

Exhibit 12

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C O N F I D E N T I A L

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
11-CV-03605 (JSR) (HBP)

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IRVING H. PICARD, Trustee for
the Liquidation of Bernard L.
Madoff Investment Securities LLC,

Videotaped
Deposition of:

Plaintiff,

PETER STAMOS

vs.

SAUL B. KATZ, et al.,

Defendants.

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Transcript of testimony as taken by and before
LESLIE ROCKWOOD, Certified Shorthand Reporter, RPR and
Notary Public of the State of California, at the offices
of Shearman & Sterling, Four Embarcadero, Suite 3800,
San Francisco, California, on Thursday, January 5, 2012,
commencing at 9:48 a.m.

1 Q. And can you tell me what was Sterling Stamos?
2 What type of business entity was it?

3 A. Well, the formation of the firm --

4 Q. Right.

5 A. -- was an investment firm.

6 Q. Was it a partnership?

7 A. I don't know the legal structure. It was
8 originally SP Capital Management. I believe it's the
9 same legal structure we have today. We just changed the
10 name.

11 Q. Did you ever consider yourself in a
12 partnership with anybody in connection with Sterling
13 Stamos?

14 A. Well, are you speaking of this in a legal
15 terminology? Was this a limited partnership or --

16 Q. Did you, yourself, what you considered a
17 partner?

18 A. Yes.

19 Q. And who did you consider yourself to be
20 partners with?

21 A. I considered myself to be partners with the
22 partners from Sterling Equities. So primarily Fred
23 Wilpon and Saul Katz.

24 Q. And when you say you considered yourself to
25 be partners with the partners from Sterling Equities, why

1 MR. GOUDISS: Go ahead.

2 Q. BY MS. GRIFFIN: Did you ever have
3 communications with Saul Katz about Sterling Stamos
4 wherein you understood that he would be communicating
5 with other members of Sterling Equities?

6 A. Yes.

7 Q. And under what circumstances would you have
8 those types of conversations with Saul Katz?

9 A. On a -- on a regular basis.

10 Q. Did you understand, you know, whether Saul
11 Katz spoke on behalf of the other partners of Sterling
12 Equities in connection with Sterling Stamos business?

13 MR. GOUDISS: I object.

14 Go ahead.

15 THE WITNESS: My understanding was that --
16 well, first of all, I have to frame this. In the early
17 stages of the firm, which was the period '02 to '04, we
18 shared office space with them. I would regularly meet
19 with Saul, and my understanding was that whatever I would
20 share with him, he would share the relevant aspects of
21 what I shared with him with their partners, and
22 similarly, that he would represent their interests when
23 he met with me. That was in the first early stages of
24 the firm, we were operating quite closely together.

25 Q. BY MS. GRIFFIN: And how did you come by your

1 which would be just considered informal advisory
2 meetings.

3 Q. In the early stages, who were the various
4 advisors that you would have that you referred to?

5 A. So for purposes of clarity, I think
6 throughout the day it would be helpful to divide it up
7 into time frames.

8 Q. Sure.

9 A. So there was a period of time, 2002 to 2004,
10 before we became a registered investment advisor, where
11 essentially in that phase -- we'll call that Phase I --
12 we were the investment office of a family office. It was
13 the family office of the Sterling partners and my family,
14 and our --

15 Q. Can I interrupt you? When you say "Sterling
16 partners," what do you mean?

17 A. The Sterling Equities, the ones that you
18 referred to early on. And my family and various friends
19 and family of our respective families. It was largely a
20 friend and family organization.

21 The second phase would be the larger, the
22 more institutionalized firm was we became registered
23 investment advisor, professionalized the firm, took on
24 institutional capital.

25 So in this first phase, we met with a lot of

1 Jerry Rosenkranz, who was a private equity investor, a
2 limited partner in the firm, who would invest with us and
3 introduced us to various private equity investors and
4 potentially may have introduced us to some other limited
5 partners.

6 Q. When you refer to "limited partners" -- you
7 have a lot of partners -- could you explain what you mean
8 by "limited partners"?

9 A. Limited partners, people who invest with us,
10 invest in our funds.

11 Q. When you said that some of the advisors would
12 sometimes introduce you to potential new investors, who
13 were some of those advisors besides -- did they include
14 Saul Katz?

15 A. I'm sorry, you have to repeat, rephrase.

16 Q. Was Saul Katz one of the advisors who also
17 introduced you to potential new investors?

18 A. Yes.

19 Q. Was Fred Wilpon one of the individuals who
20 also introduced -- one of the advisors who also
21 introduced you to new investors?

22 A. Yes. And I remember one that was important:
23 Chuck Klein as well, American Securities. But to
24 simplify this, essentially, you know, Fred Wilpon's
25 family, Jeff Wilpon, the Katz family and the Wilpon

1 family and their extended partnership, if they knew of
2 potential investors who would be suitable to come invest
3 with us, that was part of their role, to help us raise
4 capital. And in the case of knowing the industry of
5 hedge funds, private equity, real estate, all of which we
6 eventually invested in, if they knew of good managers,
7 they would introduce us to them as well.

8 Q. And when you say "managers," just for the
9 record, could you explain what you mean by that?

10 A. We are set up as a fund to funds. So when I
11 say "limited partners," I'm referring to limited partners
12 who invest with us, and when I saying "fund managers,"
13 I'm saying the managers that we in our fund-to-fund
14 structure would invest in.

15 So, for example, Chuck Klein introduced us to
16 Bill Ackman at Gotham Capital, and we would go to meet
17 with him and potentially choose to invest with him. Saul
18 Katz introduced me to people he knew in the industry, and
19 I would make the decision as to whether or not to invest
20 with them.

21 Q. Who did Saul -- I didn't mean to speak over
22 you.

23 Can you recall any of the people in the
24 industry that Saul Katz introduced you to?

25 A. I recall one in particular, Ezra Merkin.

1 Q. Forgive me if you've testified to this
2 previously, but for foundation purposes, at the formation
3 stage, at phase -- I think what you've called --

4 A. Phase I.

5 Q. -- Phase I, what was your position at
6 Sterling Stamos?

7 A. Same position I hold today. I was chairman
8 and CEO, but at that time, I was -- I also held the title
9 of chief investment officer, which I no longer hold.

