fund."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. What does it mean to say, "To that extent</p> <p>23 investing in the fund represents one of the risks of</p> <p>24 investing in the fund"? What does that mean?</p> <p>25 A. It means that the size of the sub-custodian</p>	<p>1 who -- who expressed concerns after that article.</p> <p>2 Q. Is this the only time that EFG Capital sent a</p> <p>3 notice regarding the custody being with Bernard Madoff</p> <p>4 Investment Securities?</p> <p>5 MR. COATES: I'm going to object to the form.</p> <p>6 You may answer.</p> <p>7 THE WITNESS: As customers subscribed, the</p> <p>8 issue of custody was identified in the offering</p> <p>9 memorandum. So it was identified by the fund</p> <p>10 sponsor.</p> <p>11 And for a number of years, I can't recall how</p> <p>12 many, the customers would have also signed this</p> <p>13 notice upon subscription.</p> <p>14 BY MR. LAWRENCE KELLOGG:</p> <p>15 Q. Was this a notice that had to be subscribed --</p> <p>16 signed every time there was a subscription?</p> <p>17 A. For a period of time.</p> <p>18 Q. What period of time was that?</p> <p>19 A. Starting in approximately 2000. For a few</p> <p>20 years.</p> <p>21 Q. How many years, approximately?</p> <p>22 A. I don't recall -- I don't recall.</p> <p>23 Q. Whose decision was it to -- to have customers</p> <p>24 sign one of these notices each time they subscribed?</p> <p>25 A. I can't be precise. I think it was a</p>
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<p>1 chosen by Citco was smaller than a large international</p> <p>2 bank and as such it was smaller in size and a risk to be</p> <p>3 considered.</p> <p>4 Q. After this notice went out, did -- did any</p> <p>5 customers, to your knowledge, redeem their investments?</p> <p>6 A. They may have.</p> <p>7 Q. Do you know one way or another?</p> <p>8 A. Not specifically.</p> <p>9 Q. Do you know -- did any customers contact EFG</p> <p>10 Capital and say, "This is a concern. We don't want to</p> <p>11 do business at this point with Fairfield Sentry"?</p> <p>12 A. I can't recall specifically if anybody voiced</p> <p>13 that specific concern. They may have reduced their</p> <p>14 exposure and they may have a limited exposure or they</p> <p>15 may have done nothing.</p> <p>16 Q. Did -- did periodically customers express</p> <p>17 concerns about the Fairfield Sentry Fund to EFG Capital</p> <p>18 International?</p> <p>19 A. No.</p> <p>20 Q. Do you recall any particular concerns</p> <p>21 expressed after those articles, for example, we</p> <p>22 discussed last time, after they came out?</p> <p>23 A. If the articles were 2001, I -- I don't recall</p> <p>24 whether we received specific phone calls. There may</p> <p>25 have been one or two customers but not -- not many</p>	<p>1 collective decision amongst Mark McCluskey, myself, and</p> <p>2 perhaps others in the firm.</p> <p>3 Q. When did Mr. McCluskey leave the firm?</p> <p>4 A. Approximately five years after 1996.</p> <p>5 Q. 2001 or so?</p> <p>6 A. I can't recall exactly.</p> <p>7 Q. Well, was there a particular reason he left?</p> <p>8 A. He was commuting for New York -- from New York</p> <p>9 to Miami for five years and I think he got tired.</p> <p>10 Q. When did he pass away?</p> <p>11 A. I think a few years after that.</p> <p>12 Q. During the entire time that EFG Capital was a</p> <p>13 distributor for Fairfield Sentry Limited's fund, were</p> <p>14 investors required to have a net worth in excess of a</p> <p>15 million dollars U.S.?</p> <p>16 A. I don't believe so.</p> <p>17 Q. Did that change at some point?</p> <p>18 A. It -- it may have been inserted into the</p> <p>19 offering memorandum at some point.</p> <p>20 Q. But was it always a requirement that a</p> <p>21 million-dollar net worth was necessary to --</p> <p>22 A. No.</p> <p>23 Q. -- subscribe to this fund?</p> <p>24 A. I don't believe so.</p> <p>25 Q. Did that -- did it change -- how did it</p>

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<p>1 change?</p> <p>2 A. That may have been in addition to the offering</p> <p>3 memorandum at some point in time.</p> <p>4 Q. I'm not sure I understand.</p> <p>5 A. It may have been in addition to the offering</p> <p>6 memorandum by the fund sponsor at some point in time.</p> <p>7 Q. Some point in time they required that the</p> <p>8 investors be -- have a million-dollar net worth?</p> <p>9 A. They viewed the shareholding as EFG Bank, one</p> <p>10 investor, so EFG Bank always had the threshold, if you</p> <p>11 will.</p> <p>12 Q. So the technical subscriber here was EFG Bank,</p> <p>13 not any of EFG Capital's customers. Is that right?</p> <p>14 A. As -- as an agent for the customer, correct.</p> <p>15 Q. And so from the Fairfield Sentry's</p> <p>16 perspective, they said, We're dealing with EFG Bank; if</p> <p>17 they have a net worth more than a million dollars,</p> <p>18 they're qualified; correct?</p> <p>19 A. They may have taken that position, I don't</p> <p>20 know.</p> <p>21 Q. Well, how is that your company decide -- went</p> <p>22 about qualifying investors to subscribe to this fund?</p> <p>23 A. That's an under -- that's an undertaking of</p> <p>24 the registered representative, vis-a-vis each client.</p> <p>25 Each client is different. Some clients are professional</p>	<p>1 Q. In your due diligence or the company's due</p> <p>2 diligence review of Fairfield Sentry, did you or the</p> <p>3 company come to an understanding as to what Madoff's</p> <p>4 compensation was going to be?</p> <p>5 A. EFG Capital was never involved in a</p> <p>6 compensation discussion between the fund and any of its</p> <p>7 providers.</p> <p>8 Q. So you -- you did not have an understanding of</p> <p>9 what Madoff's compensation would be?</p> <p>10 MR. COATES: Object to the form.</p> <p>11 BY MR. LAWRENCE KELLOGG:</p> <p>12 Q. Is that right?</p> <p>13 MR. COATES: Same objection.</p> <p>14 THE WITNESS: I would have an understanding of</p> <p>15 what the offering memorandum may have indicated.</p> <p>16 (Thereupon, the referred-to document was</p> <p>17 marked by the court reporter for Identification as</p> <p>18 Plaintiff's Exhibit 23.)</p> <p>19 BY MR. LAWRENCE KELLOGG:</p> <p>20 Q. Let me mark as Exhibit 23 a June 26, 2000, fax</p> <p>21 to you from Mr. Tucker, Bates-labeled EFG Capital 1211</p> <p>22 through 1213.</p> <p>23 Do you recall receiving Exhibit 23?</p> <p>24 A. No.</p> <p>25 Q. Looking at the attachment, there's a letter to</p>
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<p>1 investors, some are not professional investors. Some</p> <p>2 are very high net worth. Some are medium net worth.</p> <p>3 Some have different investment objectives. Some orders</p> <p>4 were solicited, some orders were unsolicited.</p> <p>5 Q. Well, for solicited -- would it make a</p> <p>6 difference whether or not an investment was solicited in</p> <p>7 terms of the qualifications of the investor?</p> <p>8 MR. COATES: I'm going to object to the form</p> <p>9 of the question.</p> <p>10 BY MR. LAWRENCE KELLOGG:</p> <p>11 Q. You can answer.</p> <p>12 A. It may or may not. It would depend on the</p> <p>13 individual investor.</p> <p>14 Q. In terms of the net worth, was there ever a</p> <p>15 threshold net worth that EFG Capital looked to for its</p> <p>16 investors in order to subscribe them in this fund?</p> <p>17 A. I mean, I don't recall specifically if that</p> <p>18 was a requirement of this fund or not. I mean, there</p> <p>19 were other funds that had \$5,000 minimums, other funds</p> <p>20 had a hundred thousand dollar minimums. I don't</p> <p>21 remember about this fund in particular.</p> <p>22 Q. In terms of a net worth, though, was there a</p> <p>23 net worth minimum that was required, a net worth</p> <p>24 threshold that was required?</p> <p>25 A. It -- it may have. I don't recall.</p>	<p>1 EFG Capital International from Mr. Tucker attached to</p> <p>2 the fax and it's labeled "Draft." Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know -- do you recall why Mr. Tucker</p> <p>5 was sending you a draft letter addressed to your</p> <p>6 company?</p> <p>7 A. Nope.</p> <p>8 Q. On the second page it says, in the</p> <p>9 second-to-last paragraph -- no, the third-to-last</p> <p>10 paragraph, the last sentence, it says: "All trading</p> <p>11 decisions are delegated to Madoff Securities and the</p> <p>12 success of our fund is dependent on their efforts."</p> <p>13 Then it goes on to say: "Utilizing Madoff</p> <p>14 Securities enables us to implement the strategy with</p> <p>15 low-cost execution and efficiency. Our orders and</p> <p>16 executions go through the Madoff Securities'</p> <p>17 market-making system in the same manner as any other</p> <p>18 firm that would execute through Madoff. The firm</p> <p>19 charges us a bid/offer spread but no . . ."</p> <p>20 A. I'm sorry. I lost you. You're in the</p> <p>21 third -- in the third paragraph?</p> <p>22 Q. Yes.</p> <p>23 A. Okay.</p> <p>24 Q. "The firm charges us a bid/offer spread, but</p> <p>25 no commission."</p>

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276	<p>1 was? 2 A. No. 3 Q. Did you think he was just charging a 4 commission on the trade? 5 A. That's correct. A -- a commission -- I'm 6 sorry. 7 Q. Well, strike that. 8 MR. COATES: Excuse me. 9 THE WITNESS: Can I -- 10 MR. COATES: Let me object. Object to the 11 form of the question. 12 You may answer, sir. 13 BY MR. LAWRENCE KELLOGG: 14 Q. Go ahead. 15 A. Not a commission. Rather a bid/offer spread 16 but no commissions, as the letter indicates. 17 Q. Okay. What does a bid/offer spread mean to 18 you? 19 A. A markup of a security. 20 Q. Did you know what the markup was? 21 A. No. 22 Q. Did you ever ask? 23 A. Once again, the activity between the fund 24 manager and a subadvisor is not one that a distributor 25 normally gets involved in.</p>	278	<p>1 A. This -- this doesn't relate to EFG Capital 2 Asset Management. 3 Q. I understand. I'm asking you -- 4 A. This relates to the fund manager and the funds 5 account at Bernard Madoff Securities. 6 Q. I understand. 7 Did EFG Capital Asset Management have 8 discretionary brokerage accounts for its customers? 9 MR. COATES: Object to the form of the 10 question. 11 THE WITNESS: The brokerage, EFG Capital 12 International, did not have any discretionary 13 accounts. 14 BY MR. LAWRENCE KELLOGG: 15 Q. Did EFG -- 16 A. EFG Capital -- 17 Q. -- Asset -- 18 A. -- Asset Management, the registered investment 19 advisor, has discretionary accounts. It didn't in the 20 year 2000. It didn't exist. 21 Q. Okay. The nature of its -- the way it charges 22 its customers is how? By commission? By RAT(phonetic) 23 fee or by some other way? 24 A. As disclosed in our -- in our form, by 25 management fee.</p>

