

# Exhibit 3

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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)

-----x

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

Videotaped  
Deposition of:

Plaintiff,

v.

JOHN D. MAINE

SAUL B. KATZ, et al.,

Defendants.

-----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 Thursday,  
January 5, 2012, commencing at 9:39 a.m.

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A P P E A R A N C E S:

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LAUREN HOWARD, ESQ.  
For Sterling Equities, certain  
affiliated entities, and the Witness

ALSO PRESENT:

DANIEL McCLUTCHY, Videographer

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(Previously marked Exhibits Trustee 34,  
Trustee 95, Trustee 110 and Trustee 187  
were referred to herein and are attached  
to the transcript.)

4			6		
1	THE VIDEOGRAPHER: Good morning. We	09:38:20	1	questions. I'd ask that you verbalize your response	09:41:21
2	are now on the record. My name is Daniel McClutchy	09:39:07	2	because a head nod or whatever could be	09:41:23
3	representing Bendish Reporting. The date today is	09:39:12	3	misinterpreted, so if you verbalize, it makes it	09:41:26
4	January 5th, 2012 and the time is approximately 9:39	09:39:15	4	better.	09:41:26
5	a.m. This deposition is being held at Baker	09:39:20	5	If I have a question that's	09:41:29
6	Hostetler, located at 45 Rockefeller Plaza, New	09:39:24	6	complicated or that you can't understand it, which	09:41:30
7	York, New York. The caption of this case is Irving	09:39:27	7	is probably not unlikely, then that -- I ask you to	09:41:32
8	Picard versus Saul B. Katz, et al. This case is	09:39:30	8	tell me that. I don't want you to guess at what I'm	09:41:35
9	filed in the United States District Court, Southern	09:39:34	9	asking you, whatever, and your counsel may very well	09:41:37
10	District of New York, Case No. 11-CV-03605	09:39:37	10	object in that it's not understandable, and I'll try	09:41:40
11	(JSR)(HBP). The name of the witness is John Maine.	09:39:45	11	to clarify it and make it clear. Okay?	09:41:44
12	At this time the attorneys present	09:39:48	12	A. Yes, sir.	09:41:46
13	will identify themselves for the record and the	09:39:50	13	Q. All right. And, you know, it may	09:41:47
14	parties they represent, and our court reporter,	09:39:53	14	very well be that you want to take a break, because	09:41:47
15	Nancy Bendish, will swear in the witness and we can	09:39:55	15	I sort of get enthusiastic about what we're doing	09:41:50
16	proceed.	09:39:58	16	here and then you decide we're going a little too	09:41:53
17	MR. SHEEHAN: David Sheehan with	09:40:00	17	long, just let me know. And anybody else who needs	09:41:55
18	Baker Hostetler for the Trustee.	09:40:01	18	that, just let me know and we'll take a break. Bio	09:41:58
19	MS. ZUBERI: Madiha Zuberi with Baker	09:40:06	19	breaks are always a good idea and I think it's a	09:42:01
20	Hostetler for the Trustee.	09:40:07	20	good thing that we should have that available. Just	09:42:04
21	MR. KORNFELD: Mark Kornfeld, Baker	09:40:08	21	let me know. Okay?	09:42:06
22	Hostetler for the Trustee.	09:40:10	22	A. Certainly.	09:42:07
23	MR. WISE: It's Bob Wise of Davis	09:40:10	23	Q. Okay. Let me start off by -- do	09:42:07
24	Polk representing the defendants.	09:40:13	24	we have -- by asking, do we have the two reports?	09:42:09
25	MS. HOWARD: Lauren Howard of Davis	09:40:16	25	Okay. Just get those out.	09:42:14
5			7		
1	Polk representing the defendants.	09:40:17	1	The -- I'm going to show you in a	09:42:15
2	MS. WAGNER: Karen Wagner, Davis	09:40:19	2	moment, once we retrieve them, the two reports that	09:42:16
3	Polk, representing the defendants.	09:40:19	3	you've issued in this case, ask you to identify	09:42:19
4		09:40:19	4	them, because that's what we're going to really be	09:42:21
5	JOHN DAVENPORT MAINE, sworn.	09:40:35	5	talking about here today, okay?	09:42:23
6	EXAMINATION BY MR. SHEEHAN:	09:40:35	6	A. Yes, sir.	09:42:25
7	Q. Mr. Maine, I'm going to ask you a few	09:40:37	7	Q. All right. Just by way of	09:42:25
8	questions today about the reports that you've given	09:40:39	8	background, though, while we're digging those out,	09:42:26
9	in this case that we've just talked about here in	09:40:43	9	could you give me the benefit of a description of	09:42:29
10	identifying ourselves. It's actually the Trustee	09:40:47	10	your educational background.	09:42:31
11	versus Mr. Wilpon, Mr. Katz and a number of other	09:40:51	11	A. Yes. I graduated from Dartmouth	09:42:32
12	defendants. And before I do so, I want to ask you a	09:40:53	12	College in 1964 with a degree in history. I	09:42:37
13	question. Have you ever been deposed before?	09:40:55	13	graduated magna cum laude.	09:42:39
14	A. Yes.	09:40:57	14	Q. Okay. And following your graduation	09:42:42
15	Q. How many times?	09:40:57	15	from Dartmouth, did you pursue any other degrees?	09:42:43
16	A. I don't know. 40, 50, something like	09:41:01	16	A. No, sir.	09:42:47
17	that.	09:41:02	17	Q. Other than the Dartmouth education,	09:42:48
18	Q. Okay. I'm going to assume,	09:41:03	18	did you attend any other courses, such as industry	09:42:51
19	therefore, with that experience, that you have some	09:41:05	19	courses that might be related to an industry, such	09:42:56
20	knowledge about the process we're about to engage	09:41:07	20	as the securities industry or anything along those	09:42:59
21	in. But notwithstanding that, I want to just have a	09:41:09	21	lines?	09:43:02
22	couple of ground rules just so we're clear and	09:41:12	22	A. The Wharton Business School ran a	09:43:03
23	Mr. Wise and I are clear on where we're going to be	09:41:15	23	three-year -- a course that went for three years,	09:43:05
24	going here today, okay?	09:41:18	24	but it was, I think, two weeks at a shot for three	09:43:08
25	I'm going to be, as I say, asking you	09:41:18	25	years, so a total of six weeks.	09:43:11

8			10				
1	Q.	Okay. And when did you attend that	09:43:13	1	Q.	That's quite all right. Probably	09:45:06
2		course?	09:43:14	2		bother the videographer a lot more than me. But he	09:45:09
3	A.	Sometime in the '70s.	09:43:15	3		looks okay down there, all right.	09:45:13
4	Q.	Okay. And what was the focus of that	09:43:16	4		After you left -- I assume at some	09:45:15
5		course?	09:43:18	5		point you left Smith Barney?	09:45:18
6	A.	Would have been just general	09:43:21	6	A.	Yes, sir.	09:45:20
7		securities, investments, things such as that.	09:43:23	7	Q.	Okay. Where did you go after you	09:45:21
8	Q.	Okay. Other than that course that	09:43:26	8		left Smith Barney?	09:45:23
9		you've just described for us, any other formal or	09:43:29	9	A.	I went to a West Coast-based regional	09:45:25
10		informal education that you may have engaged in?	09:43:33	10		firm named Mitchum, and I'll spell these words as we	09:45:27
11	A.	Well, in the firms I worked for, of	09:43:37	11		go along --	09:45:32
12		course we had a lot of training sessions along the	09:43:39	12	Q.	Yeah, that would be good.	09:45:32
13		way. So that --	09:43:41	13	A.	-- if that's acceptable.	09:45:32
14	Q.	Okay.	09:43:43	14		M-i-t-c-h-u-m, Mitchum, Jones & Templeton,	09:45:35
15	A.	-- would be the other.	09:43:43	15		T-e-m-p-l-e-o-n, in San Francisco and my job there	09:45:40
16	Q.	We're going to talk about your	09:43:45	16		was national institutional sales manager.	09:45:43
17		employment history, so maybe we can cover that then,	09:43:46	17	Q.	Okay. And, again, just for the	09:45:47
18		okay.	09:43:48	18		record, could you give us a description of what your	09:45:49
19		Other than that, is there anything	09:43:49	19		duties were on a regular basis as -- in that	09:45:52
20		else?	09:43:50	20		capacity that you've just described.	09:45:55
21	A.	No, sir.	09:43:50	21	A.	Sure, sure. I set up a regional	09:45:56
22	Q.	Okay, fine.	09:43:52	22		institutionally-based research operation, which	09:46:02
23		So, when you leave Dartmouth, you	09:43:53	23		meant that we researched and wrote analytics on West	09:46:04
24		enjoy -- join the employment world. What was your	09:43:57	24		Coast firms. That would include Bank America,	09:46:10
25		first job?	09:44:00	25		Weyerhaeuser, Boise Cascade, Hewlett Packard, Intel,	09:46:16
9			11				
1	A.	With Smith Barney as a registered	09:44:01	1		companies such as that. And then we marketed this	09:46:20
2		representative.	09:44:04	2		product to institutional investors, professional	09:46:24
3	Q.	And when was that?	09:44:04	3		investors around the country. And I set up five	09:46:27
4	A.	Immediately upon graduation.	09:44:05	4		sales offices, one in San Francisco, one in Los	09:46:31
5	Q.	Okay. And what were your duties as a	09:44:08	5		Angeles, one in Chicago, one in Boston and one in	09:46:34
6		registered representative of Smith Barney?	09:44:10	6		New York.	09:46:38
7	A.	I handled individual accounts for	09:44:13	7	Q.	Since this is a term that we're going	09:46:43
8		private investors.	09:44:16	8		to be talking about, could you give me your	09:46:45
9	Q.	Okay. And could you -- just, I don't	09:44:18	9		definition of what you mean by an institutional	09:46:47
10		want to break this down too much because I realize a	09:44:22	10		investor?	09:46:49
11		lot of people in this room are very knowledgeable	09:44:24	11	A.	Certainly. It's someone who is	09:46:50
12		and that we assume a lot of knowledge, but could you	09:44:26	12		compensated for handling investments, in -- in the	09:46:52
13		just tell me on a day-to-day basis what you would do	09:44:29	13		most simplistic terms.	09:46:58
14		at Smith Barney.	09:44:32	14	Q.	Is that -- is there a basis for that	09:47:01
15	A.	Well, of course it changed over the	09:44:33	15		definition?	09:47:05
16		years, because as I was there, then I accumulated	09:44:35	16	A.	Just industry -- that's just the	09:47:06
17		some institutional accounts.	09:44:38	17		industry terminology. I've never seen it codified	09:47:08
18		But just focusing on the retail side	09:44:40	18		anyplace.	09:47:12
19		of it, I would, first of all, obviously prospect for	09:44:42	19	Q.	Okay. So it's not based on any	09:47:13
20		clients, try and build my client base. And with my	09:44:46	20		literature that you've read or documents you may	09:47:15
21		clients I would identify their needs and objectives	09:44:49	21		have referred to?	09:47:18
22		and then try and match those needs and objectives	09:44:52	22	A.	No. But anyone in the industry would	09:47:19
23		with whatever securities I felt were suitable.	09:44:56	23		give you the same exact definition.	09:47:21
24	Q.	Okay.	09:44:59	24	Q.	Okay. Getting back to the work you	09:47:23
25	A.	Excuse me, I do have a cough.	09:45:04	25		were doing, I think my notes may be wrong, so you	09:47:29