10 Q. To be clear, what time period are we talking
11 about there?

12 A. I was chairman and chief executive officer
13 and chief investment officer at the formation of the
14 firm. For a brief period of time, I turned over the
15 chief investment officer role to Noreen Harrington for a
16 six to nine-month period.

17 And then more recently, I believe it was,
18 almost three years ago, I turned over the chief
19 investment officer title to Michael Chisek. I believe
20 that was in April or May or June of 2009.

21 Q. As chairman and CEO and chief investment
22 officer, can you just very briefly tell me what your
23 responsibilities were for Sterling Stamos?

24 A. Three responsibilities: Responsibilities to
25 invest capital well, the capital I've been entrusted

1 with, number one; number two, to continue to raise
2 capital for the firm; and number three, to run an
3 effective organization.

4 Q. Normally I would go into those questions in
5 detail, but I'm trying to save you some time.

6 A. Actually, I apologize. I recall Saul Katz
7 also introduced me to Bob Rosenthal, Robert Rosenthal,
8 which is an investment firm called First Long Island
9 Investors.

10 Q. And to be clear, was Bob Rosenthal an
11 investment manager?

12 A. Yes, someone that we could invest with and
13 somebody who could also invest with us. Yes.

14 Q. Did you invest with Bob Rosenthal or his
15 firm?

16 A. No. Actually, it's important because that
17 was one of the investments that was originally handed to
18 us in kind as part of the original investment of the
19 Sterling Equity partners, and we independently reviewed
20 the investment and decided to redeem from that investment
21 with Robert Rosenthal.

22 Mr. Katz also introduced us to a hedge fund
23 manager -- I can't remember the name; I believe it was
24 Winfield or Wingate -- that was also contributed in kind
25 as part of the original investment. Again, we reviewed

1 A. Robert Rosenthal. And he said it in a way
2 that everybody heard. And I said, "Because we reviewed
3 him and we don't believe it's up to the standard of what
4 it is we're looking for."

5 And Mr. Wilpon said, "That's exactly why it
6 is I chose you."

7 The decision to -- so basically to divide our
8 responsibilities.

9 Q. And why did you decide to redeem out of
10 Rosenthal's fund?

11 A. We thought we could do better with other
12 managers.

13 Q. You mean in terms of return performance?

14 A. Risk-adjusted returns.

15 Q. And what do you mean by that?

16 A. Return per unit of volatility. We thought we
17 had better options.

18 Q. And what was it about the return per unit of
19 volatility with Mr. Rosenthal's fund that led you to that
20 conclusion?

21 A. To be clear, I think Mr. Rosenthal runs a
22 very good firm and a very good fund, but his fund was
23 primarily long only, with high correlation to the equity
24 markets, and we were seeking to find more managers that
25 were less correlated to the equity markets.

1 MS. GRIFFIN: Oh, I'm sorry, I thought he was
2 still reading.

3 Q. Have you had a chance to read Exhibit 165?

4 A. Yes.

5 Q. What is this document? Let me -- for the
6 record, it says under the heading, "Board discussion
7 October 9, 2002, board members: Saul Katz, David Katz,
8 Spiro Stamos, Peter Stamos."

9 What is this document?

10 A. As I recall, original board was made up of
11 Saul Katz and his son David and myself and my father
12 Spiro. This would have been a board meeting to review
13 the progress of our first quarter having been in business
14 and to review and talk about what we planned to do going
15 forward.

16 Q. Do you know who prepared Trustee's 165?

17 A. I don't know whether it was written by me or
18 by one of the members of my team at my direction. But
19 again, I can hypothesize, given the three bullets that
20 are outlined there, that they are the same three bullets
21 that outlined -- that I just articulated, it's consistent
22 with how I thought about the formation of the firm. So
23 it clearly had my input.

24 Q. Would you routinely prepare notes like this
25 for such meetings?

1 data that would then go to our auditor, Ernst & Young.

2 So the administrator prepares the documents,
3 and the documents are audited by Ernst & Young, and those
4 documents are the source of data that we use to
5 distribute to our limited partners.

6 Q. And who was involved in the decision to hire
7 IFS and then RK as your administrator?

8 A. Well, it was my decision as CEO, but I took
9 input from, you know, several people. I don't recall at
10 the time who played the largest influence. It was more
11 just a question of interviewing.

12 Q. When you said it was your decision as CEO,
13 what did you understand your decision-making authority to
14 be?

15 A. Essentially it was delegated to me, all
16 decision making around final investment decisions, hiring
17 and firing of people, and acceptance or nonacceptance of
18 investors.

19 Q. When you say "it was delegated to me" --

20 A. By the board.

21 Q. And who was the board?

22 A. The same four members that are listed on
23 page 1.

24 Q. And how was it delegated to you? By what
25 means?

1 A. Well, first of all, that was my
2 understanding; and secondly, I believe all the documents
3 that we currently have actually are positioned that way,
4 such that even when we had, you know, another chief
5 investment officer, for example, I still am required to
6 sign off on all new investments and on all redemptions.
7 So I'm the managing member of the general partner.

8 Q. Who was Sterling Stamos' auditor in the
9 October 2002 time frame?

10 A. I don't recall the exact date that we
11 actually hired Ernst & Young, but I know that Ernst &
12 Young was our first auditor, and we had audited books by
13 the end of -- I believe at the end of the first -- second
14 quarter, which would be the end of the calendar year.

15 So at some point in time, Ernst & Young was
16 hired. I'm just not sure when we were. And they have
17 remained, I believe, our auditor ever since.

18 Q. And what services did Ernst & Young provide
19 to Sterling Stamos as its auditor?

20 A. They prepared our audited statements for tax
21 purposes, filing purposes.

22 Q. Were you involved in the decision to retain
23 Ernst & Young as Sterling Stamos' auditor?

24 A. I made that decision.

25 Q. And do you know why you made the decision to

1 around here --

2 A. Uh-huh.

3 Q. -- about discussions you had with Mr. Katz
4 about the effect that registering as an investment
5 advisor might have upon his relationship with
6 Bernard Madoff.