279	<p>1 Q. And that's a percentage of the assets under 2 management; is that right?</p> <p>3 A. That is correct.</p> <p>4 Q. In your experience, does a discretionary 5 brokerage account ordinarily -- or discretionary broker 6 ordinarily charge the customer based upon a management 7 fee?</p> <p>8 A. I'm sure -- I'm sorry. You're -- you're 9 talking about discretionary broker or discretionary 10 asset management -- asset manager?</p> <p>11 Q. Discretionary asset manager.</p> <p>12 A. I have seen discretionary asset management 13 firms that charge based on incentives only rather than 14 fixed fees, or a combination of both.</p> <p>15 Q. Have you ever seen one where all they charged 16 was a bid/offer spread on a trade? Other than this one?</p> <p>17 A. Don't know.</p> <p>18 Q. Okay.</p> <p>19 (Thereupon, the referred-to document was 20 marked by the court reporter for Identification as 21 Plaintiff's Exhibit 24.)</p> <p>22 BY MR. LAWRENCE KELLOGG:</p> <p>23 Q. Let me have marked as the next exhibit, 24 Exhibit 24, which is a July -- looks like a July 11 and 25 12 -- a summary of a meeting from July 11 and 12, 2000.</p>	281	<p>1 production or whether the purpose of this would 2 fall within the attorney-client privilege.</p> <p>3 So why don't we move on to another area --</p> <p>4 MR. LAWRENCE KELLOGG: Well, let me just ask a 5 couple questions. Let me ask a couple questions to 6 flesh that out a bit.</p> <p>7 BY MR. LAWRENCE KELLOGG:</p> <p>8 Q. This is addressed -- this memorandum is 9 addressed to Lawrence Howell?</p> <p>10 A. Yes.</p> <p>11 Q. Was Mr. Montgomery an attorney for Mr. Howell?</p> <p>12 A. What?</p> <p>13 Q. Was he an attorney for Mr. Howell?</p> <p>14 A. You mean a personal attorney?</p> <p>15 Q. Personal or for EFG Bank.</p> <p>16 A. No.</p> <p>17 Q. So was this rendering legal advice to EFG 18 Bank, this memorandum?</p> <p>19 MR. COATES: I'm going to object. 20 I don't want you to answer that question. 21 It's an unfair question, improper question for a -- 22 a lay witness.</p> <p>23 So, Larry, I'm going to instruct the witness 24 at this point not to answer any questions about 25 this document; if we can move on.</p>
280	<p>1 It's EFG Capital Bates Numbers 905 through 908. 2 Let me ask if you have seen Exhibit 24 before.</p> <p>3 A. Yes, some time ago.</p> <p>4 Q. Did you see it at or around the time it was 5 prepared?</p> <p>6 A. Yes.</p> <p>7 Q. What is it?</p> <p>8 A. It is a summary of a review conducted by Dart 9 Montgomery for EFG Capital of the Fairfield Sentry Fund.</p> <p>10 Q. At that time was Mr. Montgomery the general 11 counsel of EFG Capital International?</p> <p>12 A. I'm sorry. I didn't hear you.</p> <p>13 Q. At that time was Mr. Montgomery the general 14 counsel of EFG Capital International?</p> <p>15 A. He was either in-house counsel or head of 16 compliance. I can't recall which one.</p> <p>17 MR. COATES: I am going to -- Larry?</p> <p>18 MR. LAWRENCE KELLOGG: Yeah, I'm listening to 19 you.</p> <p>20 MR. COATES: I am going to instruct the 21 witness not to answer any questions on this 22 document, given Mr. Montgomery's status as the 23 in-house counsel.</p> <p>24 I want to look at this document in terms of 25 whether it is a -- whether it was an inadvertent</p>	282	<p>1 And under the rule, you're required to return 2 it back to me, so I would ask that you return it 3 back to me promptly.</p> <p>4 MR. LAWRENCE KELLOGG: Well, are you asserting 5 an attorney-client privilege at this point or just 6 investigate --</p> <p>7 MR. COATES: At this point --</p> <p>8 MR. LAWRENCE KELLOGG: -- it?</p> <p>9 MR. COATES: At this point I am, subject to my 10 investigation.</p> <p>11 BY MR. LAWRENCE KELLOGG:</p> <p>12 Q. Putting aside this document for a minute. 13 Did Dart Montgomery ever provide legal advice 14 to you with respect to EFG Capital International with 15 respect to Fairfield Sentry?</p> <p>16 A. Dart Montgomery, as in-house counsel, provided 17 legal guidance on many issues. I can't recall which one 18 in particular he may have --</p> <p>19 Q. Do you have a specific recollection of you 20 asking him legal advice with respect to Fairfield Sentry 21 or Bernard L. Madoff Investment Securities?</p> <p>22 A. Possibly.</p> <p>23 Q. Do you remember one way or another?</p> <p>24 A. Again, he was our in-house counsel; he was 25 consulted on many issues; and, you know, he -- we</p>

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<p>1 normally discussed legal issues on a number of funds, a 2 number of products, and different issues for the firm. 3 Q. Do you recall receiving Exhibit 24? 4 A. Yes. 5 Q. Did you receive it at or about the time it was 6 prepared? 7 A. Yes. 8 Q. Was Dart Montgomery responsible for conducting 9 any of the due diligence of Fairfield and/or Bernard 10 Madoff? 11 MR. COATES: Excuse me. Can you repeat the 12 question? 13 BY MR. LAWRENCE KELLOGG: 14 Q. Was Dart Montgomery tasked with the -- any 15 responsibility with respect to due diligence by -- by 16 your company over Fairfield International -- Fairfield 17 Sentry and/or Bernard Madoff? 18 A. I can't recall whether he was asked 19 specifically to conduct any of the periodic reviews. 20 Q. Looking at Exhibit 24, does it refresh your 21 memory as to whether he was requested to do that? 22 MR. COATES: Well, I'm going to -- I'm going 23 to instruct you not to answer that question. That 24 invades the attorney-client privilege. 25 (Thereupon, the referred-to document was</p>	<p>1 and we may have also received the financial 2 statements of the sub-custodian at different points 3 in time. 4 BY MR. LAWRENCE KELLOGG: 5 Q. Well, do you recall looking at Madoff 6 Securities' financial statements over the years? 7 A. Well, this is one of them. There may have 8 been more that we -- that we received. 9 Q. Well, there may have been. I'm asking you 10 what you recall. 11 Did you look at them over the years? 12 A. Our responsibility was not to look at the 13 financial statements of providers to the fund. Once 14 again, we had a fund which had a global custodian; it 15 had an external auditor in PriceWaterhouseCoopers; the 16 advisor was a member of FINRA, supervised by FINRA and 17 the SEC; and certainly that gave us added comfort in the 18 selection of the advisor by the investment manager. 19 Q. So, as you sit here today, you feel even if 20 you received the financial statements, that was not one 21 of the things you were going to be looking at with any 22 great detail. Is that fair? 23 MR. COATES: Object to the form of the 24 question. 25 THE WITNESS: I think I answered the question</p>
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<p>1 marked by the court reporter for Identification as 2 Plaintiff's Exhibit 25.) 3 BY MR. LAWRENCE KELLOGG: 4 Q. I'll show you Exhibit 25, which is a fax from 5 Jeffrey Tucker to Mr. Echevarria dated May 30, 1997. Do 6 you recall receiving Exhibit 25? 7 A. Not specifically, but it's addressed to me. 8 Q. Now, this attaches an annual audit -- audited 9 report of Bernard Madoff Securities with financial 10 statements from 1996 regarding Mr. Madoff's investment 11 securities company. 12 Do you see that? 13 A. Yes. 14 Q. Did you review this at the time? 15 A. I can't recall whether I personally reviewed 16 it or Mark McCluskey reviewed it, but obviously we 17 received it and ... 18 Q. Do you recall looking at Madoff financial 19 statements over the years? 20 A. I know we -- 21 MR. COATES: Object to the form of the 22 question. 23 You may answer. 24 THE WITNESS: We may have received the 25 financial statements of Fairfield Sentry Limited</p>	<p>1 that we looked, once again, at the fund, the 2 structure of the fund, the providers of the fund, 3 and we did that periodically. 4 BY MR. LAWRENCE KELLOGG: 5 Q. Was it important to you or was it not 6 important to you to look at Madoff's financial 7 statements? 8 MR. COATES: Object to the form. 9 THE WITNESS: I think the importance was to 10 understand that the fund sponsor had chosen wisely 11 the fund providers. 12 BY MR. LAWRENCE KELLOGG: 13 Q. Okay. Would looking at the financials help 14 you come to a decision on that? 15 A. I think receiving financials that were 16 submitted to the SEC for an advisor and of a firm 17 regulated by FINRA and the SEC probably gave us some 18 comfort. 19 Q. Did it concern you that Bernard Madoff 20 Investment Securities was providing investment advisory 21 advice to Fairfield Sentry but was not an approved 22 financial advisor? Didn't have a license -- 23 MR. COATES: Object -- object to the form of 24 the question. 25</p>