12			14		
1	correct me, but you did research and wrote	09:47:33	1	Q. And again, what were your duties as	09:49:43
2	analytics with regard to specific securities	09:47:35	2	the resident manager of Smith Barney in	09:49:45
3	offerings. Is that a fair statement?	09:47:38	3	Philadelphia?	09:49:48
4	A. The people who reported to me --	09:47:40	4	A. I could simplistically say to manage	09:49:49
5	Q. Oh, did that.	09:47:40	5	the office. But to give you a little bit more	09:49:51
6	A. -- did the research and wrote the	09:47:43	6	color --	09:49:53
7	analytics.	09:47:44	7	Q. No. I assumed you were doing that,	09:49:54
8	Q. Okay.	09:47:45	8	but on your day-to-day basis, what did you do,	09:49:55
9	A. And then we also had a sales force	09:47:46	9	Mr. Maine?	09:49:57
10	that then marketed these products.	09:47:48	10	A. The Philadelphia office was the	09:49:58
11	Q. Well, the analytics, can you tell me	09:47:50	11	largest office in Smith Barney. Smith Barney was	09:50:00
12	what you mean by that?	09:47:52	12	founded in Philadelphia by two old Philadelphia	09:50:03
13	A. Well, sure. You would take a company	09:47:55	13	gentlemen, E.B. Smith and C.D. Barney. And it was	09:50:08
14	such as Hewlett Packard. We would have analysts who	09:47:56	14	the largest office at Smith Barney at that time. We	09:50:11
15	specialized in specific industries so they'd have a	09:48:03	15	had about a hundred folks in the office.	09:50:14
16	broader base of knowledge.	09:48:06	16	We had a combination sales force that	09:50:16
17	So we would have a technical analyst	09:48:08	17	served retail clients, institutional clients. We	09:50:19
18	who would look at Hewlett Packard and Intel and	09:48:10	18	had a fixed income trading desk and we had a taxable	09:50:26
19	technical companies such as that. We might have	09:48:15	19	fixed income trading desk. So taxable and tax-free	09:50:34
20	another Forest products analyst who would look at	09:48:17	20	fixed income trading desk and a sales force that	09:50:38
21	Boise Cascade and Weyerhaeuser and Potlatch Forest.	09:48:20	21	worked with those products.	09:50:39
22	That's P-o-t-l-a-c-h.	09:48:23	22	And my -- my job as the resident	09:50:42
23	And they would look at these	09:48:29	23	manager is similar to running your own business. In	09:50:47
24	companies, do a top-down approach, in other words,	09:48:31	24	other words, I was responsible for sales,	09:50:49
25	where do we think the macro economy is going and	09:48:33	25	compliance, operations, recruiting, personnel,	09:50:52
13			15		
1	then how that will devolve into the individual	09:48:36	1	expense control.	09:50:56
2	industries. And then within the individual	09:48:40	2	(Comments off the record.)	09:51:08
3	industries, which companies seem the best	09:48:42	3	Q. The only one I want you to give me an	09:51:08
4	positioned, which companies seem to be selling at	09:48:47	4	inside into, what did you mean by the term	09:51:11
5	the cheapest price versus their earnings, and which	09:48:49	5	"compliance"?	09:51:14
6	have the best growth prospects, what we think a	09:48:52	6	A. Well, the securities industry is a	09:51:17
7	reasonable price target would be. And that would be	09:48:56	7	highly regulated industry, and by various regulators	09:51:19
8	the analytics.	09:48:58	8	and sub-regulatory organizations. And so compliance	09:51:27
9	Q. Okay. I want to go back to Smith	09:48:59	9	would mean making certain that my brokers and other	09:51:31
10	Barney for just one minute. The customers that you	09:49:01	10	employees complied with various security rules and	09:51:35
11	were, and I'm directing your reference to there,	09:49:08	11	regulations, and in-house rules and regulations.	09:51:40
12	were they retail or institutional customers?	09:49:09	12	Q. In connection with that, did you ever	09:51:43
13	A. Both.	09:49:12	13	deal with complaints about failure to comply with	09:51:46
14	Q. Okay. And how long were you with	09:49:13	14	those regulations?	09:51:49
15	Mitchum?	09:49:15	15	A. Certainly.	09:51:50
16	A. With Mitchum for two years.	09:49:16	16	Q. And who would those complaints be	09:51:50
17	Q. And when that came to an end what, if	09:49:20	17	made by?	09:51:54
18	anything, did you do after that?	09:49:22	18	A. Excuse me down there.	09:51:54
19	A. That was, to put it in time frame,	09:49:24	19	Well, it would depend upon the nature	09:52:00
20	that was in '74. Mitchum went out of business.	09:49:27	20	of a complaint. If it was a -- and in our process,	09:52:03
21	Q. Okay.	09:49:29	21	I'll answer the question and then give you a little	09:52:07
22	A. And I returned to Smith Barney in	09:49:31	22	elucidation --	09:52:10
23	Philadelphia, which is where I had served as a	09:49:34	23	Q. Okay.	09:52:10
24	retail broker, and became the resident manager of	09:49:37	24	A. -- unless you just have me --	09:52:10
25	the Philadelphia office.	09:49:42	25	Q. Sure, sure, absolutely.	09:52:10

16			18		
1	A. And in the nature -- it would depend	09:52:11	1	of times a client would complain that -- that	09:54:50
2	upon the nature of the complaint. If it was a sales	09:52:16	2	they -- the commission burden was too high on the	09:54:53
3	practice complaint, it would probably be brought by	09:52:18	3	equity account, and that the trading was not in line	09:54:56
4	a customer. If it was a complaint about somebody	09:52:21	4	with their objectives.	09:54:59
5	stealing somebody else's lunch, it might be brought	09:52:26	5	Q. All right. Now, were you ever a	09:55:01
6	by an employee, probably by an employee. That was	09:52:28	6	retail customer?	09:55:03
7	-- they were the most frequent complaints I dealt	09:52:30	7	A. Was I ever a retail customer? Yes.	09:55:06
8	with.	09:52:33	8	Q. Okay. And did you receive	09:55:11
9	And if it was a -- something that was	09:52:35	9	statements?	09:55:14
10	discovered on an office audit by an in-house	09:52:38	10	A. Yes.	09:55:14
11	auditor, that might be brought by -- that might be	09:52:43	11	Q. And the customer who would complain	09:55:16
12	brought to my attention by the firm. In other	09:52:46	12	to you about churning, would that customer be	09:55:19
13	words, if someone was not submitting their	09:52:48	13	receiving statements?	09:55:22
14	correspondence to be initialed or something such as	09:52:50	14	A. Yes.	09:55:23
15	that.	09:52:52	15	Q. And how would they figure out that	09:55:23
16	Q. When you say a sales practice	09:52:53	16	there was churning going on, if you know?	09:55:25
17	complaint by a customer, could you give me an	09:52:56	17	A. I don't know. I mean, it might --	09:55:29
18	example of what those sales practices might be that	09:52:58	18	they might just see the number -- mostly they'd see	09:55:32
19	a customer might complain about?	09:53:01	19	the number of confirmations coming through and say	09:55:35
20	A. Certainly. Recommendations that	09:53:02	20	this is not in line with my objectives.	09:55:37
21	weren't suitable.	09:53:05	21	Q. Well, would -- would the statement	09:55:40
22	Q. Are you familiar with the term	09:53:14	22	reflect the trading activity in the account?	09:55:41
23	"churning"?	09:53:16	23	A. Yes.	09:55:44
24	A. Certainly.	09:53:17	24	Q. All right. Would that statement	09:55:44
25	Q. What do you understand that term to	09:53:17	25	reveal to them the facts that you were suggesting	09:55:46
17			19		
1	mean?	09:53:19	1	would constitute trading?	09:55:49
2	A. Churning means that a broker is doing	09:53:20	2	A. Well, it would reveal -- it would	09:55:50
3	transactions based primarily on generating	09:53:27	3	reveal the number of trades.	09:55:52
4	commissions for him or herself as opposed to the	09:53:33	4	Q. Okay. So when someone came to you	09:55:55
5	best interests of a client. And then there are	09:53:35	5	with a churning complaint, did you ask them how they	09:55:57
6	certain statistical measures that have been applied	09:53:39	6	came to the conclusion that churning was occurring	09:56:01
7	as thresholds, not cut and dried, because every	09:53:44	7	in their account?	09:56:04
8	client's objectives are different. But there are	09:53:47	8	A. No.	09:56:05
9	certain thresholds which commissions relative to	09:53:50	9	Q. Did they tell you?	09:56:05
10	equity need to achieve before it's implied at one	09:53:54	10	A. No. They'd just say looks like	09:56:07
11	level and implied more strongly at another level and	09:53:58	11	there's too much trading.	09:56:10
12	considered a fait accompli at a certain level.	09:54:03	12	Q. And did you then look at the	09:56:12
13	Q. In your experience as the resident	09:54:10	13	accounts?	09:56:14
14	manager at Smith Barney, did you ever encounter a	09:54:11	14	A. Of course.	09:56:14
15	situation where a retail customer complained about	09:54:14	15	Q. And did you discuss those with the	09:56:15
16	churning in his account, or her account?	09:54:17	16	customer as to what was going on in the account?	09:56:17
17	A. Yes.	09:54:20	17	A. Well, I would discuss the customer's	09:56:22
18	Q. And to your knowledge, what was --	09:54:20	18	account with the customer, yes.	09:56:23
19	what would be the nature of that complaint?	09:54:30	19	Q. And in doing so would you go over the	09:56:25
20	A. Well, that there were too many trades	09:54:32	20	statements with the customer?	09:56:27
21	based upon the objectives of the client. There's	09:54:35	21	A. No. We would run analytics. In	09:56:28
22	another measure that goes along with churning which	09:54:37	22	other words, we would be able to look at the	09:56:30
23	is called cost equity, which means the cost of	09:54:39	23	turnover ratio, which is the primary measure. My	09:56:34
24	maintaining the account was an inordinately large	09:54:43	24	compliance department would provide that for me.	09:56:39
25	percent of the equity in the account. And so lots	09:54:47	25	And we'd look at the cost equity ratio, or the	09:56:40