7 A. Yes.

8 Q. Okay. I'm going to show you what's been
9 marked as Trustee's 290.

10 MS. GRIFFIN: Just for the record, it's an
11 email from Peter Stamos, dated Wednesday, July 14, 2004,
12 at 9:29 p.m., to Saul B. Katz, David Katz, Subject: "FW:
13 (BN) Divided SEC Proposes More Oversight of Hedge Funds."
14 And its Bates range is SE-T957067 (indicating).

15 Q. Oh, I'm sorry. This is supposed to be
16 attached to it.

17 A. Thank you.

18 MR. GOUDISS: 288?

19 MS. GRIFFIN: I'm sorry. This is Trustee's
20 290. We skipped one. We've marked a bunch of exhibits
21 ahead of time, and we're jumping around.

22 MR. GOUDISS: Okay. Glad I asked.

23 Q. BY MS. GRIFFIN: Mr. Stamos, have you had a
24 chance to look at Trustee's 290?

25 A. Not yet.

1 As part of looking at that, would you like me
2 to look at this second part as well?

3 Q. Sure.

4 A. Okay. I've read this now.

5 Q. Okay. Do you recognize Trustee's 290?

6 A. I do.

7 Q. Did you send this email to Saul Katz and
8 David Katz?

9 A. I believe so, yes.

10 Q. And in it, you wrote, "Team, It looks like
11 we've got 60 days to get ready to register."

12 What did you mean by that?

13 A. By "team"? I believe this is an email that I
14 forwarded. So this is probably one that was -- went to
15 Saul and David. It may have been forwarded to the rest
16 of the team. The team is, generally speaking, the other
17 people listed on that. But I'm not sure of that.

18 Q. And when you wrote, "It looks like we've got
19 60 days to get ready to register," what did you mean by
20 that?

21 A. It had been our intention to register as an
22 investment advisor, which we did. And based upon this
23 article, it looked like there was a possibility that we
24 would -- that it would be required. And so we would have
25 60 days to get ready to start that process.

1 Q. And when you're referring to this article,
2 are you referring to the attachment, which is entitled
3 "Divided SEC Proposes More Oversight of Hedge Funds"?

4 A. I believe so. This is the attachment -- I
5 assume this is the attachment that Mr. Hammerman
6 forwarded to my brother, Chris, and me.

7 Q. And when you say "register," just for the
8 record, can you explain what you mean by that?

9 A. Yes. So it had been our intention, and we
10 fulfilled that intention, to become a registered
11 investment advisor in the context of moving into Phase II
12 of the firm, from a family office into one that could
13 accept institutional capital.

14 And as the article refers to that, that was
15 best practices for leading institutions, and we wanted to
16 be a leading institution. We wanted to be able to accept
17 capital from pension funds and other institutions. We
18 thought -- that was part of my mandate. And that's what
19 we did, register with the SEC.

20 Q. And when you say, "We've got 60 days to
21 register," why did you believe -- why did you write that
22 you had 60 days to get ready to register?

23 A. I don't recall the exact formation of the
24 60 days. But as I read it again, it's 60 days to get
25 ready to register. My recollection is the following:

1 That when -- if and when the ruling was made, we would
2 have a time frame to get registered, which is, you know,
3 6 to 12 months.

4 So that would suggest that, you know, in the
5 next two months, we should decide. I don't know where I
6 got the two-months time frame from.

7 Q. And when you say "the ruling was made," what
8 ruling were you referring to?

9 A. Well, I believe that the Securities &
10 Exchange Commission -- this is what the article is
11 referring to -- was divided and hadn't decided yet, but
12 that they were going to decide. And I should also say
13 that that was our intention anyway.

14 Q. All right. Just to speed things along, when
15 you're saying "the ruling," was it a proposed regulation
16 by the SEC that was going to require a registration of
17 hedge funds?

18 MS. SESHENS: Objection to the form.

19 Q. BY MS. GRIFFIN: If you know.

20 A. My understanding, both from this article as
21 well as from other things that I recall reading from
22 Schulte, Roth, for example, was that this was something
23 that was being considered by the SEC, that we should be
24 prepared for that. It may be required. Whether it was
25 required or not, we intended to register.

1 Q. You also wrote in this email that, "I have a
2 call with Davis Polk tomorrow."

3 You testified previously that Schulte, Roth
4 was your primary counsel -- outside counsel, I believe;
5 is that correct?

6 A. That's correct.

7 Q. Was Davis Polk also Sterling Stamos' legal
8 counsel?

9 A. I believe we used Davis Polk -- I recall
10 using Davis Polk for certain select items of our legal
11 process.

12 Q. Can you tell me for what certain select items
13 of legal process you would use Davis Polk?

14 A. The only one that I can specifically recall
15 was we used Davis Polk to help us with the separation
16 agreement we had with Noreen Harrington.

17 Q. Okay. Do you recall -- and I'm not trying
18 to get into the substance of your conversations with
19 counsel. But do you recall speaking with anyone at Davis
20 Polk about the SEC proposed investment regulations --
21 investment advisor?

22 A. I don't personally recall having that
23 conversation myself. I have a vague recollection of us
24 having conversations with -- "us", meaning our firm --
25 having conversations with both Schulte, which was our

1 hypothetical. My sense is that is --

2 Q. BY MS. GRIFFIN: If you know.

3 A. I believe it would have been our general
4 counsel. I believe it would have been Derek Daley.

5 Q. Okay.

6 A. But I'm not sure of that.

7 Q. I'm going to show you, Mr. Stamos, what's
8 been marked previously as Trustee's Number 178. For the
9 record, it's an email from Peter Stamos, sent Wednesday,
10 July 28th, 2004, at 9:17 p.m., to David Katz. Subject:
11 "BM etc," Bates range SE-T680297.

12 A. Yes. I'm familiar with this.

13 Q. Have you seen Trustee's 178 before?

14 A. I believe so. I'm familiar with it.

15 Q. Okay. It's two emails. It looks like at
16 the bottom of the page, first, there's an email from
17 David Katz, email address davidk@sterl.com, sent
18 Wednesday, July 28th, 2004, at 12:08 p.m., to
19 Peter Stamos.