287	<p>1 BY MR. LAWRENCE KELLOGG: 2 Q. -- to do that? 3 MR. COATES: Object to the form of the 4 question, if I -- if that's not clear to the -- to 5 the question. 6 You may answer, sir. 7 BY MR. LAWRENCE KELLOGG: 8 Q. You may answer. 9 A. Bernard Madoff Securities had a discretionary 10 relationship through a brokerage account, which they're 11 allowed to have under FINRA regulations. 12 Q. Yeah, you understood them to be a 13 broker-dealer, not an investment advisor. Is that 14 right? 15 A. That's correct. 16 Q. Did you consider -- did you consider it to be 17 investment advisory advice when Mr. Madoff had full 18 discretion to trade -- make every trade for Fairfield 19 Sentry for 20 years? 20 MR. COATES: Object to the form of the 21 question. 22 BY MR. LAWRENCE KELLOGG: 23 Q. Almost. 24 A. I'm sorry. Could you repeat the question? 25 Q. Did you -- did you -- did you consider</p>	289	<p>1 accountants and auditors were a company called 2 Friehling, F-R-I-E-H-L-I-N-G, & Horowitz? 3 A. I noticed that that's who the firm is and that 4 they gave an unqualified opinion. 5 Q. Did you know anything about that firm? 6 A. Nope. 7 Q. Did you do any investigation of that firm at 8 the time? 9 A. Nope. 10 Q. Did you ever do any investigation of the firm? 11 A. We reviewed the activities of Fairfield Sentry 12 Limited. Once again, that is our obligation, the fund; 13 and reviewed the activities that Fairfield Greenwich was 14 doing to ensure itself that fund providers were 15 appropriate. And this -- this firm -- this information 16 was provided to the SEC, which again gave us confidence 17 that all the providers to the fund were in order. 18 Q. So did you ever investigate Mr. Madoff's 19 auditors, Friehling & Horowitz? 20 A. No. 21 Q. Did anyone at EFG Capital International ever 22 investigate Friehling & Horowitz, to your knowledge? 23 A. Not to my knowledge. 24 Q. Did -- would you have expected that, as part 25 of their management fee, that Fairfield Sentry or</p>
288	<p>1 Mr. Madoff and his company -- 2 A. Uh-huh. 3 Q. -- when they were providing -- making all the 4 decisions as to the trading at Fairfield, that they were 5 providing investment advisory services that required a 6 license to do that? 7 MR. COATES: Object to the form of the 8 question. 9 BY MR. LAWRENCE KELLOGG: 10 Q. You can answer. 11 A. I believe that Madoff Securities was in 12 compliance with all regulatory issues regarding FINRA 13 and the SEC at the time. And certainly PWC, as the 14 fund's auditor, gave me comfort that they believe 15 likewise. 16 Q. Did you rely on PriceWaterhouseCoopers to - to 17 ensure that Mr. Madoff was in compliance with the law 18 when he was giving investment advice to the fund? 19 MR. COATES: Object to the form. 20 THE WITNESS: I -- I don't have an opinion as 21 to what Mr. Madoff may have done or not done to be 22 in compliance. 23 BY MR. LAWRENCE KELLOGG: 24 Q. When you looked at these financials or when 25 you received them, did you notice that Mr. Madoff's</p>	290	<p>1 Fairfield, the sponsor, would be investigating that 2 accounting firm to make sure that they were competent? 3 A. I would expect that the fund sponsor would 4 have reviewed the relationships of its providers. 5 Q. And would that include investigating or doing 6 a background check or understanding something about 7 Friehling & Horowitz and their capabilities? 8 A. I -- it's -- sitting here it's difficult for 9 me to determine whether that was one of the 10 responsibilities of that firm or not. I mean, they -- 11 they engaged Bernard Madoff Securities, and yes, our 12 expectation is that they review the activities of the 13 advisor and they had full authority to hire and fire 14 him. So if they had found something that was irregular, 15 they should have fired him as an advisor. 16 Q. If Fairfield Sentry's auditors had been 17 Friehling & Horowitz, would you have done business with 18 the fund or would you have at least looked at the 19 background of that firm? 20 MR. COATES: Object to the form of the 21 question. Calls for speculation. 22 THE WITNESS: It wasn't the case, so I don't 23 know. I thought -- 24 BY MR. LAWRENCE KELLOGG: 25 Q. When you're looking at a fund -- you mentioned</p>

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<p>1 PriceWaterhouseCoopers -- do you look at their auditors?</p> <p>2 A. I think we're comforted by the fact that</p> <p>3 they're one of the largest auditors that are involved in</p> <p>4 the business of auditing firms and auditing funds.</p> <p>5 Q. If the -- if the auditors are unknown to you,</p> <p>6 is that one of the things that you look at as part of</p> <p>7 your due diligence of a fund?</p> <p>8 A. Perhaps would have looked.</p> <p>9 Q. And if the auditor of the -- the company</p> <p>10 making all the investment decisions and holding all the</p> <p>11 securities is unknown to you, is that something that you</p> <p>12 think EFG Capital should have looked at?</p> <p>13 MR. COATES: Object to the form of the</p> <p>14 question.</p> <p>15 THE WITNESS: It was the responsibility of the</p> <p>16 fund sponsor to look at the activities of Fairfield</p> <p>17 Sentry providers.</p> <p>18 BY MR. LAWRENCE KELLOGG:</p> <p>19 Q. Well, you're look -- EFG Capital as a</p> <p>20 distributor --</p> <p>21 A. Uh-huh.</p> <p>22 Q. -- is looking at the fund and looking at this</p> <p>23 situation with a -- with an eye towards recommending it</p> <p>24 to its own customers. Is that right?</p> <p>25 A. Sometimes.</p>	<p>1 then we're going to move on.</p> <p>2 THE WITNESS: As I have said numerous times,</p> <p>3 we looked at all of the fund primary providers, and</p> <p>4 we looked to the fund sponsor to do its research</p> <p>5 and its reviews of all the providers that they</p> <p>6 engaged in in offering the fund to distributors.</p> <p>7 BY MR. LAWRENCE KELLOGG:</p> <p>8 Q. Have you ever rejected a fund from being put</p> <p>9 on the approved list because you don't know who the</p> <p>10 auditor is?</p> <p>11 A. I don't recall.</p> <p>12 Q. Have you ever rejected a fund for having a --</p> <p>13 an investment manager also hold custody of the</p> <p>14 securities?</p> <p>15 MR. COATES: Object to form.</p> <p>16 BY MR. LAWRENCE KELLOGG:</p> <p>17 Q. You can answer.</p> <p>18 A. I don't recall.</p> <p>19 Q. Before you had mentioned or you had made a</p> <p>20 distinction between unsolicited and solicited customers.</p> <p>21 How is it that you know whether an investment is</p> <p>22 solicited or unsolicited?</p> <p>23 A. Sometimes we have customers who approach us</p> <p>24 directly to buy a specific security or a specific fund</p> <p>25 or a specific product.</p>
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<p>1 Q. Yeah, that's the purpose you're looking for.</p> <p>2 If you're going to put it on an a recommended list, it's</p> <p>3 going to be ultimately recommended to customers, right?</p> <p>4 MR. COATES: Excuse me. Object to the form of</p> <p>5 the question.</p> <p>6 BY MR. LAWRENCE KELLOGG:</p> <p>7 Q. You can answer.</p> <p>8 A. We placed the funds in our approved list which</p> <p>9 meant that registered reps could recommend it or they</p> <p>10 could execute transactions for unsolicited trades also.</p> <p>11 Q. So if the fund that you're looking at has an</p> <p>12 accounting firm that you know nothing about, as part of</p> <p>13 your decision to recommend it to your customers, do you</p> <p>14 at least check out the accounting firm?</p> <p>15 A. We're talking about a hypothetical situation</p> <p>16 right now? Is that -- is that the question?</p> <p>17 Q. No, as a -- no, I'm talking about this</p> <p>18 situation right here. I'm looking at an accounting firm</p> <p>19 you've never heard of, you're recommending it to your</p> <p>20 customers, did you consider looking at this firm?</p> <p>21 MR. COATES: I -- I'm going to object to the</p> <p>22 form of the question.</p> <p>23 BY MR. LAWRENCE KELLOGG:</p> <p>24 Q. You can answer.</p> <p>25 MR. COATES: You can answer it one more time,</p>	<p>1 Q. And those would be unsolicited?</p> <p>2 A. Those would be unsolicited.</p> <p>3 Q. Do you keep records of which customers are</p> <p>4 solicited invest- -- or which investments are solicited</p> <p>5 as opposed to unsolicited?</p> <p>6 A. The registered representative would indicate</p> <p>7 that.</p> <p>8 Q. How would that be indicated, and where?</p> <p>9 A. Either through notes or through CARR(phonetic)</p> <p>10 Reports or through trade tickets.</p> <p>11 Q. Was it ever a concern of yours or an issue</p> <p>12 that you looked at -- strike that.</p> <p>13 Did you ever look at the issue of who would be</p> <p>14 the counterparties on the option trades Madoff was</p> <p>15 making?</p> <p>16 A. I don't -- I don't recall having looked at</p> <p>17 that.</p> <p>18 Q. Well, did you ever look at who was the</p> <p>19 counterparties on any of the equities that Mr. Madoff</p> <p>20 was supposedly purchasing and selling?</p> <p>21 A. I don't recall. Once again, the sponsor of</p> <p>22 the fund is the entity that would be charged with</p> <p>23 reviewing those activities.</p> <p>24 Q. Is -- is -- was EFG Capital ever interested in</p> <p>25 learning the identities of counterparties to any of the</p>