20			22		
1	commission equity ratio, there's a little nuance.	09:56:44	1	they don't look at turnover. They look at the	09:59:04
2	And that would be provided by analytics from my	09:56:47	2	bottom line and if they're happy, they don't	09:59:07
3	compliance department.	09:56:51	3	complain.	09:59:09
4	Q. And would you share those analytics	09:56:52	4	If a client is losing money, then	09:59:10
5	with the retail customer?	09:56:55	5	they will focus on the account and they'll say, wow,	09:59:12
6	A. Yes.	09:56:56	6	there's been too much trading or, gee, this stock	09:59:15
7	Q. And it would be your expectation that	09:56:56	7	doesn't look like it fits my investment objectives.	09:59:19
8	the customer would understand those analytics?	09:56:59	8	So generally they're initiated	09:59:22
9	A. Not necessarily. Not necessarily.	09:57:03	9	because, almost universally, because a client has	09:59:24
10	In fact, I don't think they would. I wouldn't	09:57:06	10	lost money. And then I'm trying to figure out	09:59:26
11	expect them to understand that. I'd have to explain	09:57:08	11	whether it's just sour grapes and they were involved	09:59:29
12	it to them.	09:57:10	12	in every decision, and totally aware what was going	09:59:32
13	Q. Okay. And in doing so you'd walk	09:57:11	13	on, or, in fact, whether the broker was doing	09:59:35
14	through the analytics with them?	09:57:13	14	something that he or she shouldn't have been doing.	09:59:37
15	A. Well, I'd say -- it was more	09:57:16	15	So it varied from situation to situation.	09:59:40
16	complicated than that. Because really where we'd	09:57:18	16	Q. In your experience, did you ever	09:59:41
17	start would be with their account objectives. In	09:57:22	17	encounter customers that, you know, retail customers	09:59:46
18	other words, if someone had a municipal bond	09:57:24	18	that never lost money?	09:59:49
19	account, buy and hold municipal bond account, and	09:57:29	19	A. Never? Not one single month?	09:59:53
20	the turnover ratio, which was another thing that we	09:57:31	20	Q. Not -- never lost money.	09:59:56
21	looked at, was four times, which meant that the	09:57:38	21	A. Not one single month?	09:59:57
22	equity in that account was turned over four times on	09:57:40	22	Q. Nope. Every month they won.	09:59:59
23	an annualized basis, that would clearly not be in	09:57:42	23	A. I just never analyzed that.	10:00:01
24	line with the objectives of that client.	09:57:46	24	Q. I'm asking you in your experience,	10:00:03
25	On the other hand, if a client was an	09:57:48	25	people who trade in equities, retail customers in	10:00:05
21			23		
1	aggressive trader and they had a four times turnover	09:57:51	1	your entire experience, have you ever encountered	10:00:08
2	ratio, that trading might be totally suitable.	09:57:55	2	customers, more than one, or even just one, who	10:00:12
3	So, it's not as simple as just saying	09:57:59	3	never lost, every month they were a winner?	10:00:17
4	we'd go over the analytics. But then I'd say I	09:58:02	4	MR. WISE: Object, answered. Asked	10:00:20
5	would get into the costs and other things. We'd	09:58:05	5	and answered.	10:00:21
6	look at, I'd discuss the way the client interacted	09:58:07	6	A. I never looked. I mean, I did not go	10:00:22
7	with the broker. I'd look to see whether the trades	09:58:10	7	through and look at people's accounts. What would	10:00:25
8	were solicited or unsolicited. There would be a	09:58:13	8	float up to me were the people who tripped one of	10:00:28
9	whole panoply of things I would do.	09:58:16	9	our systems, their -- their account statements would	10:00:30
10	Q. And all that panoply would be	09:58:18	10	come to me, or client complaints. But to go through	10:00:34
11	discussed with the customer?	09:58:20	11	and do a study of whether somebody had ever lost	10:00:39
12	A. No. Would be on an account by	09:58:21	12	money would be something that I would never do.	10:00:41
13	account basis, depending upon what was important in	09:58:23	13	Q. Well, then is it your suggestion then	10:00:43
14	that specific situation.	09:58:25	14	that if you didn't get a complaint, that meant that	10:00:46
15	Q. And in your experience in discussing	09:58:28	15	the customer never lost money?	10:00:49
16	these -- these churning complaints that you would	09:58:30	16	MR. WISE: Object to form.	10:00:51
17	receive, what was usually the outcome of those?	09:58:34	17	A. No. Not never lost money. Either	10:00:53
18	A. Oh, it would vary. It would vary all	09:58:38	18	never lost money or the amount of money they lost	10:00:56
19	over the lot. They generally -- they generally	09:58:41	19	didn't seem to bother them, or they took	10:01:01
20	started because the customer had lost money. So	09:58:45	20	responsibility for it. No, it wouldn't be.	10:01:03
21	normally if a customer loses money, they focus on	09:58:47	21	Q. When you were representing customers,	10:01:07
22	their account. If clients -- universally if clients	09:58:53	22	would you look at the customers' accounts as you	10:01:09
23	are making money in their accounts, they're happy.	09:58:57	23	were giving them advice as to what to buy and sell?	10:01:12
24	They look at the bottom line, they don't analyze	09:58:59	24	A. Yes.	10:01:15
25	things, they don't look at specific stock selection,	09:59:01	25	Q. And would you notice whether or not	10:01:15

