

# EXHIBIT H

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

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
ADV. PRO. NO. 08-01789 (BRL)

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SECURITIES INVESTOR PROTECTION  
CORPORATION,

Videotaped

Plaintiff-Applicant,  
v.

Rule 2004  
Examination of:

BERNARD L. MADOFF INVESTMENT  
SECURITIES, LLC,  
Defendant.

ARTHUR FRIEDMAN  
  
(Volume I)

-----x

In Re:

BERNARD L. MADOFF,  
  
Debtor.

-----x

TRANSCRIPT of testimony as taken by and before  
NANCY C. BENDISH, Certified Court Reporter, RMR, CRR  
and Notary Public of the States of New York and New  
Jersey, at the offices of Baker & Hostetler, 45  
Rockefeller Plaza, New York, New York on Tuesday,  
June 22, 2010, commencing at 10:11 a.m.

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For Sterling Equities, certain  
affiliated entities, and the Witness

ALSO PRESENT:

GREGORY P. NERO, ESQ., Sterling Equities  
DANIEL McCLUTCHY, Videographer

1 Q. Okay. So, how many employees does  
2 Sterling Equities Associates employ? Approximately.

3 A. I would say approximately 120,  
4 something like that.

5 Q. Now, when you first joined the  
6 Sterling group in 1986, was Sterling Equities  
7 Associates the company that you hired into, or was  
8 it a different company at that time?

9 A. No, that was the company that was  
10 employed, from day one.

11 Q. What is your title today?

12 A. Partner, for one, and senior vice  
13 president for another.

14 Q. When you say partner for one, and  
15 senior, are those two different titles?

16 A. It's two different titles.  
17 Generally -- it's a partnership, generally there  
18 aren't any titles but we have -- it's optional and  
19 we do have titles.

20 Q. What are your job responsibilities?

21 A. You have to mention exactly when,  
22 because that's a moving picture.

23 Q. Sure. Why don't we start with, if  
24 you remember, when you first started in '86, what  
25 were your job responsibilities? Then I'll give you

1 a few more -- we'll kind of walk through, you can  
2 tell me how they've changed.

3 A. My recollection in January of '86  
4 was, let's see how this evolves kind of a thing.  
5 Let's see, as responsibilities come up we'll see  
6 whether or not this is suitable for you, for me,  
7 whether I wanted to do this or whether I was good at  
8 it, and it was kind of a thing that would evolve.  
9 But it amounted to various things. Again, there was  
10 taxes involved, investments, administrative duties.  
11 And certainly involvement with Sterling Equities  
12 accounting, a varied amount of different type of  
13 functions.

14 Q. Can you -- we'll go through each of  
15 those in a minute, kind of your different job duties  
16 and you can tell me how they evolved. But can you  
17 give me kind of an overview of the Sterling group of  
18 companies and what they do, what they're involved in  
19 and how they're serviced by Sterling Equities  
20 Associates.

21 A. The real estate aspect -- Sterling  
22 has different aspects to it. The real estate aspect  
23 is broken into each real estate property has its own  
24 entity or entities. It may be a structure for a  
25 given property that has two or more entities. But

1 the next part of the business, how were the outside  
2 investors attracted to the Sterling American  
3 Property's entities or projects? Do you understand  
4 the question?

5 A. Yes.

6 First of all, Sterling, the Sterling  
7 partners had a reputation, a very good, fine  
8 reputation, which they still do, and people knew of  
9 Sterling Equities as being very astute real estate  
10 developers, owners, managers, and so there were and  
11 still are people who want to do business with the  
12 Sterling entity or partners. And then we would,  
13 particularly with Sterling American Property, the  
14 American portion of that, American Securities, was  
15 and is a minor portion, owned a minor portion of  
16 Sterling American, but they brought in a number  
17 of -- in their business they had contact with a  
18 great many wealthy families.

19 Q. So they would bring in --

20 A. Yes.

21 Q. -- outside investors as well?

22 A. Yes.

23 Q. Okay. You were giving me an overview  
24 of the Sterling businesses. So we had the real  
25 estate, generally, and then we had the Sterling

1 American Property's real estate.

2 A. Part of real estate, right. Owned  
3 real estate, Sterling American Property. A separate  
4 segment was the baseball, which was the New York  
5 Mets and the Brooklyn Cyclones.

6 Q. Okay.

7 A. Separate businesses, separate  
8 entities. We always considered our investments as  
9 being a separate segment of the Sterling broad  
10 picture.

11 Q. Okay. And by investments you'd be  
12 including in there the investments with Bernie  
13 Madoff?

14 A. Yes.

15 Q. Describe to me the investment side of  
16 the business.

17 A. I think, first of all, there were, to  
18 a very limited extent, investments that each partner  
19 might have had when we first -- before '86, I  
20 presume. After that, the only other investments  
21 that anyone had, to my knowledge, were IRA accounts  
22 where they might have opened an IRA with a broker,  
23 usually.

24 Q. I didn't follow that. Could you  
25 repeat that? Prior to '86 some of the partners had

1 Q. Are you aware of the reasons the  
2 decision was made?

3 A. I would have to say that the reasons  
4 were the same as why I put my money in Madoff, why  
5 all of the entities, 200 plus accounts were opened  
6 at Madoff, they were all the same reasoning.

7 Q. Which was what?

8 A. It was deemed to be an excellent  
9 place to invest your money. The returns were very  
10 satisfactory and you could easily get your money out  
11 of the investment. It was a very liquid investment.  
12 It was, in every sense, a good place to invest.

13 Q. I guess -- it appears to me, from  
14 looking at the records, that some of the Sterling  
15 entities had accounts with Madoff, and others did  
16 not. Is that --

17 A. Some of the -- when you say --

18 Q. I'm sorry. Some of the Sterling  
19 entities opened up accounts with Madoff and put  
20 money in, and other Sterling entities did not open  
21 up accounts at Madoff. Is that your understanding  
22 as well?

23 A. Yes.

24 Q. Why -- and I guess what I'm trying to  
25 understand is why, if it was a good, safe place to



1 invest with a good return and easy to get your money  
2 out, why did some entities open accounts at Madoff  
3 but not others?

4 A. Any account -- any entity that had,  
5 by its nature of the operation, accumulated funds  
6 and had to invest them, they were invested in  
7 Madoff. Most entities that were profitable and  
8 accumulated funds would make a distribution to the  
9 partners, who then would, more than likely, invest  
10 their money in Madoff.

11 So, ultimately, one way or another,  
12 it would seem that all of the entities that  
13 accumulated any kind of funds, if they were going to  
14 invest it any place, there would be a likelihood of  
15 it being invested in Madoff.

16 Q. So what you're telling me, I think,  
17 is that -- I guess I'm not sure. Are you telling me  
18 that entities that by their nature accumulated  
19 funds, like a parking garage, they'd have daily  
20 revenue, right, that it would be likely that that  
21 entity would open an account with Madoff?

22 A. If there was a reason for the  
23 accumulation, then, yes, and so they therefore  
24 wanted to save the money in one place rather than  
25 going to the bank on the corner or a broker, the

1 election was made to invest it in Madoff. If there  
2 was no need to accumulate a fund, then chances are  
3 it would be distributed to the partners.

4 Q. And then, as you said, they would  
5 likely put the money back in?

6 A. Whatever they did, if they were going  
7 to save money, this was the, one of the receptacles  
8 of choice, as was any of the other investments that  
9 we have touched upon. We haven't talked about  
10 Sterling Stamos, that was an investment opportunity,  
11 American Securities, or a partner could elect not to  
12 save the money. None of the partners really have  
13 any boats, but if they wanted -- if that were the  
14 case and they were into that...

15 Q. It's their money.

16 A. Generally it's their money.

17 Q. Now, did you view the Madoff  
18 account -- now, we know Madoff was a broker, right?

19 A. Madoff was?

20 Q. Was a broker?

21 A. Yes.

22 Q. Did you view him as, not as a  
23 brokerage account, or did you view it as a bank  
24 account?

25 A. It was viewed as a brokerage account.

1 would be performed in-house?

2 A. Yes.

3 Q. By either the accounting department  
4 or at some point in time maybe by you yourself,  
5 correct?

6 A. I was never involved in auditing any  
7 of the departments.

8 Q. But you were involved in doing  
9 accounting work for some of the entities?

10 A. Yes.

11 Q. Are the entities that are 100 percent  
12 owned -- is there auditing work -- are they audited  
13 as well?

14 A. To the extent there are bank  
15 reconciliations and division of authority, if one  
16 person or people prepare bank reconciliation,  
17 somebody else would be involved in actual -- it  
18 wouldn't be the same people that performed the  
19 function that reconciled the bank statement, for  
20 example.

21 Q. Okay. That's a form of an audit  
22 then?

23 A. Yes.

24 Q. Okay. Let's talk about the  
25 investments with Madoff. Now, you arrived at

1 Sterling in January of 1986.

2 A. Correct.

3 Q. And at that point in time there were  
4 already some investments made by the Sterling  
5 principals or even Sterling entities with Madoff,  
6 correct?

7 A. I believe so, yes. In October of  
8 '85.

9 Q. Right. Just a few months before you  
10 got there. September, October, somewhere in that  
11 range, correct?

12 A. Correct.

13 Q. Now, I know you weren't with Sterling  
14 at the time that those investments were made, but  
15 did you know when you joined Sterling in January of  
16 '96 or shortly thereafter, did you come to learn how  
17 those investments came to be?