295	<p>1 trades that Madoff was supposedly making?</p> <p>2 A. I -- I don't -- I don't recall. But, you</p> <p>3 know, once again, we distribute hundreds of funds.</p> <p>4 (Thereupon, the referred-to document was</p> <p>5 marked by the court reporter for Identification as</p> <p>6 Plaintiff's Exhibit 26.)</p> <p>7 BY MR. LAWRENCE KELLOGG:</p> <p>8 Q. Let me mark as Exhibit 26 an August 21, 1998,</p> <p>9 letter to Mr. McCluskey from Jeffrey Tucker. It's</p> <p>10 Bates-labeled EFG Capital 1180. You recall ever seeing</p> <p>11 this letter?</p> <p>12 A. No. Not particularly.</p> <p>13 Q. Says here: "Dear Mark, Pursuant to your</p> <p>14 request, for further information regarding Fairfield</p> <p>15 Sentry Limited, please be advised as follows: Madoff</p> <p>16 Securities is not a counter-party of any of the</p> <p>17 over-the-counter options purchased or sold by the fund."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Does this refresh your memory as to whether</p> <p>21 this was ever an issue at EFG Capital; that is, is</p> <p>22 Madoff Securities on the other side of any of the</p> <p>23 options trades?</p> <p>24 A. No, as I indicated, Mark McCluskey went</p> <p>25 numerous times to Fairfield Greenwich; and I'm not aware</p>	297	<p>1 doing your initial due diligence, or shortly afterwards,</p> <p>2 that -- what were the percentage of options trades that</p> <p>3 were done by an exchange, over an exchange, as opposed</p> <p>4 to over-the-counter?</p> <p>5 A. I don't know what questions Mark McCluskey may</p> <p>6 have asked Fairfield Greenwich resulting in this letter.</p> <p>7 Q. This was never an issue that you addressed or</p> <p>8 were concerned about. Is that right?</p> <p>9 A. Not that I recall.</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.</p> <p>13 THE WITNESS: Not that I recall.</p> <p>14 BY MR. LAWRENCE KELLOGG:</p> <p>15 Q. Now, at some point, if I understand your</p> <p>16 testimony from last time, there was the -- the due</p> <p>17 diligence or monitoring of the Fairfield Sentry funds,</p> <p>18 and maybe all the hedge funds at EFG Capital, was done</p> <p>19 by an outside company. Is that right?</p> <p>20 A. The research, fact-gathering, due diligence</p> <p>21 information was outsourced to a firm called Greenwich</p> <p>22 Associates, I believe, in early '07. And that</p> <p>23 information would be made available to Sixto Campano to</p> <p>24 conduct periodic reviews on hedge funds in an approved</p> <p>25 platform.</p>
296	<p>1 of what specific discussions he may have had which</p> <p>2 resulted in this -- in this letter.</p> <p>3 Q. The other thing the letter says is that: "The</p> <p>4 counter-parties are a diverse group of well-capitalized</p> <p>5 firms." Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Was that an issue as to what was the strength</p> <p>8 of the counter-parties on the options trades?</p> <p>9 A. I guess it would be good know.</p> <p>10 Q. Do you know whether EFG Capital ever learned</p> <p>11 the identity of even one counter-party to any option</p> <p>12 trade?</p> <p>13 A. I don't know if Fairfield Greenwich provided</p> <p>14 that information or not.</p> <p>15 Q. The third thing it says is: "The mix between</p> <p>16 over-the-counter and exchange-traded options can vary</p> <p>17 significantly. The OTC options may, at times, represent</p> <p>18 the entire options position of the fund, or may</p> <p>19 represent zero percent of the options. However, the</p> <p>20 intention is to use exchange-traded options where</p> <p>21 possible, trading out of the OTC options where</p> <p>22 feasible."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Was it an issue at EFG Capital when you're</p>	298	<p>1 Q. Have you ever heard of Greenwich Alternative</p> <p>2 Investments?</p> <p>3 A. Doesn't mean anything in particular to me</p> <p>4 right now.</p> <p>5 MR. LAWRENCE KELLOGG: All right. Let's go</p> <p>6 off the record for a minute.</p> <p>7 THE VIDEOGRAPHER: Off the record. The time</p> <p>8 is 1:56.</p> <p>9 (Thereupon, a recess was taken from 1:57 p.m.</p> <p>10 to 2:05 p.m.)</p> <p>11 THE VIDEOGRAPHER: All right. We're now back</p> <p>12 on the record. The time is 2:05.</p> <p>13 (Thereupon, the referred-to document was</p> <p>14 marked by the court reporter for Identification as</p> <p>15 Plaintiff's Exhibit 27.)</p> <p>16 BY MR. LAWRENCE KELLOGG:</p> <p>17 Q. Let me show what I've marked as Exhibit 27,</p> <p>18 which is Bates-labeled EFG Capital 671. It's called</p> <p>19 Hedge Fund Compliance Checklist. Can you identify</p> <p>20 Exhibit 27?</p> <p>21 A. I -- I cannot identify it.</p> <p>22 Q. Is this an EFG checklist?</p> <p>23 A. I can't be certain.</p> <p>24 Q. So you don't know who inputted this?</p> <p>25 A. No.</p>

299	<p>1 Q. Do you know what "HFN" means?</p> <p>2 A. Where is that?</p> <p>3 Q. In the -- in the black bar at the bottom, it</p> <p>4 says "HFN Notes."</p> <p>5 Do you know what that is?</p> <p>6 A. No.</p> <p>7 Q. Did -- did the company subscribe to any</p> <p>8 external hedge fund databases at any time?</p> <p>9 A. I don't know.</p> <p>10 Q. Do you know whether EFG ever had a form called</p> <p>11 "Hedge Fund Compliance Checklist" or something like</p> <p>12 that? Some checklist where compliance -- hedge fund</p> <p>13 compliance policies would be examined?</p> <p>14 A. I don't know, but I don't recognize this</p> <p>15 document.</p> <p>16 Q. Okay. Did anyone from Fairfield ever tell you</p> <p>17 how it is they would do an independent verification of</p> <p>18 the prices charged for trades by Madoff on Fairfield's</p> <p>19 behalf?</p> <p>20 A. No.</p> <p>21 Q. Physically, how -- what a task it would be and</p> <p>22 how it would be accomplished, that is, to verify the</p> <p>23 prices of the options trades or the equities trades?</p> <p>24 A. They -- they never specified to me how the</p> <p>25 verifications are done, just that they were done.</p>	301	<p>1 A. I don't believe we had a formal board meeting.</p> <p>2 Q. Okay. Board members talk about it?</p> <p>3 A. Board members discussed the revelation of the</p> <p>4 fraud; I'm sure we did.</p> <p>5 Q. Was there a -- was there a strategy employed</p> <p>6 to respond? In other words, inform your customers, deal</p> <p>7 with the issue and so forth that was firmwide?</p> <p>8 MR. COATES: I'm going to instruct you not to</p> <p>9 answer this line of questioning to the extent that</p> <p>10 it involves communications with attorneys after the</p> <p>11 disclosure of the Madoff fraud.</p> <p>12 BY MR. LAWRENCE KELLOGG:</p> <p>13 Q. Well, I'm not asking you what lawyers might</p> <p>14 have said to you or didn't. I'm just asking you was</p> <p>15 there a coordinated strategy among the EFG family of</p> <p>16 companies to deal with their customers and deal with</p> <p>17 these issues?</p> <p>18 MR. COATES: I'm going to object to the form</p> <p>19 of the question.</p> <p>20 And if you can answer subject to Mr. Kellogg's</p> <p>21 qualification, then please go ahead.</p> <p>22 THE WITNESS: We had discussions with external</p> <p>23 counsel regarding how to potentially deal with --</p> <p>24 MR. COATES: All right. All right. Then I</p> <p>25 don't want you to -- the answer is no, you're not</p>
300	<p>1 Q. Do you know whether anyone at EFG Capital</p> <p>2 verified how the price checks were accomplished?</p> <p>3 A. No.</p> <p>4 Q. Do you have any understanding as to what sort</p> <p>5 of resources would be required to verify prices on the</p> <p>6 trades being done by Madoff?</p> <p>7 A. By Fairfield Greenwich?</p> <p>8 Q. Yes.</p> <p>9 A. No, but they had a hundred and fifty people</p> <p>10 working at the firm.</p> <p>11 Q. So they had a hundred and fifty people working</p> <p>12 at the firm, but you don't know how many it would take</p> <p>13 to actually verify the prices; is that what you're</p> <p>14 saying?</p> <p>15 A. No.</p> <p>16 Q. Okay.</p> <p>17 A. My suggestion is that they had the manpower to</p> <p>18 carry out verifications.</p> <p>19 Q. Do you know how many persons were committed to</p> <p>20 that task?</p> <p>21 A. No.</p> <p>22 Q. How did you find out that Madoff was a fraud?</p> <p>23 A. The news media, I believe.</p> <p>24 Q. Did the board of EFG Capital Holdings meet and</p> <p>25 discuss this issue once it was revealed?</p>	302	<p>1 going to testify regarding those discussions.</p> <p>2 If you want to ask it another way, I'm</p> <p>3 certainly --</p> <p>4 MR. LAWRENCE KELLOGG: Yeah, you know --</p> <p>5 MR. COATES: We'll allow the witness to answer</p> <p>6 it in another way, but I -- I am concerned about</p> <p>7 the attorney-client privilege, particularly now</p> <p>8 we're post-disclosure of the Madoff fraud.</p> <p>9 BY MR. LAWRENCE KELLOGG:</p> <p>10 Q. Well, just to be clear, I'm not asking you, at</p> <p>11 the moment, what your lawyers might have advised you or</p> <p>12 what you might have said to your lawyers.</p> <p>13 Was -- was this a -- a problem for EFG Bank,</p> <p>14 EFG International, and EFG Capital International?</p> <p>15 MR. COATES: I'm going to object to the form</p> <p>16 of that question.</p> <p>17 THE WITNESS: EFG Capital was shocked --</p> <p>18 BY MR. LAWRENCE KELLOGG:</p> <p>19 Q. Sure.</p> <p>20 A. -- at the revelation of a fraud.</p> <p>21 How you define a problem --</p> <p>22 Q. Okay.</p> <p>23 A. -- I guess is different from case to case.</p> <p>24 Q. Did -- did somebody at EFG Bank, Mr. Howell,</p> <p>25 for example, get involved with the situation right off</p>

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1 the bat?

2 A. I don't know what he may have done directly or

3 indirectly.

4 Q. Did you talk to him?

5 A. I may have.

6 Q. Did EFG Capital at that time hire counsel or

7 was counsel hired by EFG International, the parent

8 company, to deal with all these issues?

9 A. We have ongoing relationships with two law

10 firms in Miami.

11 Q. That's Morgan Lewis and Holland & Knight?

12 A. Correct.

13 Q. And EFG International hired Greenberg Traurig?

14 A. I think they may have. I -- I can't recall

15 precisely when they were hired.

16 Q. At some point a communication was sent out to

17 all of EFG Capital's customers describing what happened.

18 Isn't that right?

19 MR. COATES: Object to the form of the

20 question.

21 MR. LAWRENCE KELLOGG: The initial one. The

22 one in Portuguese. It's 1001.

23 (Thereupon, the referred-to document was

24 marked by the court reporter for Identification as

25 Plaintiff's Exhibit 28.)

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1 BY MR. LAWRENCE KELLOGG:

2 Q. Let me mark as Exhibit 28 -- let me mark as

3 Exhibit 28 a December 17, 2008 -- looks like it's an

4 email message from Miguel Yannuzzi, attaching an

5 announcement in Portuguese.

6 Have you seen either the email or the

7 announcement attached to the email before?

8 A. I have seen the attachment.

9 Q. Okay. What was the purpose of the attachment?

10 A. To inform existing clients of the revelation

11 of the Madoff fraud.

12 Q. Was this announcement sent out to all the

13 existing clients of EFG Capital International?

14 A. I can't recall whether it was sent out to all

15 clients or just clients who held Fairfield Sentry.

16 Q. Okay. Was there an effort made to send --

17 send this announcement out to all those who held

18 Fairfield Sentry?

19 A. By EFG Capital, yes.

20 Q. Was the same announcement sent out to holders

21 of Irongate or Fairfield Sigma or Fairfield Lambda?

22 A. I don't recall.

23 Q. Who drafted the announcement?

24 A. I don't recall.

25 Q. Did this -- was this a -- an announcement that

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1 went out firmwide?