24			26		
1	they were winning or losing?	10:01:17	1	risk?	10:03:11
2	A. With my customers?	10:01:20	2	A. Again, you're using terms which I	10:03:13
3	Q. Yes.	10:01:21	3	really have trouble with, the nature of the game.	10:03:14
4	A. Yes, I would know whether they were	10:01:22	4	If you're in equities, by definition you're always	10:03:16
5	winning.	10:01:23	5	at risk unless you're hedged. But if you're just in	10:03:19
6	Q. And would all of your customers	10:01:24	6	naked equities, you're always at risk. If you hedge	10:03:23
7	always win?	10:01:25	7	it, you're not always at risk.	10:03:26
8	A. No, not my customers.	10:01:26	8	Q. There's no risk whatsoever when you	10:03:28
9	Q. Did they all get exposed to equity	10:01:27	9	hedge?	10:03:30
10	risk?	10:01:30	10	A. Your risk is down to your stop hedge.	10:03:33
11	A. No. I had a lot of, I had a lot of	10:01:31	11	Q. Meaning that you can still lose, but	10:03:35
12	bond accounts.	10:01:34	12	your loss might be less because you've hedged it?	10:03:38
13	Q. And did the bond accounts always win?	10:01:35	13	A. Well, hedged it. But on the other	10:03:42
14	A. You know, you're using terms which	10:01:40	14	hand, if you hedge it properly, for instance, in	10:03:44
15	are difficult to put into an investment context, so	10:01:42	15	something like the split-strike strategy which we're	10:03:47
16	that's why I'm having trouble with your questions --	10:01:45	16	talking about here, if you bring in five or six	10:03:50
17	Q. All right.	10:01:47	17	dollars worth of premium on part of the split that	10:03:54
18	A. -- because over what bond accounts,	10:01:48	18	you've sold, and you pay five or six dollars for the	10:03:57
19	for instance, to answer your question, if you buy	10:01:50	19	insurance that you bought, theoretically you're	10:04:01
20	high quality bonds, they're subject to interim	10:01:52	20	perfectly hedged.	10:04:04
21	interest rate fluctuations. The price of the bond	10:01:56	21	Q. Meaning that you will never lose?	10:04:05
22	will move up or down based upon interest rate	10:01:58	22	A. Shouldn't.	10:04:09
23	fluctuations.	10:02:02	23	Q. So that split-strike conversion, as	10:04:11
24	But when they pay off at maturity,	10:02:03	24	you understand that strategy, will result in -- if	10:04:13
25	that's -- that's what you're looking for. And	10:02:06	25	executed properly as you just described -- in the	10:04:16
25			27		
1	winning in a bond account means that they pay their	10:02:09	1	customer never having a losing month?	10:04:20
2	interest as advertised on a regular basis.	10:02:12	2	A. Well, they may have a losing month.	10:04:23
3	Q. And did you ever have an experience	10:02:14	3	They may have -- then it goes to the skill of the	10:04:25
4	with bond accounts where they didn't pay the	10:02:17	4	person exercising it. Their market feel, how nimble	10:04:28
5	interest as advertised?	10:02:19	5	they are, how they're doing it. But certainly	10:04:32
6	A. No, sir. I always stuck with high	10:02:20	6	people who execute split-strike strategies have	10:04:35
7	quality bonds.	10:02:23	7	varying degrees of success.	10:04:39
8	Q. Okay. Getting back to equities then,	10:02:23	8	Q. Have you ever encountered one where	10:04:41
9	in the equity customers that you represented, was it	10:02:26	9	they never lose? In other words, that every month	10:04:44
10	your experience that all of the equity -- that any	10:02:31	10	their customers always have a positive return.	10:04:47
11	of your equity customers, those you represented,	10:02:34	11	A. I've never analyzed any broad field	10:04:49
12	those accounts you watched, that every month, that	10:02:36	12	of split-strike strategies where they always lose or	10:04:52
13	any of them always had a positive return every	10:02:40	13	always win. It's just not something I've looked at.	10:04:55
14	month?	10:02:43	14	Q. Well, in this case have you looked at	10:04:59
15	A. No. I was an unusually bad stock	10:02:44	15	the performance of Mr. Madoff in his split-strike	10:05:00
16	picker, which is why I went into management.	10:02:48	16	conversion strategy?	10:05:04
17	Q. Okay. But you think it was because	10:02:50	17	A. Not in depth, no. Anecdotally I	10:05:06
18	you're a bad stock picker that --	10:02:53	18	have.	10:05:10
19	A. I do. I do.	10:02:54	19	Q. Tell me what you've looked at	10:05:10
20	Q. Would you --	10:02:54	20	anecdotally.	10:05:12
21	A. My wife would agree with that.	10:02:57	21	A. I've looked at, I believe, something	10:05:14
22	Q. My wife would certainly agree with	10:02:59	22	which showed his year in, year out performance. I	10:05:15
23	that as well. Which is probably, leads to my next	10:03:02	23	haven't seen it month in, month out. Although I	10:05:19
24	question. Isn't that the nature of the game, so to	10:03:05	24	understand that the predominance of the months where	10:05:23
25	speaking, that if you are in equities, you're always at	10:03:08	25	-- where he was in the market were profitable.	10:05:25

28			30			
1	Q.	And could you identify for me what	10:05:27	1	What happened?	10:07:55
2		document you're speaking of here?	10:05:29	2	A. Well, a couple things happened. I	10:07:57
3	A.	Not specifically. It was just a -- I	10:05:32	3	found a lot of political problems at McCormick. I	10:08:01
4		think a comparison to the, if I remember correctly,	10:05:34	4	was from the north. I was an outsider. I'm not --	10:08:05
5		comparison to the Dow Jones average, and something	10:05:37	5	I'm a pretty easygoing guy. I was not comfortable	10:08:10
6		else.	10:05:39	6	with the political side of it and my family was	10:08:14
7	Q.	Okay. We're a little ahead of	10:05:40	7	hesitant to move to Houston. And so after about	10:08:16
8		ourselves. I want to go back to that later, okay?	10:05:42	8	seven or eight months we parted company on very	10:08:19
9		Let's -- I digressed and I apologize. But let's go	10:05:45	9	friendly terms.	10:08:22
10		back to your employment history here, if we could.	10:05:48	10	Q. Okay. And when you left	10:08:24
11		Let's talk about Smith Barney, you're	10:05:51	11	Mr. McCormick's employ in seven or eight months,	10:08:27
12		the resident manager, I think we've talked about	10:05:53	12	what did you do next?	10:08:30
13		that. How long were you in that position?	10:05:56	13	A. Went back to Smith Barney.	10:08:31
14	A.	Eight years.	10:05:58	14	Q. Okay. In what capacity?	10:08:33
15	Q.	Okay.	10:05:58	15	A. My first role was again managing the	10:08:35
16	A.	Seven or eight years.	10:05:59	16	Philadelphia office. But I was hired back to take	10:08:38
17	Q.	And when did that come to an end?	10:06:01	17	over the northeast region, which I did within a	10:08:41
18	A.	1981. 1982, somewhere in there.	10:06:04	18	matter of months.	10:08:43
19	Q.	And what, if anything, did you do	10:06:09	19	Q. Okay. What did the northeast region	10:08:45
20		after you left Smith Barney?	10:06:11	20	consist of?	10:08:47
21	A.	I went to work in Houston, Texas in	10:06:13	21	A. Consisted of about a third of the	10:08:48
22		the oil business.	10:06:16	22	revenues of Smith Barney at that time. We did	10:08:51
23	Q.	Okay. And that's a fairly large	10:06:22	23	approximately \$250 million in revenues in my region.	10:08:55
24		field, so could you break down for me what you were	10:06:24	24	We had a thousand employees. It was all of the	10:08:58
25		doing in the oil business, Mr. Maine?	10:06:27	25	production units from Virginia north, Ohio east up	10:09:03
29			31			
1	A.	Certainly.	10:06:27	1	through New England. So, for instance, I had five	10:09:07
2	Q.	Sure.	10:06:29	2	offices in New York, I had two offices in Boston,	10:09:11
3	A.	I was the assistant to the chairman	10:06:29	3	two offices in Washington.	10:09:14
4		of an independent oil and gas producer named	10:06:31	4	Q. And again, I may have missed this,	10:09:17
5		McCormick, that's M-c C-o-r-m-i-c-k, Oil & Gas.	10:06:35	5	did you have a title when you were running this	10:09:19
6	Q.	And what did you do for	10:06:41	6	regional northeast region?	10:09:21
7		Mr. McCormick?	10:06:44	7	A. Yes, I did. I was the regional	10:09:26
8	A.	Mr. McCormick had had a very	10:06:46	8	director.	10:09:28
9		successful drilling company and he thought -- and he	10:06:50	9	Q. Okay.	10:09:28
10		and I had been friends for many years. And he felt	10:06:54	10	A. And I was senior vice president of	10:09:29
11		that this was a -- going back, interrupting myself.	10:06:58	11	the firm.	10:09:31
12		The early '80s were a time of tremendous	10:07:04	12	Q. Okay. In this capacity as regional	10:09:32
13		fluctuations in the energy markets, and he felt that	10:07:07	13	director, did you have any direct interactions with	10:09:42
14		there was a business that could be built where	10:07:16	14	either retail or institutional customers?	10:09:46
15		exploration companies linked up with end users such	10:07:21	15	A. Yes.	10:09:48
16		as McCormick Oil & Gas and Brooklyn Union Gas, to	10:07:26	16	Q. Okay. With both?	10:09:49
17		take a local company. And they would provide	10:07:32	17	A. Yes.	10:09:51
18		drilling funds, but would have a call on the product	10:07:34	18	Q. And how did that come about?	10:09:51
19		that we found.	10:07:38	19	A. Well, being a regional director is	10:09:58
20		So it would be sort of a joint	10:07:39	20	sort of like being a glorified branch manager in	10:09:59
21		venture with the two. So they could ensure their	10:07:41	21	that things drift up to you that the branch manager	10:10:03
22		source of supply and get some sort of price	10:07:43	22	wants advice on. Either interface with very	10:10:09
23		stability because they controlled the product. We	10:07:47	23	substantial accounts in relationship building, both	10:10:15
24		would get money to drill.	10:07:49	24	retail and institutional. All too often problem	10:10:18
25	Q.	Sounds like it should have worked.	10:07:53	25	solving with accounts, both institutional and retail	10:10:23