18 MS. SESHENS: I think you meant  
19 January of '86. You said January of '96.

20 MR. LUCCHESI: Okay, I'm sorry.

21 A. Yes.

22 Q. Tell me what you learned.

23 A. My best recollection is that there  
24 were two accounts established, one under the name of  
25 Fred Wilpon, one under the name of Saul Katz. They

1 each put in a certain amount of money and opened an  
2 account, an individual account for each of them.

3 Q. Do you know how much money they put  
4 in?

5 A. My best recollection was a million  
6 dollars or a million one something.

7 Q. Each?

8 A. Yes.

9 Q. Do you know why they chose to open an  
10 account with Madoff?

11 A. Why they chose to open an account  
12 with Madoff? Yes, it had been recommended to them  
13 by people that they knew and who had invested with  
14 Madoff for some period of time prior to that.

15 Q. Do you know who those people were  
16 that recommended Madoff?

17 A. I do not recollect, no.

18 Q. Is that something you knew at one  
19 time?

20 A. I'm not even sure if I knew. I'm not  
21 even sure if I knew the people or heard the names  
22 mentioned.

23 Q. Do you know whether Mr. Wilpon or  
24 Mr. Katz knew Mr. Madoff prior to the time they  
25 invested with, their own funds with him?

1 MR. LUCCHESI: Yes.

2 Q. At the time you joined, did you have  
3 an understanding of Madoff, Bernie Madoff's  
4 investment strategy?

5 A. At that initial time, no. It was  
6 explained to me very early on what his strategy was.

7 Q. Okay. And who explained that to you  
8 very early on?

9 A. I don't really recollect who.

10 Q. Was it someone at Sterling or was it  
11 Mr. Madoff himself?

12 A. No, it was somebody at Sterling.

13 Q. Were you tasked at any time with  
14 doing any due diligence into Madoff, in connection  
15 with investments that were either made or  
16 contemplated to be made by the Sterling entities?

17 A. I did a certain amount of diligence.  
18 It was a question -- I don't recollect if, to what  
19 extent it was assigned to me, advised, requested,  
20 suggested or, in some cases where I just did it on  
21 my own to do due diligence.

22 Q. It's hard to say sometimes.

23 A. Due diligence. Got it out.

24 Q. Do you recall what diligence you did  
25 with respect to Madoff?

1           A.           I recall in the very early stages  
2 actually tracking market prices. In other words,  
3 when we first were invested, we did not invest in  
4 index puts and calls. We invested in individual, if  
5 we bought seven individual stocks, we bought the  
6 puts and sold the calls on each individual security.  
7 And I can remember, and I don't remember exactly for  
8 how long I continued that, but if the statement came  
9 out that we bought this list -- and I'm just using  
10 seven as an example, it wasn't necessarily seven --  
11 at specific dollar amounts and the puts and calls at  
12 certain specific amounts, I actually went to the  
13 newspapers and tracked to see how that fit into  
14 the -- first of all, did it fit into a range, did it  
15 trade at that value, and was it the high, the low,  
16 the middle, the closing price of the range for the  
17 day. That was one thing I did.

18                       I can remember other exercises I went  
19 through. They weren't necessarily due diligence,  
20 but just from a tracking standpoint, I can remember  
21 trying to project a month ahead of time what, based  
22 upon the prices, what the maximum gain and the  
23 maximum loss might be under the circumstances. And  
24 then going back and seeing exactly how we did and  
25 how that reality measured up to my projections.

1 That wasn't necessarily due diligence.

2 Q. How did your reality match up? Do  
3 you have a general recollection?

4 A. To the best of my recollection, it  
5 was -- first of all, it did fall within -- again,  
6 what I projected was the maximum that we could gain  
7 and the maximum we could loss -- lose. The fact  
8 that there was puts and calls, there was a maximum  
9 on both sides. And in all cases it would fall  
10 between that. It wasn't outside that range.

11 Q. Let me just ask you this, kind of out  
12 of order here, but do you recall any particular,  
13 let's take month, any month in which Madoff reported  
14 a loss on the investments that he purportedly made  
15 on behalf of Sterling?

16 A. Yes.

17 Q. How many times do you recall there  
18 being a loss?

19 A. How many times throughout the  
20 entire --

21 Q. Yes.

22 A. -- 23-year --

23 Q. Yes.

24 A. This would be speculation because I  
25 don't, without referring to records --



1 1987, in November of 1987, to be the risks of  
2 selling puts, as you -- I'm sorry, workings of puts  
3 and calls -- I was reading your title. I thought  
4 you didn't sell a put, but...

5 Do you recall why, what the risks you  
6 perceived in trading in puts and calls?

7 MS. SESHENS: Objection to the form.

8 A. I really don't recollect. This would  
9 seem to follow up the Al Frank memo as opposed to  
10 the, again, having anything to do with Mr. Madoff  
11 suggesting. Again, it's talking about selling puts.

12 Q. The second paragraph begins: "Assume  
13 we tell Bernie Madoff to sell puts that have  
14 appreciated dramatically due to a market crash."  
15 And then it goes on to describe how that transaction  
16 is effectuated.

17 Did you ever tell Bernie to sell  
18 puts?

19 A. No.

20 Q. Did you ever give Bernie any  
21 instruction regarding the investments that he was  
22 making on behalf, allegedly making on behalf of the  
23 Sterling entities or partners?

24 A. No.

25 Q. You indicated before that you, at

1 some point in time, did some checking, you said you  
2 looked in the newspaper after you got your statement  
3 from Mr. Madoff and checked the prices at which his  
4 trades, his trades had been effectuated. Do you  
5 recall telling me that?

6 A. Yes.

7 Q. Do you recall when you did that?

8 Over what periods of time you checked the prices?

9 A. I don't have an exact recollection.  
10 You mean how long after we got the statement or for  
11 how long I continued to do that?

12 Q. How long -- it was the latter one,  
13 how long you continued to do that.

14 A. I don't know exactly, but it wasn't  
15 too long. I mean, it was a lot of work and it  
16 didn't lead to anything that I would say something's  
17 wrong.

18 Q. Is that the purpose for which you  
19 were doing the checking?

20 A. Just -- well, I think it had multi-  
21 purpose. One was just to learn more about the whole  
22 procedure and work through it. At some point I even  
23 tried to do the strategy myself to see how I would  
24 make out if I did it. But the purpose was just to  
25 learn to track it, to see how it worked and at the

1 same time if anything turned up that was not -- that  
2 didn't look right.

3 Q. I take it nothing turned up that  
4 didn't look right when you checked the prices?

5 A. That's correct.

6 Q. Did you notice if Bernie was  
7 consistently selling at the high or selling in the  
8 middle or selling at the low?

9 A. There was no consistency. It was  
10 within the range, whether it was high or low. It  
11 was just in the range, but I didn't see any, that it  
12 traded right at the top, bottom or an average in  
13 between.

14 Q. Did you ever look at, when you sold  
15 the stock during a particular month, did you ever  
16 look at how that stock traded across the whole month  
17 to see if he sold it at the top consistently, the  
18 highest price for the month?

19 A. No, I don't remember doing that. I  
20 just remember when he sold it, on the day that he  
21 sold it, I looked at that day's transactions.

22 Q. Just to see if it was in the range?

23 A. Yeah.

24 Q. Did you ever notice prices that were  
25 not within the range, ever?

1           A.           Not that I can recall, no.

2           Q.           If you had noticed a price out of the  
3 range on a particular stock, would -- what would  
4 your reaction have been?

5                       MS. SESHENS:  Objection.

6           Q.           What would you have done?

7                       MS. SESHENS:  Objection.

8           A.           I would have brought it to the  
9 attention of the partners and looked for guidance as  
10 to what we would do next.

11          Q.           Would you have -- would it have been  
12 within your range of authority, within the scope of  
13 your authority if you'd notice such a discrepancy to  
14 call Madoff directly and ask him about that?

15                       MS. SESHENS:  Same objection.

16          A.           I wouldn't have done that without  
17 speaking to the partner.

18          Q.           You wouldn't have called Madoff  
19 directly?

20          A.           No.

21          Q.           Would you have called anyone at  
22 Madoff's shop directly without speaking to the  
23 partners for something like that?

24          A.           I don't believe so.  I would speak to  
25 the partners.

1           A.           I really don't recollect exactly.

2           Q.           Did you check all of the trades for  
3 all of the accounts at that, whatever time period  
4 you were doing it, or did you just pick one account?

5           A.           No, I checked -- no, not all of the  
6 accounts because everything was a mirror image.

7           Q.           Fair enough.

8           A.           In other words, he would buy seven --  
9 if he bought seven securities, it would be seven  
10 securities in each account. So I only had to do one  
11 account. I wouldn't have done every other account.

12          Q.           But you would have done --

13          A.           I would have done every trade, yes.

14          Q.           So, you indicated that you attempted  
15 to replicate Madoff's strategy. What did you do?  
16 Tell me.

17          A.           Trying to recollect exactly what I  
18 did.

19                        I would take the stocks that he  
20 purchased, and I believe what I did was to follow  
21 the strategy. What I'd want to see is I wasn't  
22 testing what he did that he's giving us accurate  
23 numbers, but if I utilize his strategy, let's say  
24 when I got the slips that said this is what he  
25 bought, I would take that information and then try

1 to enact it on my own account. Different  
2 quantities, didn't matter the quantity, but just to  
3 take what to buy, but I would always be lagging  
4 behind him. Just to get a general idea of how I  
5 would do, and I found that he did, I'm making up,  
6 say 15 percent. I did more like six percent. I  
7 made a profit. I determined in my own mind that the  
8 strategy was good, it worked, but not to the extent  
9 that it worked for him.