2 When I say "firmwide," to all the EFG entities

3 who had customers in Madoff-related funds.

4 A. It was sent out to customers of EFG Capital

5 who may have held positions with Fairfield Sentry.

6 Q. Do you know if any similar announcement was

7 sent out to customers of EFG Bank or EFG International

8 or any other EFG affiliated companies?

9 A. I don't know.

10 MR. COATES: And for the record, I want to

11 clear this up. This is a Portuguese announcement.

12 I want to make sure we're clear.

13 BY MR. LAWRENCE KELLOGG:

14 Q. Okay. Well, were there -- were there

15 announcements in other languages that were different

16 than this?

17 A. Would have been a similar version in English

18 and in Spanish.

19 Q. All right. Which said essentially the same

20 thing?

21 A. Yes.

22 Q. And were -- were either English, Spanish,

23 Portuguese, or any other language announcements sent out

24 to EFG-related customers of Fairfield Sentry or any

25 other Madoff feeder fund?

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1 MR. COATES: I want to object to the form of

2 the question.

3 BY MR. LAWRENCE KELLOGG:

4 Q. You can answer.

5 A. Again the --

6 MR. COATES: I'm sorry, you can answer,

7 Mr. Echevarria.

8 THE WITNESS: -- the notice that EFG Capital

9 sent out was sent out to clients of EFG Capital who

10 held positions in Fairfield Sentry Limited.

11 BY MR. LAWRENCE KELLOGG:

12 Q. Do you know if similar or even identical

13 announcements were sent out to customers of EFG Bank or

14 EFG International or any other EFG-related company?

15 A. I don't know.

16 Q. Did anyone at EFG Bank or EFG International

17 approve the form of the announcement?

18 A. I don't recall.

19 Q. Had counsel already been retained by the time

20 this announcement went out in December 17th?

21 A. We have counsel retained on an ongoing basis,

22 two law firms in Miami, as I indicated previously.

23 Q. Had counsel been retained to deal with the

24 Madoff-Fairfield fraud?

25 A. Specifically, I don't recall.

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<p>1 Q. Were counsel consulted about this announcement 2 before it went out? 3 You can answer "yes" or "no." 4 A. I don't recall specifically. 5 (Thereupon, the referred-to document was 6 marked by the court reporter for Identification as 7 Plaintiff's Exhibit 29.) 8 BY MR. LAWRENCE KELLOGG: 9 Q. I'm going to show what I'm going to mark as 10 Exhibit 29, which is a January 15th, 2009, 11 announcement or communication to customers of EFG 12 Capital, consisting of four pages, EFG Capital 1004 13 through 1007. 14 Ask you, have you seen this document before? 15 A. Yes. 16 Q. What was the purpose of sending out a 17 communication about the Securities Investor Protection 18 Corporation? 19 A. EFG capital is a broker-dealer in the U.S., 20 and as such, has SIPC coverage as a brokerage firm in 21 the U.S. 22 We had clients asking about the applicability 23 of SIPC coverage -- SIPC coverage, in general, regarding 24 the Madoff revelation. 25 Q. To date, to your knowledge, has SIPC taken a</p>	<p>1 MR. COATES: Just for the record, Larry, it 2 looks to me like there are a couple -- actually 3 two -- two letters in there. 4 MR. LAWRENCE KELLOGG: Yeah, it looks like 5 it's a composite. 6 MR. COATES: Yes, there's a -- there's a May 7 14, '09, and then there's another one dated June 8 29, '09. 9 MR. LAWRENCE KELLOGG: Okay. 10 MR. COATES: I don't know. If you want to 11 make it one composite exhibit, that's fine. 12 Yeah, there's actually two emails. That's 13 right. There's a -- there's the May -- I'm sorry. 14 There's a June '09 email enclosing the May 14, and 15 then there's a second, June 29, '09, email 16 enclosing a separate notice. 17 So we can make it a composite exhibit. I just 18 want to make sure the record's clear. 19 MR. LAWRENCE KELLOGG: Yeah, let's make it 20 separate exhibits. We'll mark the June 29, 2009, 21 email and attachment. 22 Let's mark that as the next exhibit number. 23 What is it? 24 MR. COATES: 31. 25 MR. LAWRENCE KELLOGG: Thank you.</p>
308	310
<p>1 position with respect to whether EFG Capital's customers 2 are entitled to make a claim against the fund? 3 A. I can't recall specifically. 4 Q. Has EFG Capital made a claim against the SIPC 5 fund? 6 A. I don't believe the firm has. 7 Q. Do you know whether any customers of the firm 8 have done so? 9 A. I believe some have. 10 Q. Do you know who has? 11 A. I'm sorry? 12 Q. Do you know, dollar volume, who has? 13 A. No, no idea. 14 (Thereupon, the referred-to document was 15 marked by the court reporter for Identification as 16 Plaintiff's Exhibit 30.) 17 BY MR. LAWRENCE KELLOGG: 18 Q. I'll show you what I'll mark as Exhibit 30, 19 which is a June 1, 2009, email to Lorrene from Miguel 20 Yannuzzi, with an attachment. It's EFG Capital 1008 21 through 10022 [sic]. 22 MR. COATES: Thank you. 23 BY MR. LAWRENCE KBLLOGG: 24 Q. Have you seen this before? 25 A. Yes.</p>	<p>1 (Thereupon, the referred-to document was 2 marked by the court reporter for Identification as 3 Plaintiff's Exhibit 31.) 4 BY MR. LAWRENCE KELLOGG: 5 Q. Here's 31. 6 MR. GARCIA: What are the ranges? 7 BY MR. LAWRENCE KELLOGG: 8 Q. So 30 is going to be EFG Capital 1008 through 9 1018 and 31 will be 1019 through 1022. 10 Now, the pur- -- what were the purposes of 11 Exhibits 30 and 31? Why was it sent out? Why were they 12 sent out? 13 A. If you just give me a minute to read this. 14 Q. Uh-huh. 15 A. I just don't -- I don't know if the documents, 16 the translations in here, correspond to the same May 17 14th document. 18 Q. Well, let's look at the last page of Exhibit 19 30. 20 A. Because the -- the translations refer to 21 something -- a shareholder letter dated May 8th. 22 Q. Yes, what it looks like is that on June 1st 23 Mr. Yannuzzi sent a May 14, 2009, communication from EFG 24 Capital to its customers; which in turn attached a 25 letter to shareholders from Fairfield Sentry Limited,</p>

311	<p>1 which has been translated. 2 Is that what you're referring to? 3 A. There's a May 8th letter that's in English 4 and Portuguese -- 5 Q. Yes. 6 A. -- which is different than the May 14th 7 information and different than the June 29th notice. 8 TO HERE 2 9 Q. Looking at the last page, Bates-labeled 1018, 10 it says, in the third paragraph, that: "EFG has taken 11 formal steps to monitor developments regarding the 12 Madoff fraud in general by hiring outside counsel, the 13 international law firm of Greenberg Traurig, P.A., to 14 identify and track developments and provide timely 15 updates regarding Madoff." 16 Do you see that? 17 A. Yes. 18 Q. Is that true? 19 A. This is a communication issued by EFG 20 International. I assume that what they are 21 communicating is correct. 22 Q. All right. So EFG International, to your 23 knowledge, has hired Greenberg Traurig to monitor 24 Madoff? 25 A. This is their communication.</p>	313	<p>1 A. I'm not sure whether it was approved by myself 2 or Sixto, but one of the two of us, I'm sure, reviewed 3 it. 4 Q. Who drafted it? 5 A. I did not. 6 Q. Do you know who did? 7 A. I don't recall. 8 Q. Says in the second paragraph that: "As 9 previously reported, EFG International, our parent 10 company, has retained the law firm of Greenberg Traurig 11 to assist in monitoring developments in the Madoff fraud 12 investigation and to evaluate the possible sources of 13 recovery of customer losses including potential legal 14 claims. We are now able to provide further details in 15 this regard." 16 It says: "EFG International has now also 17 engaged the law firm of Thomas Alexander & Forrester, 18 LLP, based in Venice, California, to conduct a 19 preliminary examination of potential causes of action 20 available to EFG International on behalf of its 21 customers against Fairfield Sentry Limited, its 22 managers, advisors, and/or other related entities." 23 Do you see that? 24 A. Yes. 25 Q. Is it true?</p>
312	<p>1 Q. Do you know when that happened, when they were 2 hired? 3 A. No. 4 Q. Has Greenberg Traurig been hired to monitor 5 Madoff for EFG Capital International? 6 A. I believe EFG International was hired on that 7 basis, and Greenberg Traurig has been engaged on a 8 different basis. 9 Q. Okay. So EFG Capital International has hired 10 Greenberg to defend this lawsuit. Correct? 11 A. Correct. 12 Q. And the parent company's hired Greenberg 13 sometime in the past to monitor Madoff generally. Is 14 that right? 15 A. Yes. 16 Q. Okay. Let's go to Exhibit 31. This is a 17 communication -- 18 A. What number, I'm sorry? 19 Q. The next one, 31, right there. This is the 20 June 29 communication. This is a communication from EFG 21 Capital, your company, to its customers. Is that right? 22 A. Yes. 23 Q. Did you review it before it went out? 24 A. I probably saw it. 25 Q. Did you approve it?</p>	314	<p>1 A. That EFG International engaged that law firm? 2 I assume so. 3 Q. Did it do -- do so on behalf of its customers? 4 A. I -- if that's what it says, then I assume so. 5 Q. Did you review this communication? I asked 6 you that. I'm sorry. 7 A. I don't recall whether I reviewed it or Sixto 8 Campano reviewed it. 9 (Thereupon, the referred-to document was 10 marked by the court reporter for Identification as 11 Plaintiff's Exhibit 32.) 12 BY MR. LAWRENCE KELLOGG: 13 Q. Let me have marked as Exhibit 32 an August 3, 14 2009, communication. 15 Have you -- did you review this at the time it 16 went out or beforehand? 17 A. I would assume I saw it at the time. 18 Q. Have you seen this before, you think? 19 A. At the time. 20 Q. This discusses a meeting of Fairfield Sentry 21 Limited's liquidator along with creditors; is that 22 correct? 23 MR. GARCIA: Form. 24 BY MR. LAWRENCE KELLOGG: 25 Q. Is that correct?</p>