32		34	
1	where some problem had developed in the	10:10:25	
2	relationship. A regional director is the ultimate	10:10:29	
3	person in a region in terms of compliance,	10:10:32	
4	supervision, personnel, hiring, firing. So it's --	10:10:37	
5	again, it's the jobs that you did as a branch	10:10:43	
6	manager except it's the areas where the branch	10:10:46	
7	manager wants additional input.	10:10:49	
8	Q. Okay. And in that role, as you say,	10:10:52	
9	came up from the branch manager for your assistance	10:10:56	
10	in problem solving, I think is how you put it?	10:11:00	
11	A. Yes, sir. Also development. There's	10:11:02	
12	problem solving and business development.	10:11:04	
13	Q. Business development. And would you	10:11:06	
14	deal directly with the customers at that point?	10:11:08	
15	A. Often.	10:11:10	
16	Q. Okay, fine. How long were you in the	10:11:10	
17	regional director position?	10:11:14	
18	A. Well, my position kind of morphed in	10:11:16	
19	1985, I went on the board of directors and I was	10:11:20	
20	promoted to executive vice president of the firm.	10:11:24	
21	But I continued to be the regional director until I	10:11:27	
22	retired from Smith Barney in 1990.	10:11:30	
23	Q. Okay. 1990 you retire. What did you	10:11:34	
24	do next?	10:11:52	
25	A. I moved back to the West Coast, where	10:11:53	
33		35	
1	I'd always wanted to live, and I really didn't have	10:11:56	
2	any clear idea of what I wanted to do at that time.	10:11:59	
3	And actually my first business was trying to raise	10:12:05	
4	trout on my place in Idaho. That didn't work out	10:12:09	
5	very well. And my trout herd swam away one morning,	10:12:12	
6	but...	10:12:18	
7	Q. I hate when that happens.	10:12:18	
8	A. It ruins the whole night.	10:12:21	
9	Q. Right, exactly. Collision at sea.	10:12:23	
10	There you go.	10:12:27	
11	A. But everybody else up and down the	10:12:27	
12	river was happy.	10:12:29	
13	Q. I'm sure they were.	10:12:30	
14	A. All these dumb hatchery-raised fish	10:12:33	
15	just eating anything that came along.	10:12:36	
16	So, I gave up that venture. But some	10:12:40	
17	folks were nice enough to ask me to do some	10:12:42	
18	consulting work and that's what I've done ever	10:12:45	
19	since, an expert witness in securities.	10:12:47	
20	Q. Okay, let's break that down. You say	10:12:49	
21	consulting work in -- I'm not so sure I quote this	10:12:52	
22	correctly, but expert testimony, is that what you...	10:12:56	
23	A. Well, I do a lot of consulting that	10:12:58	
24	is pretrial consulting.	10:13:06	
25	Q. Okay.	10:13:09	
1	A. Look at cases, try and help people	10:13:11	
2	value cases one way or another. And sometimes if	10:13:13	
3	that doesn't work out, then it turns into expert	10:13:19	
4	testimony.	10:13:22	
5	Q. Okay.	10:13:23	
6	A. I've also acted as an arbitrator and	10:13:24	
7	a mediator, and I've given in-house compliance	10:13:29	
8	seminars to a San Francisco firm. For a San	10:13:35	
9	Francisco firm.	10:13:41	
10	Q. Let's talk a little bit about each.	10:13:41	
11	And I ask this just so I understand	10:13:45	
12	it. So that in your capacity dealing as a	10:13:52	
13	consultant, it's -- is it always or usually in the	10:13:56	
14	case of an adversary type of position? Do you	10:13:58	
15	understand what I mean by that?	10:14:05	
16	What I'm asking is this: When you're	10:14:07	
17	asked to consult, is it always in a situation where	10:14:09	
18	there's a complaint on one side or the other of a	10:14:11	
19	transaction and you're consulting trying to help	10:14:14	
20	resolve?	10:14:16	
21	A. No, not necessarily.	10:14:17	
22	Q. Okay. Well, explain to me what you	10:14:18	
23	mean when you say you're consulting in sort of a	10:14:20	
24	pretrial capacity.	10:14:23	
25	A. Well, not the wordsmith, but when you	10:14:26	
1	said in terms of some sort of a transaction --	10:14:31	
2	Q. Right.	10:14:35	
3	A. -- or something else, I do -- a fair	10:14:38	
4	amount of my work is in personnel, a fair amount of	10:14:40	
5	my work is in inner firm raiding, r-a-i-d-i-n-g. A	10:14:43	
6	fair amount of my work is in note collection. So	10:14:51	
7	it's not all transaction-based. I didn't --	10:14:56	
8	Q. Okay. That's very helpful, thank	10:14:58	
9	you.	10:15:01	
10	A. Okay.	10:15:02	
11	Q. I think I understand the first two,	10:15:03	
12	I'm not so sure what you meant by note collection.	10:15:04	
13	Could you expand upon that for me?	10:15:07	
14	A. Certainly. The industry has	10:15:10	
15	developed over the years a process by which they	10:15:13	
16	recruit brokers and give them what are called	10:15:16	
17	forgivable notes, which is upfront money and in the	10:15:19	
18	form of a loan to be forgiven over a period of	10:15:24	
19	years. And some brokers become anxious and leave	10:15:33	
20	before the note has extinguished and then the firms	10:15:36	
21	will try and collect that money from the brokers.	10:15:39	
22	Q. In addition to the personnel issues,	10:15:44	
23	inter-firm raiding and note collection, are there	10:15:47	
24	situations where you will also act as a consultant	10:15:51	
25	in connection with the trading activities that might	10:15:54	

36			38		
1	take place at a brokerage house?	10:15:57	1	either one of us will clean that up if that happens.	10:18:02
2	A. Yeah, and the other -- to be	10:16:00	2	In how many of those instances, 40 of	10:18:05
3	complete --	10:16:02	3	those, was testimony provided in a proceeding such	10:18:07
4	Q. Sure.	10:16:02	4	as this one?	10:18:12
5	A. -- the other area that I also do a	10:16:02	5	A. You'll have to be...	10:18:13
6	fair amount of work in is in disciplinary	10:16:05	6	Q. Okay. What I mean by that is, is	10:18:15
7	proceedings brought by SROs against brokers.	10:16:09	7	that you do all this other work and you've been	10:18:16
8	Q. Give me an example of an SRO that	10:16:16	8	deposed 40 times.	10:18:19
9	you're speaking of.	10:16:19	9	A. Right.	10:18:21
10	A. The New York Stock Exchange, now	10:16:20	10	Q. And in those 40 cases, how many of	10:18:21
11	FINRA.	10:16:22	11	those were situations where what you were doing was	10:18:24
12	Q. Right.	10:16:23	12	providing expert testimony on behalf of a party in	10:18:26
13	A. SEC was not an SRO, but was a	10:16:28	13	connection with a dispute over a securities	10:18:30
14	regulatory.	10:16:31	14	transaction?	10:18:32
15	Q. It might become an SRO the way it's	10:16:31	15	A. And the 40 was my best guess.	10:18:35
16	going. But in any event, take away all the funding,	10:16:34	16	Q. Yeah, yeah, sure.	10:18:37
17	they'll be out of business.	10:16:38	17	A. But I would say, again, it would be	10:18:40
18	Let me go back to what you were	10:16:39	18	more than half. And the reason I hesitate on that	10:18:42
19	doing, or what you're doing as a consultant.	10:16:42	19	is that most pure brokerage situations are subject	10:18:46
20	A. Excuse me.	10:16:49	20	to arbitration agreements signed by the client.	10:18:52
21	Q. Today you're here in behalf of the	10:16:50	21	Most arbitrations don't have depositions. But there	10:18:57
22	defendants and acting in a capacity that all of us	10:16:52	22	are fairly frequent times where the side -- not	10:19:05
23	in this room understand. How much of that type of	10:16:55	23	frequent times, but there are times when the panel,	10:19:09
24	work is what you have been doing over the last 21	10:16:58	24	for instance, may want or grant depositions even in	10:19:13
25	years?	10:17:00	25	their arbitration. So, there's some there.	10:19:19
37			39		
1	A. Gosh, I've never broken it down.	10:17:06	1	Triple A or JAMS appearances that	10:19:23
2	Never broken it down.	10:17:08	2	I've done, they lots of times will have depositions	10:19:28
3	Q. Okay. How many -- well, maybe we can	10:17:09	3	and the rest, of course, will be court proceedings	10:19:34
4	try to quantify it a little bit differently. How	10:17:11	4	where the parties have not signed an arbitration	10:19:37
5	many cases, whether they be arbitrations, mediations	10:17:15	5	agreement. And many of those will be, for instance,	10:19:41
6	or litigations, have you been involved in where	10:17:17	6	registered investment advisory relationships where	10:19:44
7	there has been a dispute, hard to say similar to	10:17:20	7	the client and the adviser haven't signed a	10:19:47
8	this one, but a dispute involving a securities	10:17:25	8	relationship.	10:19:51
9	transaction where you've been called in to provide	10:17:28	9	Q. FINRA used to be called the NASD. Do	10:19:56
10	expert testimony?	10:17:32	10	you remember that?	10:20:00
11	A. I would say that that would be more	10:17:33	11	A. Well, half of FINRA used to be called	10:20:01
12	than half of the work I do.	10:17:34	12	the NASD.	10:20:03
13	Q. Okay. And --	10:17:36	13	Q. Right. And there is such a thing as	10:20:04
14	A. It varies. It varies. But I would	10:17:38	14	an NASD arbitration. Are you familiar with that?	10:20:06
15	say if you looked at my career, it would be more	10:17:41	15	A. Yes, sir.	10:20:09
16	than half of the work that I do.	10:17:44	16	Q. Okay. Have you appeared as a witness	10:20:09
17	Q. Okay. And at the outset I asked you	10:17:45	17	in any NASD arbitrations?	10:20:10
18	how many times you've been deposed and you gave us a	10:17:47	18	A. Yes, sir.	10:20:13
19	ballpark of 40 I think or somewhere in --	10:17:49	19	Q. How many times?	10:20:14
20	A. Yeah.	10:17:53	20	A. I don't know.	10:20:15
21	Q. -- that range.	10:17:53	21	Q. Once?	10:20:16
22	A. I'm sorry, I interrupted you.	10:17:55	22	A. No. I don't want to play games here.	10:20:16
23	Q. No, that's all right. That's all	10:17:57	23	Q. No, I don't either. That's why I'm	10:20:18
24	right. Doesn't matter. It's only important if we	10:17:58	24	just trying to get a ballpark. I'm not going to	10:20:20
25	can't understand what's on the record and I'm sure	10:18:00	25	hold you to it.	10:20:22