10 One of the major reasons was the  
11 commission. When I did the strategy I determined  
12 somehow what the commission would be, what I'd have  
13 to pay if I did this on my own. Whereas he had  
14 little or no commission, and that made a big  
15 difference when you're dealing with, just looking to  
16 try to make one percent a month, that made a  
17 difference.

18 Q. So your understanding was that the  
19 difference between the -- I know you made these  
20 numbers up, but your six percent return that you  
21 were able to accomplish and his 14 or 16, whatever  
22 you said, was primarily driven by the absence of  
23 commission costs?

24 MS. SESHENS: Objection to the form.

25 A. That was one of --

1 MS. SESHENS: Sorry. Go ahead.

2 A. That was one major factor. It could  
3 also -- again, I'm doing it after the fact, just  
4 using his information, that could change my result  
5 either way. I mean, if the next day or two days  
6 later using his strategy the market -- I was able to  
7 make a better purchase than he did, then, you know,  
8 it could have gone either way.

9 Q. If Madoff wasn't charging a  
10 commission, is that what you told me? Your  
11 understanding was he wasn't charging you a  
12 commission?

13 A. My understanding was that he was  
14 making a market in some or all of these stocks and  
15 he was making money but he determined the price. If  
16 he could buy it at one and sell it to us, in effect,  
17 at one-and-1/16th, but the one-and-1/16th was  
18 certainly a fair price and certainly it traded  
19 during the day well above one-and-1/16th -- these  
20 are all examples, of course -- he was making a  
21 commission or a substitute for commission, the  
22 1/16th. But I would actually have to go and buy it  
23 at whatever price, one-and-1/16th, and then pay a  
24 commission on top of that.

25 Q. If you bought it from someone other

1 MS. SESHENS: You mean at later  
2 periods of time?

3 MR. LUCCHESI: At any period of time.

4 A. I don't remember ever questioning it.  
5 I know from the beginning of time we never, we never  
6 got it electronically.

7 Q. Did you deal, in your work with  
8 Sterling or individually, did you dealing with other  
9 brokerage firms?

10 A. Yes.

11 Q. That traded equities on behalf of  
12 Sterling entities or Sterling partners?

13 A. Sterling partners, certainly my own  
14 personal account, yes.

15 Q. Okay. Those other brokers, did you  
16 receive electronic confirmation?

17 A. No.

18 Q. Did you get your, access to your  
19 account information electronically?

20 A. No, I don't remember getting it  
21 electronically, no.

22 Q. Going back to the confirm slips that  
23 you indicated you'd get, they'd come in the mail, as  
24 you indicated I think several days, a few days after  
25 a trade, either a buy or a sell had taken place?



1           A.           Yeah, it could be a couple of days,  
2 could be a day or two.

3           Q.           What would you do with those -- first  
4 of all, who would receive those at Sterling? Would  
5 those come directly to you?

6           A.           Yes.

7           Q.           Or to someone who worked for you?

8           A.           Well, usually my assistant.

9           Q.           I noticed on the organization chart  
10 you have your assistant underneath you, which at one  
11 point was Cynthia Bernstein. Did you have other  
12 people that worked directly for you that were direct  
13 reports up to you or through Cynthia Bernstein to  
14 you?

15          A.           No.

16          Q.           Or was she your only direct report?

17          A.           No, it was just my assistant and  
18 myself on this aspect of what I did.

19          Q.           Right. I'm just talking about this,  
20 the Madoff --

21          A.           Yes.

22          Q.           -- aspect.

23          A.           Only the two of us.

24          Q.           What would be done -- what would you  
25 do with the confirm slips when you received them?

1           A.           In the earlier periods we held on to  
2 them for quite a bit. There wasn't any -- I don't  
3 think there was any procedure that we actually did  
4 with them. I mean, I would glance at them as soon  
5 as they came in to see if they indicated real  
6 movement. First of all, they'd come in in very  
7 large volume, depending on how many accounts we had.  
8 So, the fact that they came in I'd want to know was  
9 it something I didn't know, did he just go into the  
10 market, did he just come out of the market. So that  
11 told me that. If I hadn't known to that point, that  
12 would be the information.

13                       After that, they would just be kept  
14 in a drawer. In the early periods we kept them a  
15 long time and then we realized there was no need to  
16 do that. So we used to keep them maybe just a month  
17 or a little more than a month. Once we got the  
18 statement in, the monthly statement, we disposed of  
19 them.

20           Q.           When you received the statement,  
21 would there be some effort made to tick and tie the  
22 confirmation slip evidence to the statement, or the  
23 transactions reported on the confirmation slip to  
24 the statement?

25           A.           No. We never saw any reason to do

1 that. The only thing we might tick and tie in  
2 confirmation was something like if dividends -- if,  
3 I'm sorry, not dividends, but if a particular  
4 account said they want to get a withdrawal every  
5 month, X amount of dollars, we might look for that  
6 confirmation to make sure that they received -- that  
7 that money was taken out of their accounts.

8 Q. Because certain accounts had kind of  
9 automatic monthly withdrawals?

10 A. Yes.

11 Q. Going back for a minute to the  
12 discussion about Madoff being in the market versus  
13 Madoff being out of the market, you said you could  
14 tell from, when you got trade or confirmation slips  
15 that he was either in the market or out of the  
16 market, perhaps --

17 A. Right.

18 Q. But that you'd also sometimes make  
19 calls to Frank DiPascali to ask him if Madoff is in  
20 or Madoff's out or if he's getting in or getting  
21 out?

22 A. More the latter, what the intention  
23 was. Sometimes to my surprise I'd say, do you  
24 expect to go into the market and he'd say, yeah, we  
25 just went in yesterday. So maybe I didn't get the

1           Q.           You told me a little while ago that  
2 you attempted to replicate Madoff's strategy, and  
3 you used the confirm slips so you were a few days  
4 behind in making your transactions. Did you report  
5 to the partners, the Sterling partners, the results  
6 of your exercise?

7           A.           Yes.

8           Q.           And what was the discussion; do you  
9 recall?

10          A.           I don't recall. Obviously not  
11 startling, the reaction, but I don't recall exactly  
12 what it was, if there was any kind of discussion  
13 that followed.

14          Q.           Do you -- were you satisfied at that  
15 time that the difference in results, I think in your  
16 example, your six percent versus Madoff's 14 or 15  
17 percent, were the result of the market timing issue,  
18 as well as the commission issue? Is that the two  
19 issues that you felt explained the difference?

20          A.           Yes.

21          Q.           Do you recall seeing articles, either  
22 in the late '90s or the early 2000s, questioning  
23 Madoff's success?

24          A.           Yes.

25          Q.           What do you recall about that?

1           A.           I recall a myriad of articles, some  
2           questioning how he does it, and some lauding for  
3           being a genius. So, they ran the gamut from being  
4           called suspicious or wondering how he's so  
5           consistent, but others saying it's amazing, he's  
6           terrific, or it's no wonder so many people invest  
7           with him or want to invest with him, that he's  
8           great.

9           Q.           How did these articles come to your  
10          attention?

11          A.           Some articles were in the paper for  
12          everybody to see, some articles were sent to me from  
13          partners, some from outside people that knew we were  
14          invested in Madoff. So, it's various ways.

15          Q.           Were any of the articles the subject  
16          of discussion among the partners?

17          A.           Usually there was some kind of  
18          discussion, usually.

19          Q.           Did any of the articles that  
20          questioned Madoff or, I think you used the word  
21          suspicious or suspicious of Madoff, did they cause  
22          you on behalf of the partners or to your knowledge  
23          any of the other partners to do any investigation or  
24          questioning of Mr. Madoff about his trading  
25          strategy?

1           A.           There might have been, but it always  
2           seemed that every time there was a real, call it a  
3           suspicion, where somebody questioned the  
4           transparency or had some problem with Madoff, like  
5           Markopolos, it always seemed to be an SEC  
6           investigation, either an investigation was called  
7           for and we said, well, we'll see what happens here.  
8           Or it was just publicized that the SEC went in and  
9           gave him a clean bill of health.

10                        So, any time that we sort of sat on  
11           the tip of our chair and raised an eyebrow, the SEC  
12           was always there to bring the comfort and say this  
13           man is great, he's perfect, no problem, and we went  
14           into relax mode.

15           Q.           How many times are you aware that the  
16           SEC looked at or investigated Madoff?

17           A.           In my own mind I thought there was  
18           anywhere up to four times.

19           Q.           When did those investigations occur,  
20           in your mind?

21           A.           Between 2000 and 2006, in that  
22           general area.

23           Q.           Are you aware of any SEC  
24           investigations before 2000?

25           A.           No.

1 borrowing?

2 A. It was just the financing of the  
3 Mets, just to -- not specifically, I don't remember  
4 what the money was used for, but it wasn't to, just  
5 to turn some of the investment into cash to put more  
6 money in Madoff. That wasn't my recollection.

7 Q. I guess I was asking, my thought  
8 process was was there some connection between  
9 Travelers loaning money to the Mets and Travelers  
10 wanting to understand, perhaps Travelers wanting to  
11 understand Madoff's investment strategy? Is there a  
12 connection between those two things in your mind?