20 Do you recall receiving this email from
21 Mr. Katz?

22 A. I do.

23 Q. And do you recall sending this response to
24 him, at the top of Trustee's 178?

25 A. I'm very familiar with this email, yes.

1 Q. Do you recall sending this email to Mr. Katz?

2 A. It's been seven years. This refreshes my
3 recollection, yes.

4 Q. Okay. At the bottom of the page, Mr. Katz
5 wrote to you, "Peter about the BM thing," and there's
6 some misspellings, but I'm going to do the best I can.
7 "I will pull all out of him if I have too and be" -- and
8 I think "the" -- "GP with you."

9 What did you understand Mr. Katz to mean when
10 he wrote, "Peter about the BM thing"?

11 A. I have a very clear recollection of this and
12 why I was happy with David's response. The issue that we
13 were confronting was once we got beyond the privacy of
14 the Katz/Wilpon families -- which was relatively easy to
15 do, because it turns out that registering doesn't really
16 change much in terms of the form ADV disclosures.

17 The other issue that needed to be addressed
18 was would the amount of disclosure that the Wilpons and
19 Katzs have be such that their relationship with
20 Bernie Madoff would be hampered in any way.

21 Now, remember at that time, getting access to
22 Bernie Madoff was considered a privilege. All right?
23 And you had to -- it was a -- like many great hedge fund
24 managers at the time, it was sort of -- you only got in
25 by invitation. There are hedge fund managers, by the

1 way, for whom that's still the case today, Baupost,
2 Seth Klarman, for example.

3 Great managers, but they set their rules as
4 to who gets to go in. And one of the ways that you got
5 in was being part of a -- you know, being a friend and
6 a -- a confidential friend.

7 And if that violated Mr. Madoff's concern of
8 confidentiality in any way, shape or form, then what
9 David was telling me was he, personally, would take out
10 all of his money from Bernie Madoff and just be a member
11 of the general partner with us. That's David Katz. And
12 that was, of course -- I viewed that as a positive,
13 because, remember, Mr. Madoff was in competition with me
14 for Katz's capital, the Wilpon capital and other
15 families' capital.

16 Q. When you say that the -- would the amount --
17 sorry.

18 MS. GRIFFIN: How does this turn off?

19 Q. When you say with the amount of disclosure --
20 when you say with the amount of disclosure --

21 MS. GRIFFIN: Sorry. We're having technical
22 difficulties. My apologies, Mr. Stamos.

23 (Interruption in proceedings.)

24 Q. BY MS. GRIFFIN: Mr. Stamos, when you said
25 would -- the amount of disclosure would be such that the

1 require revealing of confidential information that could
2 possibly hurt their relationship with Bernie Madoff.

3 What David was saying to me was that if that
4 were the case, and he would no longer be able to -- he
5 would not longer be able to be an ongoing investor with
6 Bernie Madoff, he was fine with that. He would redeem
7 from Bernie Madoff completely, and then he would then
8 serve as the general partner with us, which, of course,
9 made me happy at many levels, that he would do so.

10 Q. BY MS. GRIFFIN: He further writes in
11 Trustee's 178: "We are making headway, and it could end
12 out well for me. Call. We will talk. DMK."

13 When he says, "We are making headway" -- it's
14 a little typo, but what did you understand him to mean?

15 A. I believe that he was making progress with
16 regard to his broader partnership understanding why that
17 made sense for us to register and that they would support
18 that and that they would all turn to him to play a larger
19 role in however this played itself out.

20 And that was actually very consistent with
21 what David and I had as part of our original plan for
22 this firm is that he would play a larger role in the firm
23 over time.

24 Q. And when you said the -- his -- "David's
25 broader partnership," what did you mean by that?

1 A. I'm referring to that same characterization
2 you gave me in the early parts of this discussion, that
3 "partnership" being the Sterling Equities partners.

4 Q. Okay. And then at the top, your responsive
5 email, "Great, David. And thank you. I'll leave this in
6 your good hands. I'm working on some solutions for your
7 dad."

8 Can you tell me what you meant when you said,
9 "I'm working on some solutions for your dad"?

10 A. Yes. It was our understanding that with
11 registration, one of the things that we would be doing is
12 that we would start to separate out more of the functions
13 of our firm from their firm. I testified to this, I
14 believe, 18 months ago.

15 For example, moving into separate real
16 estate, separate offices. For example, separating our
17 information technology. For example, more -- creating
18 more formal separation between the running of the
19 business and the investment process. And that all of
20 those things would allay concerns that Mr. Katz had and
21 his other partners had about being more involved in an
22 investment process that they didn't feel qualified to do
23 and didn't want as part of their mandate.

24 The whole idea of Sterling Stamos was -- or
25 SP Capital Management was that was supposed to be my

1 responsibility.

2 So we were going to use this as an
3 opportunity to formalize that separation.

4 Q. Okay. Mr. Stamos, you can put that to the
5 side.

6 I'm going to show you what's been marked next
7 as Trustee's 291. It's an email from Peter Stamos, sent
8 Monday, August 2, 2004, at 11:52 a.m., to J. Ezra Merkin,
9 Subject: "RE: Catching up." And its Bates Stamp is
10 SSMT01249952. And I misspoke. I think it's an email
11 chain, by the way.

12 A. Yes. I've read this document.

13 Q. Did I give you two pages?

14 A. (Indicating.)

15 Q. Ah. Yes, mine's double-sided.

16 Okay. Mr. Stamos, have you had a chance to
17 look at Trustee's 291?

18 A. Yes. I have.

19 Q. Do you recognize this document?

20 A. I do.

21 Q. Can you tell me what it is?

22 A. This is an email -- on the first page, this
23 is an email from me, myself, to J. Ezra Merkin, copying,
24 I believe, his assistant and my assistant.

25 Q. Do you recall sending this email to

1 left on the tape.

2 MS. GRIFFIN: Why don't we break now, and
3 we'll mark an exhibit.

4 THE VIDEOGRAPHER: Okay. This is the end of
5 Tape 1. We're off the record at 11:57.

6 (Recess.)