40			42				
1	A.	It would be the bulk of -- prior to	10:20:23	1	Davis Polk.	10:23:00	
2		New York Stock Exchange and the NASD merging their	10:20:26	2	Q.	And who do you understand your client	10:23:01
3		arbitration forums, the NASD was the predominant	10:20:32	3		to be?	10:23:04
4		arbitration forum. So I believe that perhaps the	10:20:36	4	A.	Gosh, I haven't given it any thought.	10:23:08
5		bulk of my arbitrations and the bulk of my testimony	10:20:38	5		I would imagine it's the defendants.	10:23:10
6		took place in NASD forums.	10:20:43	6	Q.	I think so. And have you met any of	10:23:14
7	Q.	And would that be hundreds of	10:20:46	7		the defendants?	10:23:16
8		arbitrations?	10:20:48	8	A.	No.	10:23:17
9	A.	Yes.	10:20:49	9	Q.	And just for the record, have you	10:23:25
10	Q.	More than 500?	10:20:51	10		entered into a retainer agreement in connection with	10:23:27
11	A.	I don't know, but that would -- 500	10:20:57	11		this testimony you're giving here today?	10:23:30
12		would probably be a reasonable guess.	10:20:59	12	A.	I'm not sure.	10:23:32
13	Q.	Okay.	10:21:02	13	Q.	We're about to get into that area	10:23:42
14		This litigation that we're involved	10:21:08	14		which gets a little dicey. I'm only asking for who	10:23:44
15		in here is in the United States District Court.	10:21:11	15		here, all right. Who at Davis Polk did you talk to?	10:23:47
16		Have you appeared before as a witness in any	10:21:14	16	A.	At what time?	10:23:50
17		proceeding involving the United States District	10:21:16	17	Q.	In connection with your retention.	10:23:51
18		Court?	10:21:19	18	A.	Well, I spoke with Mr. Wise and Ms.	10:23:56
19	A.	Yes.	10:21:20	19		Wagner. And at various points then I've also spoken	10:24:00
20	Q.	And how many times have you done	10:21:20	20		with Ms. Howard.	10:24:07
21		that?	10:21:22	21	Q.	Outside of those three individuals,	10:24:10
22	A.	I don't know.	10:21:22	22		did you speak to anyone else in connection with your	10:24:13
23	Q.	More than once?	10:21:24	23		retention here?	10:24:15
24	A.	More than once.	10:21:26	24	A.	With just, strictly with my	10:24:19
25	Q.	Less than a hundred?	10:21:27	25		retention? Or in general?	10:24:23
41			43				
1	A.	Less than a hundred.	10:21:29	1	Q.	Well, I'm using that term kind of	10:24:25
2	Q.	Less than 50?	10:21:30	2		broadly, so I apologize. I don't just mean your	10:24:27
3	A.	I would say, again cut to the chase,	10:21:32	3		actual retention, like, John, will you testify in	10:24:29
4		I would say probably, I can't remember any, but I	10:21:34	4		this case, but in terms of your -- your role in this	10:24:32
5		would guess it's probably around five. I appeared	10:21:38	5		case, all right. Between the time you first got	10:24:35
6		in the Martha Stewart trial, for instance, so. And	10:21:40	6		contacted and today, besides these three folks that	10:24:39
7		there are probably a handful of others.	10:21:44	7		are here today, who else have you talked to about	10:24:43
8	Q.	Did you make it into James Stewart's	10:21:49	8		your retention, the work you're doing here, et	10:24:45
9		book? Do you know the book?	10:21:53	9		cetera? Who else have you talked to?	10:24:47
10	A.	No, sir.	10:21:54	10	A.	The only other -- I still don't 100	10:24:49
11	Q.	Okay, fine. He wrote a book and in	10:21:55	11		percent understand your question, but the only other	10:24:52
12		it it's about the Martha Stewart trial. Part of it	10:22:01	12		person I've spoken to at Davis Polk is an attorney	10:24:54
13		is, anyway.	10:22:04	13		named Seth, and we really have not had any	10:24:58
14	A.	I probably didn't make it.	10:22:07	14		substantive conversations, and I've also forgotten	10:25:01
15	Q.	I'm going to have to check now.	10:22:10	15		his last name.	10:25:05
16	A.	I was a very minor witness. My	10:22:13	16	Q.	That's fine, I'm sure we can figure	10:25:06
17		mother was so disappointed my picture was never	10:22:15	17		that out. Let me ask you this, and I'm not trying	10:25:07
18		taken.	10:22:18	18		to -- I'm just asking poor questions, so let me try	10:25:10
19	Q.	Oh, well. All right.	10:22:19	19		to clean it up.	10:25:13
20		(Comments off the record.)	10:22:19	20		What I'm looking for is this, all	10:25:14
21	Q.	Let's talk a little bit about what	10:22:44	21		right, is that in preparing for your testimony and	10:25:17
22		you did to prepare for today, okay? Or actually,	10:22:46	22		preparing for your reports, outside of talking to	10:25:20
23		more importantly, for your reports. So let me ask	10:22:50	23		people at Davis Polk, who we've already identified,	10:25:23
24		you, first of all, by whom were you retained?	10:22:53	24		have you talked to anybody else in connection with	10:25:26
25	A.	I was retained by the attorneys from	10:22:58	25		preparing your report or your testimony here today?	10:25:28

44			46		
1	A.	No. 10:25:31	1		since 1990 in your retirement from Smith Barney? 10:40:27
2	Q.	Okay. 10:25:31	2	A.	No. 10:40:34
3	A.	My wife knows it. She always likes 10:25:33	3	Q.	Let's turn back to -- 10:40:36
4		to know where I am, so she knows I'm here. 10:25:36	4		MR. SHEEHAN: What's that number 10:40:37
5	Q.	As far as I know she's not a 10:25:39	5		again, 254? 10:40:41
6		defendant, is she? 10:25:41	6		THE REPORTER: Yes. 10:40:42
7	A.	I slipped that I was here today. 10:25:41	7		MR. SHEEHAN: All right. Thanks. 10:40:46
8	Q.	All right, good. All right. 10:25:48	8	Q.	I direct your attention, if you 10:40:46
9		Now, let me do -- let's now mark the 10:25:50	9		could, to the first page, Roman Numeral III, "Facts 10:40:48
10		reports, okay? Thanks. 10:25:52	10		and Data Relied Upon." Do you see that? 10:40:53
11		This is Trustee Exhibit 254. 10:25:52	11	A.	Yes. 10:40:55
12		(Exhibit Trustee 254, Expert Report 10:26:25	12	Q.	Okay, fine. I want to go through 10:40:56
13		of John Maine, marked for identification.) 10:26:37	13		each of these and just have you explain in a little 10:41:03
14	Q.	Let's go through the identification 10:26:37	14		bit more detail, if you could, what exactly you 10:41:07
15		process. You've been shown Trustee Exhibit 254. Do 10:26:39	15		looked at here. 10:41:09
16		you identify -- can you identify that document for 10:26:42	16		Let's start with, you say you 10:41:11
17		us, please. 10:26:44	17		reviewed sample account documents and you identify 10:41:14
18	A.	It appears to be my report. 10:26:44	18		those as trade confirmations. Let's start with 10:41:17
19	Q.	Okay. And separate, in terms of 10:26:50	19		that. Do you recall what period of time, how many 10:41:20
20		physically they're separate, there's a couple other 10:26:52	20		you looked at? Could you just give me an insight 10:41:23
21		documents that we've also handed you. Could you 10:26:54	21		into that? 10:41:26
22		identify those for us, please. 10:26:57	22	A.	I looked at a -- a handful of them. 10:41:29
23	A.	Yes. Exhibit A is my CV. Exhibit B 10:26:59	23		I didn't look at a tremendous number. I think some 10:41:33
24		is a list of cases within approximately the last 10:27:09	24		of them were relatively old. And the reason I'm 10:41:37
25		four years. 10:27:13	25		being a little less than exact here is some things I 10:41:42
45			47		
1		MR. SHEEHAN: Okay. I'm going to 10:27:14	1		know I looked at in connection with your expert 10:41:45
2		take a break because I need a bio break. 10:27:16	2		reports. They would have exemplars of various 10:41:47
3		(Comments off the record.) 10:27:25	3		things and all. So some of them I may have seen 10:41:51
4		THE VIDEOGRAPHER: Going off the 10:27:28	4		there. But in terms of trade confirmations, I 10:41:54
5		record, the time is 10:27. This is the end of disk 1. 10:27:29	5		probably saw eight or ten. The same would probably 10:41:57
6		(Recess taken.) 10:28:12	6		be true of monthly statements. 10:42:01
7		THE VIDEOGRAPHER: We are back on the 10:39:31	7		MR. SHEEHAN: You know, I'm probably 10:42:04
8		record. The time is 10:39. This is disk number 2. 10:39:41	8		missing this because I'm in and out here, to be 10:42:05
9		BY MR. SHEEHAN: 10:39:47	9		honest. Have we asked for these documents and are 10:42:08
10	Q.	Of course when we were off the record 10:39:48	10		you guys producing them and do we have them? 10:42:12
11		it got suggested I ask you a couple of questions I'd 10:39:51	11		Lauren? I'm asking the one person in the room that 10:42:21
12		forgotten. And one of them was when actually were 10:39:53	12		might know the answer to that question. 10:42:22
13		you actually retained for this case? 10:39:56	13		MS. HOWARD: They have all already 10:42:22
14	A.	Well, again, since I don't remember 10:39:58	14		been produced, so we submitted a list with 10:42:25
15		signing a retention letter, because I generally 10:40:00	15		production numbers -- 10:42:26
16		don't sign retention letters -- 10:40:02	16		MR. SHEEHAN: Okay, fine. All right. 10:42:29
17	Q.	Sure. 10:40:05	17		So we already have all those. Okay, all right, 10:42:30
18	A.	-- but the answer to your question is 10:40:06	18		fine. 10:42:33
19		I think the first conversation was a couple of 10:40:08	19		BY MR. SHEEHAN: 10:42:35
20		months ago, maybe November. Late October, November, 10:40:11	20	Q.	When you looked at the trade 10:42:35
21		something like that. 10:40:15	21		confirmations, based on your experience, did 10:42:37
22	Q.	Thank you. And the other question 10:40:15	22		anything on them appear unusual to you? 10:42:39
23		was other than your excursion into the trout 10:40:20	23	A.	Something appeared old-fashioned. 10:42:43
24		industry and the consulting we've been talking about 10:40:23	24	Q.	And what was that? 10:42:45
25		here this morning, have you done any other work 10:40:24	25	A.	Well, old-fashioned brokers, in other 10:42:47