13 A. Well, if they're going to lend us  
14 money, and we have a great deal of money, to see  
15 what kind of risk we are, if we have a great deal of  
16 money invested in Madoff, I think the more they know  
17 about that investment, the more comfort or concern  
18 they would have, one way or another.

19 Q. In 1990, September of 1990, did you  
20 have or did Sterling group of companies have a  
21 substantial amount of money with Madoff, to use your  
22 words?

23 A. I don't know the amount but, as I  
24 said, any money that we had, any liquid cash, we  
25 would generally invest it in Madoff.

1 Q. Even as early as 1990?

2 A. Yeah, because I cannot think of any  
3 other place where we put liquid funds.

4 Q. Okay. Didn't you have some  
5 investments with Prudential?

6 A. Prudential?

7 Q. Yeah.

8 A. The only investments we had in  
9 Prudential were perhaps Saul Katz having had some  
10 personal investments there, not from a company  
11 standpoint.

12 Q. Okay. I mean, I've seen and we're  
13 going to look at some point at a few spreadsheets  
14 where it looks like you have listed all of the  
15 investments of the Sterling entities, and just doing  
16 some rough math it looks like 90 percent, just a  
17 round number, 90 percent of your investment activity  
18 was with Madoff. Is that a pretty correct  
19 understanding?

20 A. That's not surprising to me.

21 Q. Just to go back to Exhibit 5 for a  
22 minute.

23 A. Sure.

24 Q. You have no recollection of Barry  
25 Gonder or Travelers looking at Madoff and summing up



1 Q. From Madoff, yes.

2 A. Yes.

3 Q. Did you have -- what was your  
4 understanding, in May of 2004, regarding what that  
5 wire transfer was?

6 A. My understanding was that it was an  
7 advance and if it was -- it was at the time that we  
8 were exercising an option to buy out of the  
9 Cablevision agreement for \$54 million. And to make  
10 certain -- we were awaiting a loan from Chase  
11 Manhattan Bank, Chase -- JPMorgan Chase in that  
12 amount. Just in case, there was a little  
13 nervousness that if the Chase loan wasn't  
14 forthcoming while we had the opportunity, while a  
15 window was open to exercise the option to buy out,  
16 we were prepared to close certain Madoff accounts to  
17 take out money out of investments to raise the \$54  
18 million.

19 My understanding was that Bernie  
20 Madoff sent the money saying if the -- and this was  
21 like the day that it was supposed to happen or the  
22 day before, if the money wasn't forthcoming from  
23 JPMorgan Chase, then he would close the respective  
24 accounts and the \$54 million would be returned to  
25 him. If it was forthcoming from JPMorgan Chase,

1 then again the \$54 million would be returned to him.

2 So, my understanding was that he was  
3 just making an advance for perhaps a day. And  
4 either way it would be returned in a day or two, and  
5 either the JPMorgan Chase loan would be used to  
6 exercise this window of opportunity, or the sale of  
7 securities, closing, taking, withdrawing money from  
8 certain Madoff accounts. That was my understanding.

9 Q. Let me walk through that because I  
10 understood it up until kind of the middle or last  
11 third. Let me see if I understand. Just to break  
12 it down.

13 One of your entities had an option to  
14 buy out of a Cablevision agreement. Am I right so  
15 far?

16 A. Yes.

17 Q. And to exercise that option cost \$54  
18 million?

19 A. Yes.

20 Q. Which was needed by a date certain?

21 A. Yes.

22 Q. In or around May, end of May 2004?

23 A. Correct.

24 Q. In order to come up with the \$54  
25 million, Sterling applied, some Sterling entity or

1 withdrawn?

2 MS. SESHENS: Object to the form.

3 Q. Is that true?

4 A. That's my understanding, yes.

5 Q. Do you have an understanding as to  
6 who had that conversation with Mr. Madoff. Was it  
7 Mr. Saul Katz?

8 A. Yes.

9 Q. And that's your understanding because  
10 Saul Katz told you that or for some other reason?

11 MS. SESHENS: Objection to the form.

12 A. Yes.

13 Q. Saul Katz told you that?

14 A. Yes.

15 Q. Okay. Now, your understanding is  
16 that when Saul Katz told Bernie, I need to withdraw,  
17 may need to withdraw 54 million, Bernie came up with  
18 a -- this is where I lost you -- an alternative  
19 proposal? Am I right so far?

20 A. Yes.

21 MS. SESHENS: Object to the form.

22 Q. And the alternative proposal was  
23 what? Restate it for me. What was Mr. Madoff's  
24 proposed solution?

25 A. My understanding was he was advancing

1 the \$54 million and if the JPMorgan Chase loan did  
2 not come through on time which, again, was a day  
3 away, my recollection is, then the money would be  
4 withdrawn from the accounts, as requested by  
5 Mr. Katz.

6 Q. Okay. That's what I misunderstood,  
7 because I'm not sure that's what you said before, at  
8 least that's not what I heard. So he was going to  
9 make a loan, essentially? Mr. Madoff was going to  
10 make a loan?

11 A. He was going to loan it -- well, I  
12 don't know what the terms of the conversation were.  
13 I just knew that he was advancing the funds and it  
14 should be just for a day.

15 Q. Okay. And if the loan didn't come  
16 through --

17 A. If the loan from JPMorgan didn't come  
18 through, the funds would be withdrawn from the  
19 Madoff accounts.

20 Q. Okay. And if the loan did come  
21 through, what then?

22 A. Then his money would be returned to  
23 him immediately. So either way the money would be  
24 returned, this advance would be returned to  
25 Mr. Madoff and either, what would be used to buy out

1 of the Cablevision agreement was either the loan  
2 money from JPMorgan Chase or the money withdrawn  
3 from the Madoff accounts.

4 Q. Okay. And I think you told me this,  
5 you had no discussions with Mr. Madoff or anyone at  
6 Madoff about this particular transaction, correct?

7 A. The only communication I had was with  
8 Mr. DiPascali regarding the wiring of the money to  
9 us and the wiring of the money back to them.

10 Q. Okay. And the money -- do you know  
11 what account the money came from at Madoff? Were  
12 you ever privy to that information?

13 A. I may have been. I mean, there was  
14 correspondence that were faxed and it may -- that  
15 information may be on the correspondence.

16 Q. Okay. Do you -- is my understanding  
17 correct that the JPMorgan Chase loan did come  
18 through?

19 A. Yes, it did.

20 Q. And so essentially you returned the  
21 money to Madoff?

22 A. Yes.

23 Q. Are you aware -- I mean, this letter  
24 talks about -- frankly, doesn't talk about any of  
25 the stuff that you just mentioned. This letter

1 not joint ownership of the account. It is  
2 specifically designated what percent each of the  
3 tenant owns in that account.

4 Q. Okay. So if you and I had an account  
5 that you were going to call a tenant-in-common  
6 account and we could each have a 50 percent  
7 interest, we would each put in 500 bucks --

8 A. Okay.

9 Q. -- and that would be a thousand  
10 dollar account?

11 A. Right.

12 Q. And then was it your job to keep  
13 track of our respective interests in that account?

14 A. Yes. We would keep track. Usually,  
15 it would be -- Well, whether it was partners or  
16 outside people that were one of the tenants, we  
17 prepared a monthly sheet and the respective  
18 percentage interest, the actual interest, would be  
19 reflected on that --

20 Q. On that sheet?

21 A. Yes.

22 Q. That was a monthly --

23 A. Yes.

24 Q. Did that sheet have a name?

25 A. We called it the hell sheet.

1           A.           Yes.

2           Q.           Tell me about that.

3           A.           There was a jet that was -- a jet  
4 that for a while only Mr. Wilpon owned, and then  
5 Mr. Katz purchased 50 percent, and that still exists  
6 today that they are 50/50 partners on a jet  
7 aircraft.

8           Q.           So together they own the whole  
9 aircraft?

10          A.           Yes.

11          Q.           And it's a particular aircraft --

12          A.           Yes. It's a G4. Yes, it's a  
13 particular aircraft.

14          Q.           Do you know whether Mr. Madoff has  
15 ever been flown anywhere in the G4 or any prior  
16 aircraft that Sterling partners owned?

17          A.           I don't know. I don't remember  
18 offhand.

19          Q.           Going back to the accounts and the  
20 different people owning different percentages of the  
21 accounts, I noticed that on many of the Sterling  
22 entity accounts that were opened in the name of  
23 Sterling entities, there are also individuals that  
24 are listed as -- the phrase, I think, you used in  
25 some of your documents is "tenants in common." Am I

1 correct?

2 A. There were several tenants-in-common  
3 accounts, yes.

4 Q. And often, you are one of the tenants  
5 in common when it's a Sterling entity account?

6 A. Yes.

7 Q. And also your percentage interest as  
8 a percentage is a relatively small number; you know,  
9 1 percent, 5 percent, a fraction of 1 percent. Is  
10 that correct?

11 A. That's correct.

12 Q. How did you obtain that interest in  
13 the account? Do you understand my question?

14 A. Yes. There are different types of  
15 accounts, two that I could think of immediately.  
16 One, if the tenant-in-common account was as a result  
17 of a business arrangement, the money in the account,  
18 whatever was set forth in the account, was divided  
19 according to the interest in whatever business it  
20 was. If it was Sterling Equities, whatever our  
21 percentage interest was that we owned.