315	<p>1 A. Let me -- let me read it --</p> <p>2 Q. Sure.</p> <p>3 A. -- to ascertain that.</p> <p>4 It's a meeting with creditors and investors,</p> <p>5 correct.</p> <p>6 Q. It says that counsel for EFG International</p> <p>7 will be in attendance at the meeting in London</p> <p>8 representing EFG Bank as nominee shareholder in the fund</p> <p>9 on behalf of all the bank's clients with beneficial</p> <p>10 ownership in the fund."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Is that true? Did that happen?</p> <p>14 A. Yes.</p> <p>15 Q. And the lawyers were there on behalf of the</p> <p>16 bank's clients with beneficial ownership in Fairfield</p> <p>17 Sentry. Does that include EFG Capital International's</p> <p>18 customers?</p> <p>19 A. Yes.</p> <p>20 (Thereupon, the referred-to document was</p> <p>21 marked by the court reporter for Identification as</p> <p>22 Plaintiff's Exhibit 33.)</p> <p>23 BY MR. LAWRENCE KELLOGG:</p> <p>24 Q. I'll show you what I'll be marking as Exhibit</p> <p>25 33, which is EFG Capital 1039 through 1055. It's</p>	317	<p>1 A. Yeah, I saw it.</p> <p>2 Q. Okay. Is that position the position of EFG</p> <p>3 Capital International, that the Anwar case provides the</p> <p>4 best chance of recovery for EFG clients?</p> <p>5 MR. COATES: Object to the form. It</p> <p>6 mischaracterizes the sentence.</p> <p>7 BY MR. LAWRENCE KELLOGG:</p> <p>8 Q. You can answer the question.</p> <p>9 A. I don't know what the best position is for</p> <p>10 EFG. We're going to be guided by counsel. I'm not an</p> <p>11 attorney, I have no experience in class-action defense</p> <p>12 or litigation; and as such, I don't know which is the</p> <p>13 best solution for aggrieved investors.</p> <p>14 Q. Okay. EFG Capital says to its customers here,</p> <p>15 quote, We believe that the consolidated class action</p> <p>16 against Fairfield presents the best challenge to the</p> <p>17 fund and maximizes chances of recovery for EFG clients</p> <p>18 unquote.</p> <p>19 Is that the position of EFG Capital or has it</p> <p>20 changed?</p> <p>21 A. I don't know. I don't know whether we have</p> <p>22 sent other notices beyond this, or on this subject, or</p> <p>23 what has transpired there.</p> <p>24 Q. Earlier in this paragraph it says: Outside</p> <p>25 counsel advised that EFG, by acting alone in litigating</p>
316	<p>1 another communication that attaches an October 16, 2009,</p> <p>2 communication to EFG Capital's customers. Is that</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. Do you know who drafted this communication?</p> <p>6 A. I don't know specifically who drafted the</p> <p>7 communication.</p> <p>8 Q. Was the communication sent to all of EFG</p> <p>9 Capital's customers who had invested in Fairfield</p> <p>10 Sentry?</p> <p>11 A. Yes.</p> <p>12 Q. Was the communication authorized to be sent to</p> <p>13 those customers by the company?</p> <p>14 A. Yes.</p> <p>15 Q. Now, this communication says that -- and I'm</p> <p>16 looking now at the fourth paragraph, in the last</p> <p>17 sentence, says that your company believes that the</p> <p>18 consolidated class action against Fairfield -- that's</p> <p>19 the Anwar case -- presents the best challenge to the</p> <p>20 fund and maximizes chances of recovery for EFG clients.</p> <p>21 Do you see that?</p> <p>22 A. What paragraph is that?</p> <p>23 Q. This is the fourth paragraph, last sentence.</p> <p>24 A. And your question related to that is?</p> <p>25 Q. I-- I just asked if you saw it.</p>	318	<p>1 against Fairfield Sentry, would undoubtedly face</p> <p>2 numerous financial, procedural, and legal obstacles to</p> <p>3 any causes of action it could commence against the fund</p> <p>4 and the likelihood of success would be materially</p> <p>5 diminished," unquote.</p> <p>6 Do you see that?</p> <p>7 A. Uh-huh, yes.</p> <p>8 Q. What else did outside counsel tell EFG about</p> <p>9 this topic?</p> <p>10 MR. COATES: I'm going to object to the</p> <p>11 question and instruct you not to answer.</p> <p>12 BY MR. LAWRENCE KELLOGG:</p> <p>13 Q. Who is the outside counsel who was making this</p> <p>14 advice. Was it Greenberg?</p> <p>15 A. It would appear to be Greenberg or Thomas</p> <p>16 Alexander.</p> <p>17 Q. One of those two law firms --</p> <p>18 A. At that --</p> <p>19 Q. -- or both?</p> <p>20 A. At that point in time, and I don't know</p> <p>21 whether we, in fact, consulted with Morgan Lewis or</p> <p>22 Holland & Knight locally.</p> <p>23 Q. It says in the last paragraph on this page</p> <p>24 that: EFG Bank, as nominee shareholder of your</p> <p>25 investment in Fairfield Sentry, will act on your behalf</p>

319	<p>1 and participate in the consolidated class action and any 2 potential class settlement in order to attempt recovery 3 of losses due to the Madoff fraud. 4 Do you see that? 5 A. Yes. 6 Q. Is that true? 7 A. As we have been informed. 8 Q. In the event that there's a settlement or 9 recovery of losses in the class action up in New York 10 against Fairfield Sentry, does EFG Bank or EFG Capital 11 or EFG International intend to charge that recovery fund 12 with the fees that Greenberg Traurig is charging? 13 A. I have no idea what EFG Bank intends to do. 14 Q. How about EFG Capital, are you intending to 15 charge any recovery with Greenberg's fees? 16 A. I don't think it's ever been discussed. 17 Q. Is EFG Capital paying Greenberg's fees in 18 connection with prosecuting the class action on behalf 19 of your company's customers? 20 MR. COATES: I'm going to object to the form 21 of the question. 22 Could you repeat the question, please. 23 (A portion of the record was read by the 24 reporter.) 25 MR. COATES: Object to the form of the</p>	321	<p>1 Traurig has been retained by EFG Capital or that is 2 action initiated by another EFG entity. 3 BY MR. LAWRENCE KELLOGG: 4 Q. Do you -- have you consulted all of Greenberg 5 Traurig about the class action up in New York? 6 MR. COATES: Well, I want to instruct you not 7 to answer that question. 8 You can -- you can answer whether you've been 9 consulted with the -- whether you have or not, but 10 not the substance of the conversation. 11 THE WITNESS: The question was whether I have 12 been consulted? 13 BY MR. LAWRENCE KELLOGG: 14 Q. Whether you've consulted with Greenberg 15 Traurig, had discussions about the class action up in 16 New York and their representation up there. 17 MR. COATES: Object to the form of the 18 question. 19 You -- you can answer, sir. 20 THE WITNESS: I don't recall participating in 21 any discussions of the sort. 22 BY MR. LAWRENCE KELLOGG: 23 Q. Who at EFG International is coordinating the 24 prosecution of the litigation up in New York, if you 25 know?</p>
320	<p>1 question. I'll let the witness answer that 2 question. 3 THE WITNESS: EFG Capital is paying for the 4 legal bills rendered by the outside counsel that we 5 have engaged to defend us in this complaint. 6 BY MR. LAWRENCE KELLOGG: 7 Q. Okay. But you understand that the same 8 lawyers are prosecuting a claim up in New York against 9 the Fairfield defendants and others related to the Anwar 10 class action. Are you aware of that? 11 MR. COATES: Object to the form of the 12 question. 13 BY MR. LAWRENCE KELLOGG: 14 Q. You may answer. 15 A. I am unaware if it's the same attorneys or 16 different attorneys. 17 Q. Whatever attorneys there are, you know it's 18 the same firm, right, Greenberg Traurig? 19 A. Yes. 20 Q. Is that same firm, Greenberg Traurig, charging 21 your company any fees in connection with their 22 representation up in New York in that class action? 23 MR. COATES: I'm going to object to the form 24 of the question. 25 THE WITNESS: I don't know if Greenberg</p>	322	<p>1 A. I don't know specifically. 2 Q. Do you know generally? 3 A. The head of -- the head general counsel for 4 EFG International is Fred Link. 5 MR. LAWRENCE KELLOGG: Let's go off the record 6 for a second. 7 THE VIDEOGRAPHER: Going off the record. The 8 time is 2:39. 9 (Thereupon, a recess was taken from 2:39 p.m. 10 to 2:55 p.m.) 11 THE VIDEOGRAPHER: All right. We're now back 12 on the record. The time is 2:55. 13 BY MR. LAWRENCE KELLOGG: 14 Q. Okay. While we were off the record we 15 revisited Exhibit 24 to which a privilege objection and 16 instruction was made previously. 17 We've come to an agreement that -- tell me if 18 I'm wrong about this -- with respect to Subsection A on 19 Exhibit 24, which would be the only potential 20 attorney-client communication in this document, I'm 21 going to be allowed to ask questions about that so long 22 as I don't argue it's a waiver of the attorney-client 23 privilege for Mr. Echevarria to testify about that 24 section of the memorandum. And I'll agree to stipulate 25 to that for the reason that I don't think it's</p>

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1 privileged in any way. Doesn't appear to be in the
 2 nature of rendering legal advice.
 3 Is that fair?
 4 MR. COATES: Well, one qualification. I don't
 5 think we talked about subparagraph B, which our
 6 position is that that is attorney-client
 7 privileged.
 8 MR. LAWRENCE KELLOGG: Oh, I misunderstood.
 9 MR. COATES: I don't think you made a comment
 10 about that, that we're not going to talk about that
 11 now. There will be no questions about B. And
 12 that -- that that's not the subject of our -- of
 13 agreement. We just talked about testimony with
 14 respect to Subparagraph A.
 15 MR. LAWRENCE KELLOGG: Okay. I misunderstood
 16 you then, because I thought you were saying that
 17 you weren't asserting a privilege as to the
 18 remainder of the document, but you are?
 19 MR. COATES: I am, to the remaining part of
 20 the document.
 21 MR. LAWRENCE KELLOGG: Okay. Okay. All
 22 right.
 23 MR. COATES: So let me just recap, to be
 24 clear.
 25 The witness is -- will -- is prepared to