7 (Exhibit Trustee 296 was marked for
8 identification.)

9 THE VIDEOGRAPHER: Okay. This is the
10 beginning of Tape 2. We're on the record at 12:16.

11 Q. BY MS. GRIFFIN: Hi, Mr. Stamos. I'm going
12 to give you what's been marked as Trustee's 296. It's
13 subject Pete Sheet, start date of 9/2/2004, at 3:00 a.m.,
14 Bates range SSMT01229948 (indicating).

15 A. I've read the document.

16 Q. Okay. Do you recognize Trustee's Number 296?

17 A. Yes.

18 Q. Can you tell me what it is, please?

19 A. Just as the other one, this is my Pete Sheet,
20 which is my daily phone calls, to do list and some
21 specifics on calls that I'm supposed to return.

22 Q. And, again, just for the record, who
23 prepares -- or who prepared Pete Sheets at or about
24 September 2004?

25 A. Whoever was serving as my executive assistant

1 at the time. It could have been Ming. It could have
2 been Gillian. I'm not sure who was doing it at that
3 time.

4 Q. Under -- the top of the document, Peter's
5 calls, the second name, Anthony Scaramucci, do you see
6 that?

7 A. Yes.

8 Q. Who is Anthony Scaramucci?

9 A. Anthony Scaramucci is a hedge fund to funds
10 manager.

11 Q. How do you know Anthony Scaramucci?

12 A. He was introduced to me by Fred Wilpon.

13 Q. Was he involved in Sterling Stamos' business
14 in any way?

15 A. He was a potential recruit for us, somebody
16 we considered hiring for our front office.

17 Q. And in what capacity did you consider hiring
18 Mr. Scaramucci?

19 A. Considered hiring him for the front office,
20 which is the raising of capital side of the business.

21 Q. Okay. And down below, at the bottom,
22 Michael Katz, do you see that?

23 A. Yes. Yes.

24 Q. Did you frequently talk to Michael Katz?

25 A. If you could -- if you could define --

1 MR. GOUDISS: Object --

2 THE WITNESS: -- frequently.

3 MR. GOUDISS: Yeah.

4 Q. BY MS. GRIFFIN: Do you know who Michael Katz
5 is?

6 A. Yes.

7 Q. And how do you know Michael Katz?

8 A. He's the brother of Saul Katz.

9 Q. Okay. And did Michael Katz have anything to
10 do with Sterling Stamos' business?

11 A. He was a member of the ownership structure.

12 Q. And did you talk to him about Sterling
13 Stamos' business with him?

14 A. Periodically.

15 Q. And what do you mean by "periodically"?

16 A. You know, on occasion. If he would stop into
17 the office, I would talk to him. Occasionally we might
18 have a phone call. I might meet him at a baseball game.

19 Q. Do you recall ever having discussions with
20 Michael Katz about registering Sterling Stamos as an
21 investment advisor?

22 A. I don't recall specific conversations with
23 Michael Katz about that subject. It could have occurred,
24 but I don't recall them.

25 Q. Do you recall having conversations with

1 A. I don't recall personally speaking to
2 Ms. Yukako. I may have, but I don't recall.

3 Q. Do you have an understanding as to whether
4 anyone at Sterling Stamos spoke to Yukako Kawata?

5 A. Yes.

6 Q. And what is your understanding?

7 A. I believe that this was a set of
8 responsibilities that was delegated to some of the people
9 who are cc'd in these two references. Kevin Okimoto took
10 on primary responsibility for coordinating all of our
11 legal activity until we had our own internal general
12 counsel, so he played that role. And Kevin would have
13 been primarily responsible for those communications --
14 coordinating those communications between Mr. Glaser and
15 other counsel.

16 Q. You said Mr. Glaser was from Cooley Godward?

17 A. I believe he was at Cooley Godward at the
18 time. This was -- looks like August of 2004. And I
19 believe he joined us in February of 2005 as our internal
20 general counsel.

21 Q. So at this time Sterling Stamos had three law
22 firms involved in the investment advisor issue?

23 MR. GOUDISS: I object.

24 Go ahead.

25 MS. SESHENS: I object.

1 other investors?

2 A. No. We hadn't launched it yet.

3 Q. When did you launch Sterling Stamos?

4 A. We launched -- well, the firm was
5 incorporated on June 17th and then we launched our first
6 two funds, I believe on July 1st, 2002, and we did that
7 initially with only internal capital, meaning capital
8 from the Sterling Equities partners and from the Stamos
9 partners.

10 Q. What was Tom Olds' position with Sterling
11 Stamos?

12 A. Tom Olds was originally hired as an
13 engagement manager or associate.

14 Q. What were his job responsibilities as an
15 engagement manager or associate?

16 A. He was the second to me, the senior-most
17 person on the investment team. And his first
18 responsibility as a manager was to help me build out the
19 rest of the team, and so he helped me recruit Ashok
20 Chachra who came in as an analyst or associate.

21 Q. And how did Mr. Olds -- what were his
22 day-to-day tasks as an associate?

23 A. I'll give you an example. His
24 responsibility, he was trained in mathematics and as a
25 certified financial advisor. CFA, level three or

1 something like that. And he knew how to do analysis to
2 design portfolios. So his first -- one of his first
3 tasks was to develop a model that would show us what
4 asset allocation we should have among the various
5 strategies of hedge funds so as to optimize risk adjusted
6 returns. Another example is he would go on manager
7 interviews with me and with Mr. Chachra to meet potential
8 managers that we would potentially invest with.

9 Q. Did Mr. Olds conduct any diligence in the
10 course of his duties?

11 A. There are several levels of diligence.
12 There's investment due diligence, operation due
13 diligence, risk management due diligence, legal due
14 diligence. At that time when we were in that early phase
15 as I described the family office, the primary due
16 diligence we did was investment due diligence, meaning is
17 this investment an appropriate investment for us based
18 upon their historical returns and the reputation of the
19 manager to go into our portfolio? So that level of due
20 diligence he did, which was primarily data analysis and
21 interviews.