22 Q. Pursuant to the partner agreement or  
23 business agreement?

24 A. Yes.

25 Q. It would be mirrored on the account.



1           A.           Yes.   Then there were several  
2 accounts that were set up -- would have been  
3 referred to as leveraged accounts.

4           Q.           Okay.

5           A.           Which we opened, we started,  
6 initiated, periodically when there was excess funds  
7 that we wanted to invest in Madoff, and with those,  
8 there were -- whether it was a leveraged account or  
9 not, if there were funds that we were just going to  
10 open a new account and somebody would say, We're  
11 opening a new account. And there would be a memo,  
12 announcement to the other partners, If you have any  
13 money that you wanted to invest, this is an  
14 opportunity.

15                        So whatever money I or any of the  
16 other partners happened to have, wherever it was --  
17 I may have accumulated money in Sterling Equities  
18 funding, for example, wherever there might be or  
19 there was a distribution. So everybody had cash,  
20 whatever anybody had would be put in that account  
21 and, therefore, the percentages would be determined  
22 by how much money everybody put in, so that would be  
23 different than any other account we had.

24           Q.           Okay. So your -- Your point is that  
25 the percentages in those accounts reflected the

1 with you?

2 A. No. It was rather confusing,  
3 particularly since Mr. Katz' other partners belonged  
4 to country clubs which Mr. Katz never has. So it  
5 seemed strange that you singled him out and  
6 mentioned his country club cronies when that was  
7 nonexistent --

8 Q. Saul Katz doesn't belong to country  
9 clubs?

10 A. No.

11 Q. Did you ever hear Mr. Katz, Mr. Saul  
12 Katz, say he didn't understand how Bernie did it?

13 A. I heard him say that there's a lot of  
14 people that don't know how he does it. He always  
15 kidded me that I -- when I said I understood his  
16 strategy, that he said, I was the only one that  
17 really -- you know, it was almost a standing joke.

18 Q. That you were the only one who  
19 understood the strategy?

20 A. Right.

21 Q. Did the other partners, the other  
22 Sterling partners, to your knowledge, share Saul  
23 Katz's view that they didn't understand the strategy  
24 and that you were the only one that --

25 MS. SESHENS: Objection.

1           A.           Everybody understood the strategy  
2 because it is not really -- The basic strategy is  
3 not that complex. But were there things that we  
4 didn't know about it that they felt that nobody or  
5 very few people knew about it.

6                        As far as I was concerned, I knew  
7 that he had great technology and that the technology  
8 supplied all of this other information that made  
9 this much less -- It supplied the transparency, as  
10 far as I was concerned.

11           Q.           But you never saw the technology?

12           A.           No. I knew they had a computer  
13 system. I never --

14           Q.           You knew that because you were told  
15 that?

16           A.           Yes.

17           Q.           As opposed to going and seeing --

18           A.           I read about the technology and  
19 always --

20           Q.           Go ahead.

21                        MS. SESHENS: I don't think he was  
22 finished.

23           Q.           I was starting to say something. I  
24 realized you weren't done.

25                        You said that you read about the

1 that each would be insured for 500,000 as opposed to  
2 the possibility existing, if we had one account,  
3 that there would only be \$500,000 in coverage.

4 Q. So the purpose then in dividing the  
5 monies the way you did was to stay at or under that  
6 cap that you understood as coverage -- And I'll use  
7 that word in quotes. -- from SIPC?

8 A. That's correct.

9 Q. Did you -- As you sit here today, do  
10 you believe that dividing the money up in this  
11 manner that's reflected in this memo, Exhibit 10,  
12 was an appropriate way to insure -- and I'll use the  
13 word "coverage" again because you've used it. --  
14 from -- by SIPC with respect to the accounts you  
15 were opening at Madoff?

16 A. I do. I do believe that the total  
17 maximum coverage in this case was a million dollars  
18 or, you know, 910,000, the full amount, at least  
19 initially.

20 Q. Okay. So after you divided the money  
21 up in this manner, was it your job to keep track of  
22 the parties' respective interests in these two  
23 accounts?

24 A. In administering the accounts with  
25 all of the other Madoff accounts -- They were the

1 allocated portion of any tenant-in-common account or  
2 joint account. -- I -- it was my job to account for  
3 them and make sure that that was reported  
4 appropriately.

5 Q. Okay. So with regard to Sterling  
6 Third Associates, after you opened an account in  
7 1986 for -- with Madoff, that \$430 -- that \$430,000  
8 was allocated how?

9 A. The 430 was allocated 100 percent to  
10 Sterling Third Associates.

11 Q. Okay. And was there a -- Was there a  
12 portion of that that was allocated to -- of that  
13 \$430,000 that was allocated to Fred Wilpon and a  
14 portion that was allocated to Saul Katz?

15 A. Not in that account. Not in that  
16 account per se, but in the profit-sharing plan, all  
17 of its assets --

18 Q. Time out. I just -- I just don't  
19 want to go the wrong way. I'm not talking about the  
20 profit-sharing plan. I'm talking about the Sterling  
21 Third --

22 A. Oh. I'm sorry. Sterling Third?

23 Q. Yes.

24 A. Yes. That was -- That would be --  
25 Each would own 50 percent of --

1           A.           Just to have more information.  
2           There's certain analysis that we did -- we did not  
3           include the Mets. Just we have the figures  
4           separated.

5           Q.           Okay. So was the decision to back  
6           the Mets out just random -- We'll just back out the  
7           Mets. -- or was there a business reason for backing  
8           out the Mets from the analysis?

9           A.           No business reason. The Mets numbers  
10          were varied more than others. When they needed  
11          money, they withdrew money out of Madoff. When they  
12          had extra money, certain times during the year,  
13          generally, when season ticket holders purchased  
14          their tickets, there would be large sums of money.  
15          Towards the end of the season, the balances would be  
16          smaller. So they changed a lot more than others.  
17          It was just to identify. The Mets certainly were a  
18          significant number.

19          Q.           Okay. So if I could kind of reword  
20          what you said. Was it -- the Mets were backed  
21          out -- I think what you're telling me is because --  
22          because of the variation in the Mets account, it  
23          could skew the numbers one way or the other, make a  
24          comparison from month to month or time period to  
25          time period, not necessarily representative of what

1 I know a lot of the others because I can recognize  
2 the names or a couple of them you identified were  
3 relatives or, you know, relatives through marriage  
4 of one or more of the Sterling partners. Correct?

5 A. Yes. They were relatives. They were  
6 very close friends. They were --

7 Q. Some of them were friends?

8 A. Business acquaintances.

9 Q. Business acquaintances?

10 A. Yes.

11 Q. Was there a limit on who could be,  
12 you know, referred to Madoff or --

13 A. There were --

14 Q. Let me ask it a different way. Was  
15 there a limit -- let me actually ask a totally  
16 different question, and then I'll come to the limit  
17 question.

18 My understanding is that you managed  
19 the accounts for these others that are listed on  
20 these reports in the same manner that you managed --

21 A. When you say "manage," are you  
22 talking about from an administrative point of view?

23 Q. Yes, to be fair, from an  
24 administrator's standpoint.

25 A. Yes.

1 Q. And you were the -- You were the  
2 contact for these others --

3 A. Yes.

4 Q. -- with respect to Madoff, the  
5 liaison?

6 A. That's correct.

7 Q. Was there a -- any limitations on the  
8 persons or the types of persons for whom you would  
9 serve that function?

10 A. Yes. The criteria varied according  
11 to time. At different times, the criteria may have  
12 changed. For one thing, Mr. Madoff imposed certain  
13 criteria later, at more recent times.

14 Q. You mean like a minimum dollar  
15 amount?

16 A. Yeah. Like he said, no, he won't  
17 take accounts under a million dollars. Then it  
18 became \$2 million. And so he set certain criteria.  
19 At other times when we were getting too many other  
20 accounts, a rule was imposed that Saul Katz would  
21 have -- You have to get his approval before you open  
22 an account.

23 Q. You said there were too many other --  
24 others accounts. Too many according to whom, to you  
25 or according to the Sterling people or according to



1 Q. Okay. Who was this individual?

2 A. His name was Cantor.

3 Q. C-A-N-T-O-R?

4 A. Yes.

5 Q. What was his first name, if you  
6 remember?

7 A. I almost said Eddie Cantor, but -- I  
8 can't think of a -- He had a plumbing business.

9 Q. Okay. We can find him -- or find his  
10 account. Is he still alive, if you know?

11 A. Yes.

12 Q. And how often would you and  
13 Mr. Cantor discuss this topic?

14 A. It would be irregular. I might not  
15 hear from him for more than a year, and he would  
16 just call me.

17 Q. Was -- With respect to the outsiders  
18 for whom you got an account open at Madoff, was  
19 there any compensation received by you or by the  
20 Sterling group from the outsider for being able to  
21 accomplish the task?

22 A. Nothing.

23 Q. Was -- Were you compensated in any  
24 way by Madoff for bringing others into the --

25 A. No.

1           Q.           -- business? Were -- Did you ever  
2 have the feeling or the understanding that your  
3 returns on your existing Sterling group of accounts  
4 were enhanced or modified as a result of having  
5 brought others in to invest in Madoff?

6           A.           No.

7           Q.           Were you ever either told directly or  
8 indirectly by Madoff not to tell people generally  
9 about your investment in Madoff or investments  
10 through Madoff?