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1 testify about Subparagraph A, so long as
 2 Mr. Kellogg will not treat that testimony as a
 3 waiver of any potential attorney-client privilege.
 4 I believe it is the attorney-client privilege, but
 5 he will not treat that as the waiver of any
 6 attorney-client privilege. And he -- and the
 7 witness is prepared to testify as to Subparagraph
 8 A.
 9 MR. LAWRENCE KELLOGG: All right. Let's go
 10 off the record because I want to think about this.
 11 It's a little different than what I thought it was.
 12 THE VIDEOGRAPHER: Going off the record. The
 13 time is 2:58.
 14 (Thereupon, a recess was taken from 2:58 p.m.
 15 to 3:01 p.m.)
 16 THE VIDEOGRAPHER: We're now back on the
 17 record. The time is 3:01.
 18 MR. COATES: During the break --
 19 MR. LAWRENCE KELLOGG: When I -- when I was
 20 off the record, I went and -- I was not -- my
 21 understanding of our stipulation was a little
 22 different. My understanding was that they were
 23 only asserting a privilege as to Subsection A. Now
 24 I understand they're asserting a privilege to the
 25 entire document, and I'm not prepared to stipulate

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1 that portions of this document and portions of the
 2 due diligence analysis done by Mr. Montgomery are
 3 privileged and portions are not. Either it is or
 4 it isn't, and I contend that it isn't. So I'm not
 5 prepared to stipulate that it won't be a waiver if
 6 I question about Subsection A.
 7 MR. COATES: All right. Just so we're clear
 8 on the record, that I proposed that the witness be
 9 permitted -- will be permitted to testify about
 10 Subparagraph A, 1 through 3, subject to one
 11 condition, that his testimony on that part would
 12 not be treated as a waiver of the attorney-client
 13 privilege.
 14 He is prepared to testify about Subsection A,
 15 which is A1, 2, and 3.
 16 Subparagraph B, entitled "Documents," we are
 17 maintaining the privilege at this time.
 18 This -- you know, again, this may be revisited
 19 vis-a-vis Mr. Montgomery's deposition, if you're
 20 going to notice him? I'm not sure whether you have
 21 or not already.
 22 MR. LAWRENCE KELLOGG: We're planning to, but
 23 I don't know if it's happened yet or not.
 24 Okay. So at this point then you're asserting
 25 a privilege as to Exhibit 24; is that correct?

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1 Attorney-client privilege?
 2 MR. COATES: No. I -- I made it clear that
 3 I -- I am -- I -- I will let you testify about
 4 Subparagraph A --
 5 MR. LAWRENCE KELLOGG: Okay.
 6 MR. COATES: -- 1, 2, and 3.
 7 MR. LAWRENCE KELLOGG: Okay.
 8 MR. COATES: So long as it's not treated as a
 9 waiver. And if you believe it's not -- and state
 10 on the record that you believe it's not the
 11 attorney-client privilege, then I'll let you
 12 testify -- I'll let you -- if that's the position
 13 that you take, that A1, 2, and 3 is not
 14 attorney-client privilege, thereby by definition it
 15 would not be a waiver. So, fine. I -- I will
 16 allow him, based on your representation and
 17 reliance on your representation, you may answer
 18 questions regarding 1, 2, and 3.
 19 MR. LAWRENCE KELLOGG: Okay. So let's talk
 20 about Exhibit 24, at least as to Subsection A.
 21 BY MR. LAWRENCE KELLOGG:
 22 Q. What was the purpose of having
 23 Mr. Montgomery -- or why did Mr. Montgomery prepare
 24 this -- this report to Mr. Howell, Mr. Alvarez,
 25 yourself, and Mr. McCluskey?

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328	<p>1 Q. Did Mr. Howell receive other reports on due</p> <p>2 diligence from -- from EFG Capital employees?</p> <p>3 A. I don't know.</p> <p>4 Q. It says here, it refers in Subsection A that</p> <p>5 Mr. Montgomery had some discussions with Jeffrey Tucker.</p> <p>6 Is that correct?</p> <p>7 A. It appears that way.</p> <p>8 Q. It says in this first sentence that:</p> <p>9 "Mr. Tucker stated that confirmations of all security</p> <p>10 transactions done in the fund's account are sent by the</p> <p>11 fund's discretionary investment advisor Bernard Madoff</p> <p>12 Investment Securities on a realtime basis to both Citco,</p> <p>13 the fund's administrator, and the manager."</p> <p>14 Do you see that?</p> <p>15 A. Yes, I do.</p> <p>16 Q. What was your understanding of "realtime</p> <p>17 basis"?</p> <p>18 A. I have -- I don't know what "realtime basis"</p> <p>19 may have -- may have meant in 2000, whether that means</p> <p>20 an advice was sent or what.</p> <p>21 Q. Well, when you received this, did you have any</p> <p>22 understanding whether it was instantaneous, whether it</p> <p>23 was appearing on a computer screen, or whether these</p> <p>24 were written confirmations that are sent days later, or</p> <p>25 did you have any understanding of what "realtime basis"</p>	330	<p>1 Q. Now in 2000 you're being told that the actual</p> <p>2 confirmations are being sent on a realtime basis to</p> <p>3 Citco. Did that raise an issue in your mind that, well,</p> <p>4 the proprietary nature of these trades is not being</p> <p>5 protected from Citco because they're receiving on a</p> <p>6 realtime basis confirmations of the trades?</p> <p>7 A. The proprietary nature of the trades would</p> <p>8 have been concern of the investment advisor, not</p> <p>9 necessarily the manager and not necessarily Citco.</p> <p>10 Q. "Investment advisor," you mean Bernard Madoff?</p> <p>11 A. Bernard Madoff Securities, the firm.</p> <p>12 Q. Okay. It looks like, it says here, that</p> <p>13 Bernard Madoff, investment advisor, has taken a written</p> <p>14 piece of paper called a confirmation, which has every</p> <p>15 trade on it, and is actually giving that on a realtime</p> <p>16 basis to Citco. Is that what you understood was going</p> <p>17 on?</p> <p>18 A. That's what this says.</p> <p>19 Q. Now, that's inconsistent, isn't it, with Citco</p> <p>20 not knowing about this, which is the reason that they</p> <p>21 can't have custody, isn't it?</p> <p>22 A. I -- I never testified that they didn't know</p> <p>23 about it.</p> <p>24 MR. COATES: I'm going to object to the form</p> <p>25 of the question.</p>

331	<p>1 BY MR. LAWRENCE KELLOGG:</p> <p>2 Q. You never testified that they didn't know</p> <p>3 about the proprietary strategy; is that what you're</p> <p>4 saying?</p> <p>5 A. Never testified about the timeliness of the</p> <p>6 delivery of that information between Bernard Madoff</p> <p>7 Securities and Citco.</p> <p>8 Q. I'm not talking about the timeliness. I just</p> <p>9 thought that the -- you were given comfort by the fact</p> <p>10 that, when you asked why is it that custody of these</p> <p>11 securities is staying with Madoff and not going to</p> <p>12 Citco, you were comforted or you were explained that,</p> <p>13 well, because Madoff doesn't want Citco to know what his</p> <p>14 trading strategy is.</p> <p>15 A. I don't believe I --</p> <p>16 Q. And now you're being told that they do know</p> <p>17 what the trading strategy is; they're getting it on a</p> <p>18 realtime basis.</p> <p>19 A. I don't believe that's what I said.</p> <p>20 MR. COATES: Object to the form of the</p> <p>21 question, argumentative.</p> <p>22 BY MR. LAWRENCE KELLOGG:</p> <p>23 Q. You can answer.</p> <p>24 A. I don't believe that's what I said.</p> <p>25 Q. Okay. Well, I guess I'm not understanding</p>	333	<p>1 Q. Did you find that to be inconsistent with the</p> <p>2 explanation that had been given to you earlier that</p> <p>3 Citco -- or that Madoff didn't want Citco to know what</p> <p>4 his trading strategy was?</p> <p>5 MR. COATES: Object to the form of the</p> <p>6 question.</p> <p>7 BY MR. LAWRENCE KELLOGG:</p> <p>8 Q. You can answer.</p> <p>9 A. I don't believe that I said that Bernard</p> <p>10 Madoff Securities didn't want Citco to know what the</p> <p>11 strategy -- strategy was. I think the strategy was</p> <p>12 explained accurately in the offering memorandum. I</p> <p>13 think he was concerned about the timeliness of the</p> <p>14 dissemination of whatever positions the firm may have</p> <p>15 placed on behalf of the fund.</p> <p>16 Q. Okay. So that the issue is the timeliness?</p> <p>17 In other words, if Citco knows too quickly, they might</p> <p>18 be able to front-run those trades?</p> <p>19 A. I don't know.</p> <p>20 Q. Well, did you have an understanding after you</p> <p>21 talked to one of those people about this issue as to</p> <p>22 what they were -- what Madoff was really concerned about</p> <p>23 here?</p> <p>24 A. I don't know which people you're talking</p> <p>25 about.</p>
332	<p>1 you.</p> <p>2 Was the reason given to you by Jeffrey Tucker</p> <p>3 for not -- for Citco's not having physical custody and</p> <p>4 that the securities stay with Madoff because Madoff</p> <p>5 didn't want Citco to know what its proprietary trading</p> <p>6 strategy was? Was that the reason given?</p> <p>7 MR. COATES: Object to the form of the</p> <p>8 question.</p> <p>9 THE WITNESS: As I recall, the comments that</p> <p>10 were made to me by either Jeffrey Tucker or Lourdes</p> <p>11 Barreneche by a representative of Fairfield</p> <p>12 Greenwich, I can't recall who in particular, in the</p> <p>13 late '90s, were related to the fact that the</p> <p>14 subadvisor, Bernard Madoff Securities, was</p> <p>15 concerned about the proprietary nature of his</p> <p>16 trading strategies. And it's not unusual in the</p> <p>17 hedge fund world for advisors to be concerned about</p> <p>18 third parties becoming aware of their trading</p> <p>19 strategies.</p> <p>20 BY MR. LAWRENCE KELLOGG:</p> <p>21 Q. And here you're being told that Citco is</p> <p>22 getting information about every trade on a realtime</p> <p>23 basis directly from Bernard Madoff Investment</p> <p>24 Securities; would you agree with me?</p> <p>25 A. That's what it says here.</p>	334	<p>1 Q. Louise or Jeffrey Tucker.</p> <p>2 MR. COATES: Object to the form.</p> <p>3 BY MR. LAWRENCE KELLOGG:</p> <p>4 Q. Lourdes. I'm sorry. Lourdes or Jeffrey</p> <p>5 Tucker?</p> <p>6 A. Again, I think I indicated I can't even recall</p> <p>7 which individuals I spoke to, much less be certain about</p> <p>8 exactly what those discussions contained. I mean, this</p> <p>9 is, again, over a decade ago.</p> <p>10 Q. Okay.</p> <p>11 MR. COATES: Larry, I'm going to -- polite</p> <p>12 reminder. Wrap it up now. Certainly been more</p> <p>13 than accommodating to go over, but you said you had</p> <p>14 a few questions.</p> <p>15 MR. LAWRENCE KELLOGG: Yeah, well, then you</p> <p>16 gave me this document so I had more than a few,</p> <p>17 but -- all right.</p> <p>18 BY MR. LAWRENCE KELLOGG:</p> <p>19 Q. Well, I guess, to sum this -- this part up,</p> <p>20 you didn't find this -- this statement here about</p> <p>21 realtime review by Citco to be inconsistent with what</p> <p>22 you've been told previously about why Citco doesn't have</p> <p>23 custody. Is that right?</p> <p>24 A. No.</p> <p>25 Q. You didn't --</p>