48		50	
1	words, sometimes will put on the trade confirmation	10:42:52	
2	"we sold," which means we sold to the customer.	10:42:55	
3	Now, now most people use "customer bought" if the	10:42:59	
4	customer bought as opposed to "we sold."	10:43:04	
5	Q. All right. And did -- was that on	10:43:07	
6	all of the -- on all trade confirmations you looked	10:43:09	
7	at?	10:43:15	
8	A. I always hesitate to say all --	10:43:16	
9	Q. Right.	10:43:16	
10	A. -- but it's my memory that it was.	10:43:18	
11	But I'm not sure.	10:43:21	
12	Q. And I don't want to keep repeating	10:43:23	
13	this, so I'm going to just ask it here once, just to	10:43:26	
14	make it clear for the record.	10:43:29	
15	Did you speak to anybody at -- any of	10:43:30	
16	the defendants about these trade confirmations?	10:43:35	
17	A. No, sir.	10:43:37	
18	Q. And just for the record so I won't	10:43:37	
19	keep asking it, it's fair to say that you spoke to	10:43:40	
20	no defendants about any of the documents that you	10:43:43	
21	reviewed in preparation for this report; is that	10:43:45	
22	correct?	10:43:47	
23	A. That's correct.	10:43:47	
24	Q. All right, good.	10:43:48	
25	You also said that you looked at the	10:43:52	
49		51	
1	monthly statements. Again, could you give me a	10:43:54	
2	sense of how many those were and what you looked at?	10:43:56	
3	A. Again, probably eight or ten. I	10:43:59	
4	didn't -- I didn't count them up, and again, some of	10:44:02	
5	them I saw as exemplars to your experts' reports, or	10:44:04	
6	sections of them.	10:44:10	
7	Q. Do you remember what specific	10:44:11	
8	defendants were involved in either the confirmations	10:44:12	
9	or the statements?	10:44:14	
10	A. I think Mr. Wilpon was one that I	10:44:17	
11	looked at.	10:44:19	
12	Q. Any other recollection?	10:44:21	
13	A. No, I didn't really focus on the	10:44:22	
14	names, I'm sorry.	10:44:24	
15	Q. That's okay. Then you also said the	10:44:25	
16	1099s.	10:44:30	
17	A. No, I didn't say the 1099s, I'm	10:44:31	
18	sorry.	10:44:33	
19	Q. Well, I'm sorry. I'm quoting your	10:44:34	
20	report, not what you testified to.	10:44:36	
21	A. Oh, right, okay, yeah.	10:44:38	
22	Q. Sorry about that. Now, continuing	10:44:40	
23	after "Monthly statements," it says you also	10:44:42	
24	reviewed some 1099s. Same question: Would you look	10:44:44	
25	at how many --	10:44:47	
1	A. Just again, a handful, and I forget	10:44:48	
2	whose they were.	10:44:52	
3	Q. Then you refer to the broker check	10:44:54	
4	report prepared by FINRA.	10:44:57	
5	A. Yes, sir.	10:45:01	
6	Q. Okay. Did you obtain that yourself?	10:45:02	
7	A. Yes, sir.	10:45:04	
8	Q. And you say you -- is it fair to say	10:45:05	
9	you found it on the FINRA website?	10:45:08	
10	A. Yes, sir.	10:45:10	
11	Q. Okay. And why did you look at the	10:45:12	
12	broker check report?	10:45:16	
13	A. I was curious.	10:45:17	
14	Q. About what?	10:45:17	
15	A. Well, I was just curious about the	10:45:19	
16	compliance history of the Madoff firm.	10:45:22	
17	Q. And what did it reveal to you?	10:45:24	
18	A. An exceedingly clean compliance	10:45:25	
19	history. Virtually, I was shocked that a firm could	10:45:28	
20	be in business that long through the period of time	10:45:31	
21	and -- and have as few entries on the broker check	10:45:36	
22	report. Because as you know, broker check reports	10:45:40	
23	report things, whether they have any validity or	10:45:46	
24	not, so, and then they stay on the broker check	10:45:51	
25	report.	10:45:53	
1	Q. Well, just for the record, what --	10:45:53	
2	what does a brokerage check report consist of? What	10:45:57	
3	does it reveal?	10:45:59	
4	A. A broker check report is a report	10:46:01	
5	which the SROs have made available to the public in	10:46:04	
6	response to a perceived need for the public to be	10:46:09	
7	able to get some sort of a feeling as to the	10:46:16	
8	compliance history of both a firm and a broker.	10:46:19	
9	So you can do a broker check report	10:46:22	
10	on the Madoff firm, or you can do a broker check on	10:46:24	
11	Merrill Lynch and then pick a specific Merrill Lynch	10:46:27	
12	broker and do a broker check on that broker, or the	10:46:30	
13	whole firm. And it shows -- and this would not be a	10:46:33	
14	complete list -- but it shows the states in which	10:46:37	
15	the firm is licensed to do business, other	10:46:41	
16	background information on the firm, and then it	10:46:45	
17	shows if there are any client complaints about the	10:46:47	
18	firm or the broker.	10:46:51	
19	Q. Based upon your review of the record	10:46:54	
20	that you've looked at here, do you understand BLMIS	10:46:59	
21	to be acting as a broker-dealer in this case?	10:47:05	
22	A. Yes, I think they were a	10:47:11	
23	broker-dealer, yes. I know they later in 2006	10:47:12	
24	registered as an RIA. But in this case, dealing	10:47:15	
25	with these clients, it acted as a broker-dealer.	10:47:18	



52			54			
1	Q.	And why do you say that?	10:47:24	1	A. Yes.	10:50:06
2	A.	Well, they maintained regular stock	10:47:25	2	Q. Are there other criteria besides just	10:50:07
3		accounts, individual accounts. They received	10:47:27	3	assets under management that would cause you to be	10:50:10
4		individual statements. They were not pooled. They	10:47:33	4	required to register as an investment adviser?	10:50:13
5		could take money in or out of their accounts at	10:47:37	5	A. I'm not aware one way or another.	10:50:15
6		will. They received -- just a normal brokerage	10:47:41	6	Q. Okay. Do you know whether that was a	10:50:18
7		relationship.	10:47:47	7	factor, assets under management, in Madoff	10:50:21
8	Q.	And you testified that they, in 2006,	10:47:48	8	registering as an investment adviser in 2006?	10:50:24
9		registered as an investment adviser. Do you have	10:47:50	9	A. I don't know.	10:50:27
10		any understanding as to why that happened?	10:47:53	10	Q. Okay. Then lastly, just for the sake	10:50:52
11	A.	There was a -- not specifically.	10:48:00	11	of completeness, there's the last sentence in your	10:50:54
12	Q.	What is your understanding, if any?	10:48:01	12	facts and data relied upon where you referred to a	10:50:56
13	A.	Well, during the 2000s, there was a	10:48:03	13	number of items that are actually filed in this	10:50:59
14		pressure by the regulators for all firms, whether it	10:48:09	14	lawsuit. Do you see those?	10:51:01
15		was UBS or Smith Barney or Madoff Securities, to	10:48:14	15	A. Yes, sir.	10:51:03
16		register as broker-dealers and -- as registered	10:48:21	16	Q. Okay. And is it -- let me just ask	10:51:03
17		investment advisers. So I assumed that that's why	10:48:25	17	you. Did you in fact read each of these items?	10:51:06
18		they did it.	10:48:28	18	A. I did.	10:51:08
19	Q.	What is your understanding of what a	10:48:29	19	Q. You read the amended complaint?	10:51:09
20		registered investment adviser is?	10:48:30	20	A. Yes, sir.	10:51:11
21	A.	It's an entity that's registered with	10:48:33	21	Q. Okay. When you said the memoranda of	10:51:14
22		the SEC. Or it can be registered with the state,	10:48:36	22	law with respect to defendants' motion to dismiss,	10:51:16
23		and not the SEC.	10:48:41	23	did you read the memorandum submitted by the	10:51:19
24	Q.	Is it registered for a specific	10:48:42	24	Trustee?	10:51:24
25		purpose?	10:48:44	25	A. I believe so. I'm not sure. I know	10:51:27
53			55			
1	A.	Well, it's registered in that being	10:48:50	1	I read something that -- yes, I believe I did. I'm	10:51:29
2		registered, it therefore has to file form ADVs and	10:48:51	2	not sure, though.	10:51:32
3		they fall under the scrutiny of the SEC. In other	10:48:55	3	Q. Okay. Does the term "double-up" mean	10:51:33
4		words, a regular broker-dealer, while the SEC has	10:48:59	4	anything to you?	10:51:56
5		ultimate responsibility for anybody operating within	10:49:04	5	A. It didn't until this, this	10:51:56
6		the securities industry, day-in/day-out supervision	10:49:08	6	proceeding.	10:51:58
7		generally falls to NASD, FINRA, New York Stock	10:49:12	7	Q. Really? And what does it mean to you	10:51:58
8		Exchange, various people such as that.	10:49:17	8	in the context of this proceeding?	10:52:00
9		When you register with the SEC or a	10:49:19	9	A. It means somebody -- somebody who's	10:52:01
10		state registration, smaller RIAs, and the number has	10:49:21	10	not sophisticated in securities, and I guess it's	10:52:06
11		changed of assets under management which allows you	10:49:28	11	the defendants, calling what's a traditional margin	10:52:11
12		to only register with the state, then becomes	10:49:31	12	account or loan account a double-up account. That's	10:52:16
13		(indiscernible) by either the state regulators or	10:49:37	13	why I'd never -- it's really just a simple old	10:52:17
14		the SEC.	10:49:38	14	margin account.	10:52:19
15	Q.	You mentioned assets under	10:49:39	15	Q. And how did you come to understand	10:52:21
16		management. Is there certain criteria that when	10:49:42	16	that there were double-ups being used by the	10:52:22
17		they're met it triggers a requirement under the	10:49:44	17	defendants here?	10:52:26
18		regulations to register as an investment adviser?	10:49:47	18	A. From the depositions.	10:52:27
19	A.	When you say assets under management,	10:49:52	19	Q. And was there a specific deposition	10:52:33
20		I'm unclear what --	10:49:53	20	that you spoke of?	10:52:35
21	Q.	Well, I was referring to as perhaps,	10:49:55	21	A. No. I think they -- I know	10:52:38
22		and I'm suggesting to you, is -- is the amount of	10:49:57	22	Mr. Friedman spoke of them I believe in his	10:52:38
23		assets under management, is that a factor in whether	10:50:00	23	deposition, and I think several of the other	10:52:40
24		or not you have to register as an investment	10:50:03	24	defendants spoke of them in their depositions. I	10:52:43
25		adviser?	10:50:06	25	just forget exactly which ones, but it was a	10:52:45