11          A.           No.

12          Q.           Did you feel that the fact that you  
13 were invested in Madoff -- invested through Madoff  
14 in the market was something that you could discuss  
15 publically?

16          A.           Yes.

17          Q.           When Madoff -- You told me that he  
18 had kind of a minimum account threshold which, at  
19 some point, was a million dollars and then went up  
20 to \$2 million. Was any reason given to you as to  
21 why there was a threshold?

22          A.           No. I don't recall giving any  
23 reason, no.

24          Q.           Did you have any -- Did you form an  
25 understanding in your own mind at the time as to why

1 there were these minimum thresholds?

2 A. Just the natural thought was that he  
3 just wanted to limit the -- how many accounts. It  
4 would be just as easy for him to handle an account  
5 for \$20 million as it would for a thousand dollars,  
6 so why exert the energy on a thousand dollar  
7 account?

8 Q. Did -- When those thresholds came  
9 into place, did you ever take two or more outsiders  
10 that wanted to invest and combine them into a single  
11 tenant-in-common account for the purpose of meeting  
12 the minimum threshold?

13 A. I believe we did.

14 Did you say -- I'm sorry. Did you  
15 say to outsiders?

16 Q. To outsiders, yes.

17 A. Oh, I'm sorry. I don't -- I don't  
18 believe we did that. That would be -- I don't  
19 believe we did that. To partners perhaps, just to  
20 make sure -- or relatives, but not --

21 Q. Okay. Well, for -- Would you  
22 sometimes pair up an outsider with a Sterling  
23 partner for the purpose of meeting a minimum  
24 threshold?

25 A. I don't recall that we did it when --

1 you.

2 So Exhibit 22 then are the notes you  
3 took at the meeting with Mr. Duran?

4 A. Either at or immediately thereafter.

5 Q. Okay. And all the notes on this page  
6 are in your handwriting?

7 A. Yes, they are.

8 Q. The first -- let's just read the  
9 beginning part. What does that say? That heading,  
10 what does that say? Bond, is it bond coverage?

11 A. Looks like bond coverage.

12 Q. Do you know what that refers to?

13 A. No. I don't know why I would have  
14 written bond. The fact that it's outside the  
15 margin, perhaps it doesn't -- perhaps I started to  
16 write something. I don't know why I would have  
17 written bond. I can understand coverage, but...

18 Q. Do you understand the beginning of  
19 your notes to be describing the scope of coverage?

20 A. Yes.

21 Q. And this was based on the discussion  
22 that took place in June of 2001?

23 A. Yes.

24 Q. And the first line says, "Fraud or  
25 fidelity"?

1 A. Correct.

2 Q. And then in parens it says "Ponzi"?

3 A. Yes.

4 Q. What was the conversation that  
5 surrounded those notes?

6 A. This, to some extent I'm guessing,  
7 but that, he mentioned, I have some recollection of  
8 him giving examples of what types of fraud, and  
9 Ponzi was one of them. You can see I wasn't even  
10 quite sure how to spell Ponzi.

11 Q. I see.

12 A. I'm not sure how I wound up  
13 ultimately, either. It's hard to read.

14 Q. Looks like you've got an E on the  
15 end.

16 A. I think so, too.

17 Q. Did you know what a Ponzi scheme was  
18 at that time?

19 A. I don't think I did.

20 Q. Was there any discussion of Madoff in  
21 particular during the course of this meeting?

22 A. No.

23 Q. Did you discuss your investments with  
24 Madoff? Other than the fact that you had  
25 investments. Well, let me ask that. Did you

1 Q. What was the reason insurance was not  
2 purchased?

3 A. We didn't see any need and the cost  
4 was very high.

5 Q. Do you know who the SKCG Group is?

6 A. It's an insurance company that we  
7 work with now, one of the insurance companies.

8 Q. What type -- do they provide any  
9 insurance -- what type of insurance does SKCG Group  
10 provide to you?

11 A. Provide property insurance for the  
12 various properties that we own or manage.

13 Q. That insurance wouldn't cover your  
14 Madoff losses, correct?

15 A. No.

16 Q. Do you recall from time to time that  
17 Madoff would offer, I'll call them special deals for  
18 investment?

19 A. I recall one such time. Only one.

20 Q. What do you recall? Tell me.

21 A. I recall that it was reported to us,  
22 and I don't remember by whom or how they got the  
23 information, that he was offering a special return.  
24 He felt that there was something he could do to  
25 increase the normal return we were getting by up to,

1 I have a recollection of something like 50 percent  
2 was an estimate. There was nothing fixed, no  
3 guarantee. And it would be relatively short-term  
4 investment.

5 Q. So the 50 percent, was that the  
6 return or was that --

7 A. No.

8 Q. -- the increase on what you were --

9 A. If we were earning 12, we might have  
10 earned up to 18.

11 Q. And you recall only one instance of  
12 that?

13 A. Yes.

14 Q. Do you recall the specifics? What  
15 the deal was?

16 A. I recall that we did invest, in fact,  
17 \$22 million. What other information do you want?

18 Q. I didn't know -- were you done?

19 A. Well, that was my first initial  
20 recollection, that we did get involved, we did set  
21 aside 22 million, we did set up a separate  
22 tenant-in-common account for the 22 million dollar  
23 account.

24 (Exhibit AF-23 marked for  
25 identification.)

1 MR. LUCCHESI: Okay. Let's take a  
2 short break.

3 THE VIDEOGRAPHER: Going off the  
4 record, the time is 10:57. This ends tape number 1.

5 (Recess taken.)

6 THE VIDEOGRAPHER: We're back on the  
7 record. The time is 11:15. This is tape number 2.

8 BY MR. LUCCHESI:

9 A. Are you through with this last memo?

10 Q. Yes, I am.

11 A. I'd just like to make one additional  
12 comment because maybe I didn't quite comprehend when  
13 you said do you have recollections regarding the  
14 returns.

15 Q. Okay. Just for the record, you're  
16 looking at Exhibit 23, correct?

17 A. That's correct. What I was thinking  
18 of in terms of beforehand, the projected returns,  
19 not -- I wasn't thinking in terms of the actual,  
20 what followed in the next number of months.

21 Q. Okay.

22 A. Because I do recollect the fact that  
23 the returns were different for a period of time.  
24 Not -- maybe a maximum of about a year, but probably  
25 a shorter period of time that he, in this special



1 account, end quote, did things a little differently  
2 that generated additional profit. And then it  
3 reached a point, perhaps as it says here, from  
4 January '07 on, maybe even before that, it was  
5 identical. He didn't do anything in the special  
6 accounts that he did in the regular accounts.  
7 Whatever was done in the regular accounts was done  
8 in the special accounts from that point on. That's  
9 it.

10 Q. Okay. What caused you to remember  
11 that? I know we took a break. Did you look at  
12 something or hear something?

13 A. Well, in the break I said I'm sure  
14 he's going to get back to this because he didn't ask  
15 me any questions with regard to how did it actually  
16 turn out or what was the result, and it was pointed  
17 out to me that, when the question was do you  
18 recollect anything regarding returns, that's what  
19 you were referring to, so I mis -- you know, I  
20 didn't really interpret the question properly.

21 Q. Okay. I appreciate the  
22 clarification. I guess I had assumed, and I thought  
23 I'd asked, that the way it turned out and the  
24 results are what's written here. Correct?

25 A. That's true.

1 Q. And you were just explaining to me  
2 what same -- same, actually I had interpreted it to  
3 mean 17 percent for the period of January '07  
4 through June of '07. You're telling me same  
5 means --

6 A. The same, what he did was identical.  
7 He didn't do anything different. Whereas in the  
8 beginning he did things different.

9 Q. Okay. What did he do differently?

10 A. Well, he did more option trading than  
11 he did in the regular, normal account.

12 Q. How do you know that?

13 A. I went back -- this I tracked  
14 immediately, month by month.

15 Q. Because it was a special deal?

16 A. It was special, I wanted to see what  
17 made it special and how he went about earning more  
18 income.

19 Q. When you say you tracked it, what did  
20 you do?

21 A. I mean, I looked at this account 4,  
22 which is -- I looked at the entire statement.  
23 Nothing was different other than the dash 4 which  
24 was the options.

25 Q. Dash 4 was your options account,

1 Q. Everybody would get their pro rata  
2 share of the taxing?

3 A. Yeah, it would break the account. Do  
4 you understand? You can't continue, you couldn't  
5 continue a Madoff account if one person, for  
6 example, withdraws. It was set, once it's set with  
7 given percentages it's an account and take one  
8 person out, you have to break that and set up a new  
9 account.

10 Q. So the new accounts that were set up  
11 in the name of each partner were the TR designation?

12 A. Correct.

13 Q. Were those set up at Madoff or were  
14 they set up somewhere else?

15 A. No, they were set up at Madoff.

16 Q. What was Sterling Brunswick? What  
17 was that?

18 A. That was, I just referred to the  
19 property in New Jersey that Michael Simon was  
20 involved in managing. That was a property we owned  
21 in New Jersey. It was a warehouse property.

22 Q. Okay. Let's talk about, little bit  
23 about double-up accounts.

24 A. Um-hum.

25 Q. I think we talked yesterday just a

1 little bit about them. Could you explain to me what  
2 a double-up account is?