22 Q. What data analysis would Mr. Olds conduct?

23 MS. SESHENS: Objection to the form.

24 THE WITNESS: I can give you an example. An
25 example would be taking the historical returns of the

1 managers that we were considering putting into our
2 portfolio and then constructing a pro forma of what the
3 portfolio would be. For example, if we had not one
4 manager but 12 managers, each with equal positions or
5 changing the position size.

6 Q. BY MS. GRIFFIN: What is operational due
7 diligence?

8 A. Operational due diligence is, generally
9 speaking, an analysis of the operations of a business, in
10 this case of the hedge funds that we consider investing
11 in, and it includes a whole series of questions that we
12 have to have answered in order to qualify the fund
13 manager as a potential investment.

14 Q. What series of questions would you have to
15 have answered in order to qualify the fund manager as a
16 potential investment?

17 MR. GOUDISS: I object. Particularly over
18 time frame. But go ahead.

19 MS. GRIFFIN: In this time frame in the
20 change --

21 MR. GOUDISS: 2002.

22 THE WITNESS: 2002, 2004 we did not conduct
23 operation due diligence. We conducted operation due
24 diligence after we started the process of becoming a
25 registered investment advisor and hiring a CFO.

1 been over this, but it's just easier to keep going. What
2 was her position when she was hired?

3 A. When she was officially hired, she was given
4 the title of chief investment officer.

5 Q. And what were her responsibilities as chief
6 investment officer?

7 A. To be the supervisor of the team that was
8 assembled. So at that particular time it was Ashok
9 Chachra. But then the anticipation -- I believe Tom Olds
10 had left at that time. It was anticipated that we would
11 be hiring other associates as well and she would be
12 responsible for conducting the analysis and doing manager
13 interviews and then making recommendations to me for
14 potential additions or subtractions from our portfolio.

15 Q. I'm sorry. When you said she would be
16 responsible for doing the analyses --

17 A. The same analysis we just referred to before,
18 only she was more senior than either Tom Olds or Ashok
19 Chachra -- she had more experience.

20 Q. Not to put words in your mouth, but are you
21 referring to due diligence analyses or specific analyses?

22 A. Investment due diligence, all of the -- the
23 analyses that we would do would go to the chief
24 investment officer, she would lead that analysis and then
25 make recommendations to me.

1 And I believe that was through December 30th of 2002,
2 December 31st.

3 Q. When you say he traded in and out of single
4 stock positions, what do you mean?

5 A. I can tell you an example. He had a -- would
6 have a position in a company called MBNA, he would buy it
7 when he thought it was low and sell it when he thought it
8 was up, and then move in and out sometimes on a daily
9 basis, sometimes on a weekly basis, and he was trying to
10 achieve staple steady returns as a short-term day trader,
11 if you will.

12 Q. Okay. I got that term.

13 Do you know how Ms. Harrington went about --
14 well, did she evaluate Sterling Stamos' existing fund
15 managers?

16 A. I believe she -- I know that for a fact she
17 did some interviews of our existing managers, I'm not
18 sure which ones she did, but I know of some that she did.

19 Q. And do you know what the purpose of her
20 interviews with the existing managers was for?

21 A. In general, the purpose was to reaffirm that
22 we should stay with the manager, that the manager was
23 continuing to do the things that we had -- that
24 originally he or she had said that they would do. Again,
25 the things that are listed for ongoing monitoring, that's

1 the responsibility of the investment team.

2 Q. And was she a part of that investment team
3 that was responsible for that function?

4 A. She was second only to me in that
5 responsibility.

6 Q. Okay. Did there come a time that Ms.
7 Harrington met with Ezra Merkin to discuss Sterling
8 Stamos' investments with him?

9 A. Yes.

10 Q. Do you know why Ms. Harrington was meeting
11 with him? What was the purpose of that meeting?

12 A. I requested a meeting with Mr. Merkin, I
13 believe it was in February of 2002, with Ms. Harrington,
14 who had recently joined us and become partner, and with
15 Mr. Chachra. And I requested that meeting because we
16 were making increased investments with Mr. Merkin in a
17 series of his funds as we were raising capital. Original
18 investments were June 30th and as capital came in --
19 June 30th to July 1st of 2002, as capital came in, we
20 kept adding capital to all of our managers and he was
21 becoming a larger and larger pool of capital for us,
22 because I think at that time we had three funds. And,
23 second, in particular, we had made a decision in the
24 early part of 2002 at Ms. Harrington's recommendation to
25 launch a levered fund, and we were considering putting

1 him for many years, and I said, "Saul, does that," you
2 know, "comport with your understanding of Mr. Merkin?"

3 And of course, I believe at that time all of
4 us, with the exception of Noreen, stood, generally
5 speaking, in awe of Mr. Merkin. He was chairman of the
6 investment committee for Yoshiba. He was considered
7 world renowned, and he may have been president of the
8 temple, and he just was stalwart in the community. And
9 Saul said some reassuring words to me about this being a
10 trustworthy person. That's why he originally introduced
11 me to him. So Saul was aware of this conversation.

12 I'm not sure if he was aware of the details
13 that followed later on, but...

14 Q. So suffice it to say that a manager's
15 reputation is a significant factor in what you look at in
16 selecting a manager and maintaining a manager?

17 MR. GOUDISS: Object.

18 Go ahead.

19 THE WITNESS: We have said in the firm, since
20 the inception of the firm, something that Fred Wilpon
21 said to me when they selected me to be the CEO of our
22 firm, that whenever you make an investment decision,
23 there are ten questions that need to be answered. The
24 first nine are trust and value based; the tenth one is
25 can they do the job.

1 were often closed to outside investors.

2 And the level of questioning that I would
3 have of Saul, in particular, based upon his judgment, was
4 if he knew the manager, what he thought of that person as
5 an individual, could we trust them? So in the first nine
6 questions we had to answer, the trust and value based,
7 those are qualitative judgment calls. It's an important
8 part of due diligence. I would argue it's one of the
9 most important parts.

10 And then on the quantitative side, you know,
11 can they actually do the job, can they execute on hedge
12 fund strategies and so on, that was our job.