335	<p>1 MR. COATES: Object to the form of the</p> <p>2 question.</p> <p>3 You can answer, sir.</p> <p>4 THE COURT REPORTER: He said, "No."</p> <p>5 BY MR. LAWRENCE KELLOGG:</p> <p>6 Q. It says here that the manager does a P & L</p> <p>7 analysis each day for the fund's position. That's the</p> <p>8 last sentence in the first paragraph. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And you take that to mean that the manager,</p> <p>11 Fairfield, did a profit and loss analysis each day?</p> <p>12 A. That's what I would understand.</p> <p>13 Q. Did you ever see any of those?</p> <p>14 A. No.</p> <p>15 Q. Did you ever ask to see any of them?</p> <p>16 A. No.</p> <p>17 Q. It says here that the manager checked the</p> <p>18 confirms to see if the prices shown on the confirms fall</p> <p>19 within that day's trading range.</p> <p>20 Do you see that?</p> <p>21 A. Is that in --</p> <p>22 Q. That's the sentence before. Second-to-last</p> <p>23 sentence. Paragraph I.</p> <p>24 A. That's correct.</p> <p>25 Q. Do you know how the manager was able to do</p>	337	<p>1 Q. Yes.</p> <p>2 A. I -- I can't say specifically. A handful.</p> <p>3 Q. Were -- were some of the customers,</p> <p>4 whether -- whether -- not residents of the U.S., but</p> <p>5 living in the U.S.?</p> <p>6 A. Not that I recall.</p> <p>7 Q. Okay. So everybody was a foreign resident, to</p> <p>8 your knowledge?</p> <p>9 A. To my knowledge.</p> <p>10 Q. Have any arbitrations been filed by any</p> <p>11 customers regarding the Fairfield Sentry Fund against</p> <p>12 EFG Capital?</p> <p>13 A. Yes.</p> <p>14 Q. How many arbitrations have been filed?</p> <p>15 A. Two.</p> <p>16 Q. Who are the customers?</p> <p>17 A. I can't recall the specific names.</p> <p>18 Q. Have -- has the company hired lawyers?</p> <p>19 A. Yes.</p> <p>20 Q. If so, who are they?</p> <p>21 A. The answer is yes. And it's Morgan Lewis.</p> <p>22 Q. Are these FINRA arbitrations?</p> <p>23 A. Yes.</p> <p>24 Q. Have any lawsuits been filed against EFG</p> <p>25 Capital other than this one regarding Fairfield Sentry?</p>
336	<p>1 that?</p> <p>2 A. No, but it's consistent with what the manager</p> <p>3 informed us over the years.</p> <p>4 Q. Did -- Did Mr. Montgomery tell you how</p> <p>5 Fairfield was checking the trading range, how it</p> <p>6 accomplished that?</p> <p>7 A. If he did, I don't recall.</p> <p>8 Q. Did he tell you what kind of due diligence</p> <p>9 infrastructure Fairfield would need in order to do a job</p> <p>10 like that?</p> <p>11 A. No.</p> <p>12 Q. Okay. EFG Capital -- this is my few cleanup</p> <p>13 questions here.</p> <p>14 EFG Capital had customers that invested and</p> <p>15 subscribed to Fairfield Sentry throughout Latin America.</p> <p>16 Is that right?</p> <p>17 A. Yes.</p> <p>18 Q. How many different countries were its</p> <p>19 customers located in?</p> <p>20 A. How many different customers --</p> <p>21 Q. Countries.</p> <p>22 A. How many -- how many different countries of</p> <p>23 customers residing -- of holding Fairfield Sentry --</p> <p>24 Q. Yes.</p> <p>25 A. -- or --</p>	338	<p>1 A. Not that I'm aware of.</p> <p>2 Q. Who is Steve Vogel?</p> <p>3 A. He's our senior administrative officer.</p> <p>4 Q. What is -- how long has he been the senior</p> <p>5 administrative officer?</p> <p>6 A. Since he joined the firm.</p> <p>7 Q. When is that?</p> <p>8 A. A few years ago.</p> <p>9 Q. What -- what is his job function?</p> <p>10 A. Responsible for administrative issues at the</p> <p>11 firm and human resources.</p> <p>12 Q. At any time did he have any responsibility for</p> <p>13 due diligence of the Fairfield Sentry hedge fund?</p> <p>14 A. I don't believe so.</p> <p>15 Q. Did he have any participation in the due</p> <p>16 diligence analysis?</p> <p>17 A. I -- I don't believe so.</p> <p>18 Q. Who is Esther Mizrachi(phonetic)?</p> <p>19 A. Is a former registered representative.</p> <p>20 Q. When was she a registered rep?</p> <p>21 A. When? For approximately five years.</p> <p>22 Q. What years?</p> <p>23 A. She left the firm this year. So it would be</p> <p>24 five prior years.</p> <p>25 Q. Did she have any customers in Fairfield</p>

339	<p>1 Sentry?</p> <p>2 A. I can't recall specifically.</p> <p>3 Q. Who were the financial advisors involved in</p> <p>4 the -- the two arbitrations that you mentioned?</p> <p>5 A. The registered representative?</p> <p>6 Q. Yes.</p> <p>7 A. Ricardo Daugherty.</p> <p>8 Q. I'm sorry?</p> <p>9 A. Ricardo Daugherty.</p> <p>10 Q. Can you spell his last name?</p> <p>11 A. D-A-U-G-H-E-R-T-Y.</p> <p>12 Q. Is he still with the firm?</p> <p>13 A. Yes, he is.</p> <p>14 MR. LAWRENCE KELLOGG: Okay. Thank you very</p> <p>15 much.</p> <p>16 MR. COATES: We will read.</p> <p>17 THE VIDEOGRAPHER: Going off the record. The</p> <p>18 time is 3:21.</p> <p>19 (Thereupon, the taking of the deposition was</p> <p>20 concluded at 3:21 p.m.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
340	<p>1 RE. FERREIRA VS EFG</p> <p>2 DEPO OF: VICTOR MANUEL ECHEVARRIA</p> <p>3 TAKEN: October 18, 2010</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 My Commission Expires:</p> <p>25</p>
341	<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 October 18, 2010 and was duly</p> <p>15 sworn by me.</p> <p>16 WITNESS my hand and official seal this 20th</p> <p>17 day of October, 2010.</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>
342	<p>1 REPORTER'S DEPOSITION CERTIFICATE</p> <p>2</p> <p>3 I, PATRICIA C. WEINER, Registered Professional</p> <p>4 Reporter, Registered Merit Reporter, Certified Realtime</p> <p>5 Reporter, Florida Professional Reporter, certify that I</p> <p>6 was authorized to and did stenographically report the</p> <p>7 deposition of VICTOR MANUEL ECHEVARRIA, the witness</p> <p>8 herein on October 18, 2010; that a review of the</p> <p>9 transcript was requested; that the foregoing pages</p> <p>10 numbered from 166 to 339, inclusive, is a true and</p> <p>11 complete record of my stenographic notes of the</p> <p>12 deposition by said witness; and that this computer-aided</p> <p>13 transcript was prepared under my supervision.</p> <p>14 I further certify that I am not a relative,</p> <p>15 employee, attorney, or counsel of any of the parties,</p> <p>16 nor am I a relative or employee of any of the parties'</p> <p>17 attorney or counsel connected with the action, nor am I</p> <p>18 financially interested in the action.</p> <p>19 DATED this 20th day of October, 2010.</p> <p>20</p> <p>21 _____</p> <p>22 PATRICIA C. WEINER, RPR, CRR, RMR, FPR</p> <p>23</p> <p>24</p> <p>25</p>

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1 ERRATA SHEET
 2 RE: FERREIRA VS EFG
 DEPO OF: VICTOR MANUEL ECHEVARRIA
 3 TAKEN: October 18, 2010
 REPORTER: PATRICIA C. WEINER, RPR, CRR, RMR, FPR
 4
 5 DO NOT WRITE ON TRANSCRIPT, ENTER ANY CHANGES HERE
 6 PAGE # | LINE # | CHANGE | REASON
 7 _____
 8 _____
 9 _____
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 12 _____
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 19 _____
 20 _____
 21 State of Florida
 County of Miami-Dade
 22
 Under penalties of perjury, I declare that I
 23 have read my deposition transcript, and it is true and
 correct subject to any changes in form or substance
 24 entered here.
 25 _____

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1 VERITEXT FLORIDA REPORTING CO.
 19 West Flagler Street, Suite 1020
 2 Miami, FL 33130
 Phone: 305.376.8800
 3
 4 October 20th, 2010
 5 Victor Manuel Echevarria
 c/o Joseph C. Coates, III, Esq.
 6 777 South Flagler Drive, Third Floor East
 West Palm Beach, Florida 33401
 7
 8 RE: Ferreira vs EFG
 9 DEPO OF: VICTOR MANUEL ECHEVARRIA
 TAKEN: October 18, 2010
 10 READ & SIGN BY: 30 days
 11 Dear Victor Manuel Echevarria:
 12 This letter is to advise you that the transcript of the
 deposition listed above is completed and is awaiting
 13 reading and signing.
 14 Please arrange to stop by our office in Suite 1020, 19
 West Flagler Street, Miami, Florida, to read and sign
 15 the transcript. Our office hours are from 8:00 a.m. to
 p.m. Monday through Friday. Depending on the
 16 length of the transcript, you should allow yourself
 sufficient time.
 17
 18 If the reading and signing has not been completed prior
 to the referenced date, we shall conclude that you have
 waived the reading and signing of the deposition
 19 transcript. Your prompt attention to this matter is
 appreciated.
 20 Thank you.
 21 Very truly yours,
 22
 23 PATRICIA C. WEINER, RPR, CRR, RMR, FPR
 24 cc: LAWRENCE A. KELLOGG, ESQ
 MICHAEL E. GARCIA, ESQ.
 25

4:00

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: October 18, 2010

13 READ & SIGN BY: 30 days

14 Dear Counsel:

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

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

Sincerely,

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

Veritext Florida Reporting Co.

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305-376-8800