3 A. Taking -- at a time, once we started  
4 to get into doubling-up or leveraged accounts, if we  
5 wanted to set up a new account and one of the  
6 reasons was when one or more partners had excess  
7 funds that they wanted to invest in Madoff, we might  
8 take that as an opportunity to leverage the account  
9 by borrowing an equivalent amount that we were going  
10 to put into the account.

11 As an example, let's say, we'll take  
12 Sterling 30. If the partners assembled \$30 million,  
13 wherever they got it from, could have been from  
14 another Madoff account, wherever they got \$30  
15 million, if they wanted they could double up. One  
16 of the reasons was, it was understandably going to  
17 stay longer term than if they had money in their own  
18 account, they could take it out tomorrow. But in  
19 doubling up there was a certain commitment to leave  
20 it in there longer.

21 Q. Commitment to whom?

22 A. Commitment by any of the partners to  
23 the doubling-up account. There was an  
24 understanding -- no written commitment, an  
25 understanding that anything that you put into a

1 or the companies themselves. I didn't write the  
2 description.

3 Q. Okay. Did you review them before  
4 they were put in a document to be shown to your  
5 employees?

6 A. I looked at them and I didn't test  
7 them for accuracy, no.

8 Q. Do you recall whether you edited or  
9 suggested any changes to the description of the  
10 other investment opportunities?

11 A. The people that drew them up,  
12 supplied them, wrote up the description and history  
13 were the experts that I was relying on to supply the  
14 options and a description of the options. So, I  
15 generally accepted their description.

16 Q. Both of these draft documents,  
17 Exhibit 33 and 34, indicate that the Madoff option  
18 is a sophisticated investment strategy. 33  
19 suggests, which requires further explanation; and 34  
20 suggests, which employees will be given an  
21 opportunity to ask questions. Were employees given  
22 the opportunity to ask questions about the Madoff  
23 investment strategy?

24 A. Yes.

25 Q. How was that done?

1           A.           There were meetings held with M & T  
2 and anybody who had knowledge of all of the other  
3 options and representatives from Sterling that knew  
4 more about the Madoff option and answered any  
5 questions at the same time.

6           Q.           Who were the representatives from  
7 Sterling that met with the employees?

8           A.           I believe Michael Katz and myself  
9 were two, but I don't remember exactly who, if any  
10 other partners were present.

11          Q.           Was anyone from Madoff's office  
12 present?

13          A.           No.

14          Q.           Whose idea was it to offer the  
15 401(k), as part of the 401(k) plan the option to  
16 invest with Madoff?

17          A.           I think that was all of the partners.  
18 Somebody advanced it and all of the partners  
19 endorsed the idea, to give all of the employees an  
20 opportunity, whereas generally they didn't have that  
21 opportunity to invest in Madoff. We at that point  
22 were in Madoff some 11 years, were extremely happy  
23 with the returns. It seemed like an ideal place if  
24 anybody -- for retirement funds in particular to  
25 grow tax deferred, good rate of return, the chance

1 of loss was very, very small. It just seemed like,  
2 as I said, a great place to put retirement funds and  
3 we were happy about being able to offer that  
4 alternative to employees.

5 Q. Did anyone from Sterling talk to  
6 Madoff about this before you offered it to the  
7 employees?

8 A. Not that I know of. No, I'm sure  
9 they didn't or else I would have known.

10 Q. So -- that answer, frankly, surprised  
11 me.

12 If I understand you correctly, nobody  
13 raised with Madoff in advance of creating this  
14 401(k) investment option for your employees the fact  
15 that perhaps there would be a new account being  
16 opened, you'd like to open an account, a 401(k)  
17 account for employees, no one discussed that with  
18 Madoff?

19 A. Opening a 401(k) plan with Madoff?

20 Q. Yes.

21 A. Yes. That was discussed.

22 Q. Before you offered it to the  
23 employees?

24 A. Absolutely.

25 Q. That's what I was asking.

1           A.           Oh, I'm sorry, I misinterpreted your  
2 question.

3           Q.           Who had that discussion with Madoff?

4           MS. SESHENS:   Are you talking the  
5 Madoff firm or Mr. Madoff?

6           MR. LUCCHESI:   I mean the firm  
7 generally.

8           A.           I don't recall whether I spoke to him  
9 or I spoke to Mr. DiPascali or it was one of the  
10 other partners that spoke to Mr. Madoff. I don't  
11 recall.

12          Q.           Do you recall what that, what the  
13 general substance of the conversation was?

14          A.           That we were contemplating starting a  
15 401(k) plan and we wanted to offer an option to  
16 invest in his firm.

17          Q.           Do you recall Madoff or anyone from  
18 his firm voicing any concern about that? Or  
19 resisting to it, resistance to it in any way?

20          A.           No.

21          Q.           Do you recall whether it was Madoff's  
22 idea to offer this investment option or whether it  
23 was someone from the Sterling side who had the idea  
24 to offer Madoff as an investment option?

25          A.           It was clearly Sterling's idea.



1 Q. Okay. But then the second point then  
2 is then trustee -- you're talking about the issues  
3 that arise if it's trustee directed?

4 A. Yes.

5 Q. What does "all to Madoff," dash, "no  
6 choice" refer to?

7 A. I interpret that to mean that we were  
8 directed, if we wanted them to, it could be we say  
9 everything has to go into Madoff and they have no  
10 choice. If they want to be in the plan, it's all  
11 invested in Madoff.

12 Q. Okay. So obviously that's not --  
13 this is not the route you chose to follow, correct?

14 A. That's correct.

15 Q. And one of the reasons, I guess now I  
16 understand your notes, it's less popular to have a  
17 trustee-directed fund? Is that the point?

18 A. Yes.

19 Q. Because if things go south, then you  
20 get blamed and you get sued.

21 A. Right.

22 Q. But it is cheaper to administer, that  
23 was your next point?

24 A. Yes.

25 Q. And someone must have explained that

1 Q. Okay.

2 A. It would either be Mr. Fred Wilpon or  
3 Mr. Saul Katz, or both, that would have some sort of  
4 a meeting with Mr. Madoff and discussions.

5 Q. If such a meeting occurred, would you  
6 have expected the results of that meeting or the  
7 fact of that meeting to have been reported to you,  
8 either directly or, you know, as part of a partners'  
9 meeting or some other regularly conducted business  
10 meeting of the Sterling partners?

11 MS. SESHENS: Objection to the form.

12 A. Generally, yes.

13 Q. And you don't recall any such  
14 discussion?

15 A. I do not.

16 Q. You mentioned the portfolio  
17 management reports. I know I covered some of this  
18 the other day, and I want to make sure I have kind  
19 of a more complete understanding than I think I do  
20 at this point.

21 The portfolio management reports were  
22 received for each account on a quarterly basis,  
23 correct?

24 A. Yes.

25 Q. And those were received directly from

1 Madoff?

2 A. That's correct.

3 Q. And those were -- were those  
4 addressed to you or to someone else at Sterling?

5 A. They were addressed to me.

6 Q. And that's for all of the accounts  
7 that you were administering?

8 A. Yes.

9 Q. And that would include the outsiders  
10 as well?

11 A. Yes. But I must say, that's a copy  
12 of all of them. The account holder would also  
13 receive a copy.

14 Q. And so the account holder would get a  
15 copy and you would get a copy?

16 A. Yes.

17 Q. If the account holder was a Sterling  
18 entity, would that be true?

19 A. Generally, not.

20 Q. So if the account holder were an  
21 individual, one of the Sterling partners, for  
22 example, would that be true, that they would get a  
23 copy and you would get a copy?

24 A. I'm not, I'm not sure. I don't  
25 remember any partner discussing the -- I'm not sure.

1 Q. So, was your comment that the account  
2 holder would get a copy, as well as you, was that a  
3 reference only to the, what you call the outsiders?

4 A. Clearly the outsiders got a copy of  
5 the report.

6 Q. To your knowledge was anyone else,  
7 other than the outsiders within the group of people  
8 that would be getting direct mailing of the, I'll  
9 call them PMRs, portfolio management reports?

10 A. Yeah.

11 Q. Anyone other than outsiders within  
12 that group?

13 A. That's what I'm not sure, if the  
14 partners and individual accounts received a copy  
15 personally.

16 Q. Okay. We talked about other  
17 documents you received from Madoff, we talked about  
18 the account statements, correct?

19 A. Right.

20 Q. Those were received monthly?

21 A. Yes.

22 Q. And were those sent to you as well?

23 A. Same thing, that I would get a copy  
24 and there would be another copy that went to,  
25 certainly to all outsiders. And, again, I don't

1 recollect that partners got a copy of that.

2 Q. Okay. What about -- what other --  
3 I'm looking for all of the information that you  
4 would have received directly from Madoff with  
5 respect to the accounts that you administered on a  
6 regular basis. So we have the portfolio management  
7 reports, the account statements. What other  
8 documents or information did you receive directly  
9 from Madoff relative to the accounts?

10 A. Confirmation slips.

11 Q. And those were sent to you?

12 A. Yes.

13 Q. Did the account holders get, directly  
14 receive those as well?

15 A. Yes.

16 Q. How do you know that?

17 A. I would commonly get the question  
18 what should I do with all of these piles of slips  
19 that come to me.

20 Q. And what would you instruct or  
21 advise?

22 A. I told them what we do internally,  
23 and after a period of -- we used to keep them for a  
24 long period of time, and then we decided that we'd  
25 keep them only for a month. Once we got the monthly

1 issue with receiving trade confirmation tickets on a  
2 timely basis from Madoff?