13 Q. BY MS. GRIFFIN: Okay. Page 11 of that
14 document, Bates range, last four digits, 8262. Under
15 Saul B. Katz, it says, "Mr. Katz is a general partner of
16 Sterling Stamos and is actively involved in the
17 investment decisions, as well as the management of
18 Sterling Stamos."

19 Was that true in or about October 2004?

20 A. Yes. At that time he was actively involved.
21 Again, with the caveat being that his active involvement
22 was, on the investment side at least, at the very general
23 level. On the business side, very specific level.

24 Q. And David Katz, it says, "Mr. Katz is a
25 general partner of Sterling Stamos and is actively

1 involved in the investment decisions as well as the
2 management of Sterling Stamos."

3 Is that an accurate statement in or about
4 October 2004?

5 A. Yes.

6 Q. Okay.

7 A. With the same caveat, at the general level on
8 the investment side. More specifically on the management
9 side of it.

10 Q. Were you marketing Mr. Katz's, Mr. Saul Katz
11 and Mr. David Katz, their involvement with the fund to
12 your potential investors?

13 A. Yes.

14 Q. And did you inform your potential investors
15 that their -- strike that.

16 MR. GOUDISS: Thank you.

17 MS. GRIFFIN: I'll save you the objection.

18 MR. GOUDISS: You saved me the objection.

19 MS. GRIFFIN: You're coughing so hard I felt
20 bad.

21 Q. On page 3 of the first attachment -- my
22 apologies.

23 A. Going back to the first?

24 Q. Yes. Jumping back.

25 A. Okay.

1 exposure to the hedge fund world. And this was -- we
2 became the integrative investment arm for everything else
3 other than that for them.

4 Q. Okay. You can put that aside.

5 A. The whole document?

6 Q. I'm sorry, you can put that --

7 A. You're finished with this document?

8 Q. Yes. We're finished. Sorry.

9 Did there come a time that Merrill Lynch
10 acquired an ownership interest in Sterling Stamos?

11 A. Yes.

12 Q. And do you remember approximately when that
13 was?

14 A. Yes.

15 Q. And who was involved in the negotiations of
16 that transaction?

17 A. I was. And I believe that the primary
18 responsibility for negotiating the terms and conditions
19 was mine, but I went back to my various partners to get
20 their agreement.

21 Q. And who would you -- which of your various
22 partners would you go back to get their agreement?

23 A. On the Sterling Equities side, I would go
24 back to Saul Katz.

25 Q. You wouldn't speak to any of the other

1 Sterling Equities partners?

2 A. As a matter of course, I would speak to Saul
3 directly, and my assumption is he would share with the
4 partners as need be. But if one of the other partners
5 asked me, I would also give them an update. And of
6 course, I had a dedicated internal team focused on the
7 negotiations for structuring it, internal legal staff,
8 internal financial staff, internal investment staff, and
9 we had external counsel help us negotiate the terms and
10 conditions.

11 Q. And just to be clear, in your last record
12 that when you would -- strike that.

13 When you were referring to the other partners
14 in your last answer, were you referring to Sterling
15 Equities partners? There's a lot of partners floating
16 around here.

17 A. Okay. So what I would do is on a regular
18 basis I would speak to Saul Katz, and my assumption was
19 that he would share the information with his partners,
20 but I would also -- those are the Sterling Equities
21 partners.

22 But I would also, as a matter of course, if
23 any of them asked me a question, I would be happy to
24 answer them directly. My primary source of communication
25 was with Saul.

1 On the other side of the ownership structure,
2 which is the -- we'll call it the Stamos partners, there
3 my communication was daily with my team. Some of whom
4 were partners, Ashok Chachra, Kevin Barcelona and
5 Kevin Okimoto, others of whom at the time were associates
6 and colleagues.

7 Q. Did you ultimately sign an agreement whereby
8 which Merrill Lynch acquired an ownership interest in
9 Sterling Stamos?

10 A. Yes.

11 Q. And how much of an interest did Merrill Lynch
12 acquire?

13 A. A 50 percent interest.

14 Q. And how much did they pay for that interest?

15 A. The valuation of the firm was \$460 million.
16 They ultimately paid \$230 million for a 50 percent stake.

17 Q. And to whom did Merrill Lynch pay that sum of
18 money for the ownership interest?

19 A. They paid -- of that \$230 million, 50 percent
20 or 115 million, was paid out to the Sterling Equities
21 partners in two installments. And the other 50 percent
22 was paid out to the Stamos partners proportionate to our
23 ownership stake in the firm.

24 MR. GOUDISS: Note that I'll designate this
25 portion of the transcript confidential as well.

1 Q. BY MS. GRIFFIN: Now, if you could take a
2 moment and look at Trustee's 310. At the top it says,
3 "Sterling Stamos internal chat application."

4 Do you recognize what that could be referring
5 to?

6 A. I haven't read this yet.

7 Q. That's okay.

8 A. I'm familiar with this.

9 Q. Okay. Did Sterling Stamos have an internal
10 chat application?

11 A. I believe that we did, yes. I am not -- this
12 is the first time I've actually seen this chat, but I've
13 seen other chats, and I actually participated on a few
14 myself.

15 Q. And the metadata that accompanied the
16 production of this document has it dated somewhere
17 around -- a file name anyway of 06/12/2006. And then
18 there's another date after it -- well, it's 06/12/2006
19 and I don't know what 22-0727 is.

20 But in the document -- who's Michelle Ruvolo,
21 by the way?

22 A. Michelle Ruvolo was the assistant to Rohit.
23 Rohit was the managing director in charge of risk, and I
24 believe at that time Michelle was either a director or
25 senior associate. She's currently a managing director

1 still on the risk team -- risk management team.

2 Q. And as a senior associate or a director of
3 the risk management, what were her responsibilities?

4 A. To do analysis of the underlying investments
5 from a risk perspective and to provide that analysis at
6 the direction of Rohit, who was the head of risk.

7 Q. The chat application document says,
8 "Michelle Ruvolo says 'Rohit.'"

9 "Michelle Ruvolo says, 'Ascot does not keep
10 financial.'"

11 "Michelle Ruvolo says, 'Their holdings report
12 consists entirely of T-bills.'"

13 "Rohit Kumar says, "'Because they turn
14 everything into cash on year end.'"

15 Was it true in or about 2006 that Merkin
16 turned to cash at the year end?

17 A. Yes. I believe that's correct. And as Rohit
18 said in his next statement, we believe that that was done
19 intentionally. And that was part of the similar strategy
20 that was conducted by -- a similar strategy was conducted
21 by Mr. Madoff, which was if you're doing an options
22 arbitrage by year end, you're -- particularly if you're
23 providing year-end liquidity to your underlying
24 investors, you want your trades to be completed and in a
25 liquid form by year end to provide liquidity to your

1 Q. Okay. Can you tell me who you remember being
2 there?

3 A. Members of the board, which included my
4 father, Spiro Stamos, Kevin Dunleavy, who's a Merrill
5 Lynch representative on the board, myself, Saul Katz.
6 Saul Katz, Spiro Stamos and Peter Stamos represented the
7 three voting members of the Sterling Stamos group.

8 I don't recall who the other board members
9 were on the Merrill Lynch side, because they turned over
10 somewhat. But I know that Kevin Dunleavy was one of the
11 senior members of the three. And he represented them
12 with a vote.

13 And then in addition to that, there was my
14 general counsel and various members of our staff.

15 Q. Do you remember Mr. Dunleavy's response to
16 Mr. Katz's suggestion about a fund to funds comprised of
17 black box strategists?

18 A. Yes.

19 Q. And what was Mr. Dunleavy's response?

20 A. His response was twofold. Number one, we
21 could not do that under the Merrill Lynch structure,
22 because under the Merrill Lynch structure, they required
23 a different level of transparency than black boxes -- a
24 fund to funds and black boxes.

25 He did say -- and I just had my memory

1 make the referral and we would sometimes say yes and
2 sometimes say no. It was our call.

3 Q. Okay. If you could turn to the page -- it
4 bears Bates Number ending in 8262, it's towards the back,
5 and it is page 11, if that's helpful.

6 A. That's helpful.

7 Q. Of the marketing supplement.

8 A. Oh, is this the --

9 Q. Yes, yes, you've got it.

10 A. The bio -- bio, Saul B. Katz, David B. Katz.

11 Q. Yes. And Ms. Griffin asked you some
12 questions earlier about this page and in particular the
13 language that Mr. Saul Katz is "actively involved in the
14 investment decisions."

15 Do you see that?

16 A. Uh-huh, yes.

17 Q. And you, I believe, said at a very, very --
18 at a very general level he was involved in the investment
19 decisions.

20 Do you recall that generally?

21 A. Yes. I do.

22 Q. And can you tell me what you meant by at a
23 general level?

24 A. At the time that this was written, which I
25 believe is early 2005, late 2004, the Katz and the Wilpon

1 and Sterling Equities partners represented a substantial
2 portion of all of the assets that we managed. So to call
3 them our largest limited partner would be an
4 understatement. I don't know whether it was at that time
5 25 percent or 50 percent of the assets. If you included
6 in that all of the referrals that they made to us of
7 limited partners who also chose to invest with us, the
8 Sterling Equities related investments, their investments
9 with us, was a significant, I believe, majority of the
10 assets we had. So Mr. Katz in the context of being one
11 of our largest investors and being a member of the
12 general partner with a lot of business experience gave me
13 credibility in that I was two years into this new
14 industry, and at that time he was on our investment
15 committee, and that investment committee discussed very
16 broad topics and very specific topics, and on the broad
17 topics, the general topics, Mr. Katz was a very big
18 contributor. Part of the discussion would be, for
19 example, you know, comparing one set of managers versus
20 another set of managers for the kinds of returns that we
21 wanted to generate, we wanted to generate returns that
22 had singles and doubles, not triples and home runs. This
23 is a Saul Katz contribution to the investment committee.
24 Look for managers who are stable and steady over time,
25 invest in managers -- he would counsel us that, you know,

1 infective, but what David did have is -- and does have, I
2 believe, to this day, some of Saul's judgment and
3 instincts about people. And so David would regularly,
4 you know, counsel me in the same way, in this case not
5 like a father but more like brother, and ask me questions
6 about the managers. And that's why I think in the early
7 days he even came on some manager interviews with us,
8 gave us some of his judgment. But, again, like Saul, he
9 deferred the investment decisions to us.

10 Q. Now, you also testified in response to
11 questions to Ms. Griffin that you -- not you personally,
12 but Sterling Stamos was marketing Mr. Katz, Mr. Wilpon
13 and David Katz to potential investors.

14 Do you recall that?

15 A. Yes.

16 Q. And can you tell me why it is that Sterling
17 Stamos, or what was SP Capital at the time, was marketing
18 those individuals to potential investors?

19 A. Because they had a, if you'll pardon the
20 phrase, sterling reputation in the New York area in
21 general -- I mean, in the investment world in general,
22 because of their remarkable track record in real state,
23 remarkable track record with American Securities and
24 private equity, and that gave us credibility. In
25 addition to the fact that they owned the New York Mets,

1 were at the time highly respected owners. A portion of
2 the Mets, I believe, at the time. I don't know whether
3 they owned 50 percent or more at this point in time. And
4 that opened doors both on the manager's side, the people
5 that we invested with. Specifically they would, you
6 know, use the cachet of the New York Mets and the ability
7 to have access to the owners' box and to throw out the
8 first pitch or to have a charitable event at Shea Stadium
9 as an incentive for hedge fund managers to consider us.
10 I think I got an allocation to Michael Lowenstein when he
11 asked for a charitable event that they could throw out
12 the first pitch or have a couple seats. Then the next
13 day I got access to him. That's on the one hand.

14 On the other hand, they had the reputation of
15 being savvy businessmen, very thoughtful, very credible.
16 And so a number of other limited partners who chose to
17 invest with us would do it under the halo of the fact
18 that Saul and Fred had chosen us as their investment
19 manager for a significant portion of their assets.

20 Q. Okay. Last set of questions. Mr. Stamos, at
21 any point prior to December 11th, 2008, did you believe
22 that there was a high probability that Bernie Madoff was
23 engaged in fraud?

24 MS. GRIFFIN: Objection.

25 THE WITNESS: No. If I had any inkling