3 A. No, I have no recollection that that  
4 was ever a problem.

5 Q. Now, you mentioned, in response to  
6 some previous questions, about what you would check,  
7 you said I would check, we would check special  
8 requests, to see if special requests or withdrawals  
9 were reflected. I wrote down, you said special  
10 requests for withdrawals. What were you referring,  
11 do you remember what you were referring to when you  
12 said that?

13 A. I was referring to somebody -- if we  
14 wrote a letter to Frank, Mr. DiPascali, and said  
15 kindly withdraw X amount of dollars from X account,  
16 either now or as soon as you get out of the market,  
17 that would be a special request and we would check  
18 the confirmation with that list that we maintained.

19 Q. The phrase "special request," is that  
20 to distinguish it from other types of withdrawals?

21 A. To distinguish it between a regular  
22 monthly withdrawal. This was special, it was  
23 different, it was unusual.

24 Q. So you had regular monthly  
25 withdrawals. Was there a particular reason for

1 conversation or correspondence wherein I asked him  
2 for, supply some of the information that was asked  
3 for by the Attorney General's Office.

4 Q. Okay. Well, let's look at what  
5 they're asking for. In the middle paragraph they're  
6 asking for some information, and the first thing,  
7 after noting that there's a high volume of  
8 securities trading they ask, the AG's office asks:  
9 "Who makes the Foundation's investment decisions?"  
10 You see that?

11 A. Yes.

12 Q. What's the -- do you know the answer  
13 to that question?

14 A. It would have -- yes.

15 Q. Who makes the Foundation's investment  
16 decisions?

17 A. Either Saul or Iris Katz. Presumably  
18 Saul Katz.

19 Q. And what -- how do you know that Saul  
20 or Iris Katz makes the Foundation's investment  
21 decisions?

22 A. I know that as a matter of fact.

23 Q. What investment decisions do they  
24 make with respect to the funds?

25 A. Where to invest the funds of the

1 Foundation.

2 Q. And where did they invest them?

3 A. Well, they did have at least one  
4 Madoff account, perhaps more. I believe they had  
5 funds invested elsewhere.

6 Q. Where else did the Foundation have  
7 funds invested in 2000?

8 A. I would really have to check the  
9 records, but they had other investments. They might  
10 have been involved in partnerships. It may be...

11 Q. Was the majority or the bulk of the  
12 Foundation's investments made with Madoff?

13 A. Again, I would have to check.  
14 Perhaps liquid investments, but I don't know about  
15 the magnitude of investable dollars.

16 Q. With respect to the investments that  
17 were made in Madoff, did you consider the decision  
18 to give Madoff the money to be the investment  
19 decision that this letter was seeking information  
20 on -- about?

21 A. I'm not certain at this moment.

22 Q. Well, let me ask it different.

23 A. It could be, could be just an  
24 investment decision to give the money to Madoff to  
25 invest, or it could be that they're referring to the

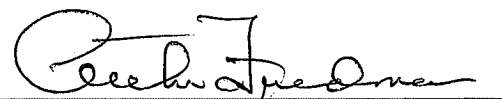


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JURAT

I, ARTHUR FRIEDMAN, do hereby certify that I have read the foregoing transcript of my testimony taken on June 22, 2010, and have signed it subject to the following changes:

PAGE	LINE	CORRECTION
SEE ATTACHED	EXHIBIT A	



ARTHUR FRIEDMAN

Sworn and subscribed to before me on this day of

September 28, 2010

NOTARY PUBLIC:



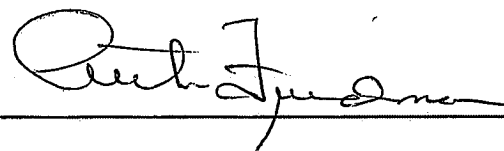
URSULA M. MIKA  
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I, ARTHUR FRIEDMAN, do hereby certify that I have read the foregoing transcript of my testimony taken on June 23, 2010, and have signed it subject to the following changes:

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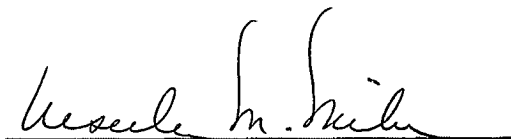


ARTHUR FRIEDMAN

Sworn and subscribed to before me on this day of

September 28, 2010

NOTARY PUBLIC:



URSULA M. MIKA  
NOTARY PUBLIC, STATE OF NEW YORK  
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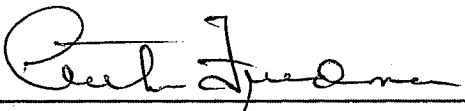
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I, ARTHUR FRIEDMAN, do hereby certify that I have read the foregoing transcript of my testimony taken on June 24, 2010, and have signed it subject to the following changes:

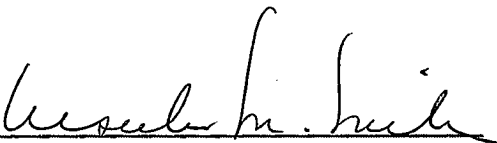
PAGE	LINE	CORRECTION
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 \_\_\_\_\_  
 ARTHUR FRIEDMAN

Sworn and subscribed to before me on this day of

September 28, 2010

NOTARY PUBLIC:

  
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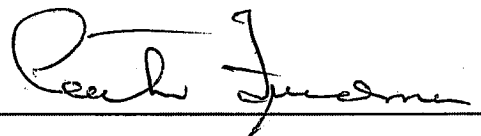
URSULA M. MIKA  
 NOTARY PUBLIC, STATE OF NEW YORK  
 No.01MI6216250  
 QUALIFIED IN QUEENS COUNTY  
 COMMISSION EXPIRES JANUARY 11, 2014

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JURAT

I, ARTHUR FRIEDMAN, do hereby certify that I have read the foregoing transcript of my testimony taken on June 29, 2010, and have signed it subject to the following changes:

PAGE LINE CORRECTION  
SEE ATTACHED EXHIBIT A

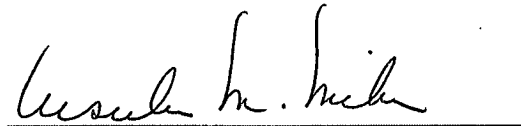


ARTHUR FRIEDMAN

Sworn and subscribed to before me on this day of

September 28, 2010

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EXHIBIT A

PAGE	LINE	ORIGINAL	CHANGE REDACTED	REASON
39	9	No, that was the company that was	No, that was the company where I was	Grammatical error; Transcription error
39	15	senior, are those two different titles?	senior vice president. Are those two different titles?	Transcription error
40	23	is broken into each real estate property has its own	is broken into - each real estate property has its own REDACTED	Grammatical error
43	12	Sterling entity or partners. And then we would,	Sterling entities or partners. And then we would, REDACTED	Grammatical error

EXHIBIT A

PAGE	LINE	ORIGINAL	CHANGE REDACTED	REASON
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116	16	person or people prepare bank reconciliation,	person or people prepare bank reconciliations, REDACTED	Grammatical error
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142	17	speaking to the partner.	speaking to the partners. REDACTED	Grammatical error
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150	8	Sterling or individually, did you dealing with other brokerage firms?	Sterling or individually, did you deal with other brokerage firms? REDACTED	Transcription error
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164	2	questioning how he does it, and some lauding for	questioning how he does it, and some lauding him for REDACTED	Transcription error
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EXHIBIT A

PAGE	LINE	ORIGINAL	CHANGE REDACTED	REASON
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254	6	Wilpons and the Madoffs vacations together?	Wilpons and the Madoffs vacation together?	Grammatical error
254	23	talking about their personal assets. -- do the	talking about their personal assets. Do the	Grammatical error
257	6	initiated, periodically when there was excess funds	initiated, periodically when there were excess funds	Grammatical error
257	10	open a new account and somebody would say, We're	open a new account and somebody would say, "we're	Grammatical error
257	11	opening a new account. And there would be a memo	opening a new account." And there would be a memo	Grammatical error
257	18	funding, for example, wherever there might be or	Funding, for example, wherever there might be or	Grammatical error

REDACTED

272	3	Particularly since Mr. Katz' other partners belonged	Particularly since some of Mr. Katz's other partners belonged	Transcription error; Grammatical error
272	5	seemed strange that you singled him out	seemed strange that he singled him out	Transcription error

REDACTED

EXHIBIT A

PAGE	LINE	ORIGINAL	CHANGE REDACTED	REASON
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358	2	There's certain analysis that we did -- we did not	There's certain analyses that we did -- we did not	Grammatical error
358	7	Mets. -- or was there a business reason for backing	Mets -- or was there a business reason for backing	Grammatical error

REDACTED

380	15	say to outsiders?	say two outsiders?	Grammatical error
380	16	To outsiders, yes.	Two outsiders, yes.	Grammatical error
380	19	believe we did that. To partners perhaps, just to	believe we did that. Two partners perhaps, just to	Grammatical error

REDACTED



EXHIBIT A

PAGE	LINE	ORIGINAL	CHANGE	REASON
			REDACTED	

434	11	Provide property insurance for the	They provide property insurance for the REDACTED	Transcription error
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EXHIBIT A

PAGE	LINE	ORIGINAL	CHANGE	REASON
540	19	resisting to it, resistance to it in any way?	resisting it, resistance to it in any way? REDACTED	Transcription error