56		58			
1	commonly used term in the depositions.	10:52:47	1	institutional investors?	10:55:26
2	Q. And do you understand how the	10:52:50	2	A. Yes.	10:55:27
3	double-ups functioned in the context of what the	10:52:52	3	Q. And what is that opinion?	10:55:27
4	defendants did?	10:52:54	4	A. No, they're not institutional	10:55:29
5	A. Yes.	10:52:55	5	investors.	10:55:30
6	Q. And how did they function?	10:52:55	6	Q. And what is that based upon?	10:55:31
7	A. The defendants used Madoff	10:52:57	7	A. 40 years of experience in the	10:55:34
8	investments as collateral for bank loans with Fleet,	10:53:02	8	industry, reading the depositions. They could not	10:55:35
9	later Fleet/B of A, and borrowed against those and	10:53:06	9	in any stretch of the imagination be considered	10:55:39
10	then invested the proceeds of the loan in additional	10:53:11	10	institutional investors.	10:55:43
11	investments with Madoff.	10:53:15	11	Q. I want to show you -- I don't know if	10:55:48
12	Q. And who is the obligor on the bank	10:53:16	12	this has been marked. Exhibit 255.	10:55:51
13	loan?	10:53:20	13	(Exhibit Trustee 255, FINRA Customer	10:56:10
14	A. I've never seen the paperwork.	10:53:21	14	Account Information, marked for identification.)	10:56:19
15	Q. Do you know who the obligor was on	10:53:23	15	Q. Mr. Maine, I'm showing you Exhibit	10:56:19
16	the bank loan?	10:53:25	16	255. First of all, have you ever seen this document	10:56:22
17	A. I hate to confess this, but you'll	10:53:29	17	before?	10:56:26
18	have to tell me, the obligor is the?	10:53:30	18	A. Yes.	10:56:27
19	Q. The person who owed the bank the	10:53:33	19	Q. The contents of this document.	10:56:27
20	money.	10:53:35	20	A. Yes.	10:56:31
21	A. I would assume, I don't know, but I	10:53:37	21	Q. Okay. What do you understand it to	10:56:31
22	would assume it would be the defendants.	10:53:40	22	be?	10:56:32
23	Collateralized by the -- again, I don't know, but I	10:53:45	23	A. It's a -- it's a FINRA document that	10:56:33
24	would assume it would be whoever borrowed the money	10:53:48	24	talks about information about clients and what's	10:56:36
25	collateralized by whatever collateral they put up.	10:53:51	25	needed to be retained.	10:56:38
57		59			
1	Q. Are you guessing?	10:53:54	1	Q. Okay. I direct your attention	10:56:40
2	A. I said I assume. That's a guess.	10:53:55	2	towards the bottom quarter of it where there's a	10:56:42
3	Q. Okay. If I were to tell you it was	10:53:58	3	paren, B, close paren, lower case B; do you see	10:56:46
4	Sterling Equities was the obligor, would you be able	10:54:01	4	that?	10:56:50
5	to contradict that?	10:54:05	5	A. Yes.	10:56:51
6	A. No.	10:54:07	6	Q. Then underneath that there's C, it	10:56:51
7	Q. Assume Sterling Equities, assume that	10:54:08	7	says, "For purposes of this rule." Do you see that?	10:56:53
8	there's evidence in this record that Sterling	10:54:12	8	A. Yes.	10:56:57
9	Equities is the obligor, would that have any impact	10:54:14	9	Q. And I'm going to read this into the	10:56:57
10	on the opinions you've expressed in this case?	10:54:18	10	record and going to ask you a few questions about	10:57:00
11	A. None.	10:54:22	11	it, okay?	10:57:03
12	Q. Let's -- I want to start in this	10:54:41	12	A. Certainly.	10:57:03
13	specific area, so let me tell you what it is and	10:54:45	13	Q. It reads, paren, C, close paren:	10:57:04
14	then we can get the ground rules right.	10:54:47	14	"For purposes of this rule, the term 'institutional	10:57:07
15	As I understand it, based on your	10:54:50	15	account' shall mean the account of," colon. I'm	10:57:09
16	review of the record here, it's your opinion that	10:54:53	16	dropping down to paren, 3, close paren: "Any other	10:57:13
17	the defendants were retail brokerage customers; is	10:54:55	17	person, whether a natural person, corporation,	10:57:17
18	that a fair statement?	10:55:00	18	partnership, trust or otherwise, with total assets	10:57:20
19	A. That's an accurate statement.	10:55:02	19	of at least \$50 million."	10:57:23
20	Q. Okay. And what is that based upon?	10:55:03	20	Do you see that?	10:57:26
21	A. Well, it's based upon my review of	10:55:04	21	A. Yes.	10:57:27
22	the depositions, my review of the monthly statements	10:55:07	22	Q. Is it your understanding that none of	10:57:27
23	and trade confirmations.	10:55:13	23	the defendants here have personal assets of \$50	10:57:30
24	Q. Do you have an opinion as to whether	10:55:19	24	million?	10:57:32
25	or not they are -- any of the defendants are	10:55:22	25	A. No. I believe they do.	10:57:33

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1	Q. All right. And does that -- does	10:57:34	1	takes the money in from the foundation and sends it	10:59:44
2	this definition in any way affect your opinion then	10:57:36	2	out to JPMorgan to be managed. That clerk is not an	10:59:46
3	that they are institutional investors?	10:57:39	3	institutional investor. The account at JPMorgan	10:59:51
4	A. Not from a functional standpoint.	10:57:43	4	could be an institutional account. I hope I made	10:59:55
5	Maybe from some sort of a heading standpoint, but	10:57:45	5	that clear.	10:59:59
6	not from a functional standpoint. In other words,	10:57:48	6	Q. But if the person who has the account	11:00:00
7	they're not institutional investors as that term	10:57:50	7	is the same as the person that has the \$50 million	11:00:05
8	would be understood in the trade.	10:57:53	8	in assets, would that make them an institutional	11:00:08
9	Q. Okay. Based on your expertise, why	10:57:54	9	investor?	11:00:11
10	then does FINRA suggest that somebody that has \$50	10:57:58	10	A. Well, the -- the foundation in this	11:00:12
11	million of assets is an institutional investor?	10:58:01	11	instance has the account. But they're not an	11:00:14
12	MR. WISE: Object to the form of the	10:58:04	12	institutional investor. The institutional investor	11:00:17
13	question.	10:58:06	13	refers to the person who actually is a professional	11:00:20
14	A. I have absolutely no idea, but	10:58:07	14	money manager who's handling the money. This refers	11:00:24
15	they're not institutional investors.	10:58:08	15	to a pool of assets. It's totally different.	11:00:27
16	Q. FINRA is suggesting that if you have	10:58:10	16	Q. If someone has -- so to the broker --	11:00:46
17	\$50 million in assets that you are an institutional	10:58:13	17	Mr. Wilpon has an account, it's an institutional	11:00:51
18	investor.	10:58:16	18	account because he's worth more than \$50 million.	11:00:54
19	MR. WISE: Object to the form of the	10:58:16	19	Can we agree on that?	11:00:57
20	question. That's not what it says.	10:58:19	20	A. Under this definition.	11:00:59
21	MR. SHEEHAN: Thank you.	10:58:21	21	Q. Okay. What are the obligations of	11:01:00
22	Q. Rule -- I'm going to read the rule	10:58:23	22	the broker-dealer in dealing with an institutional	11:01:03
23	again. The rule says: "For purposes of this rule,	10:58:25	23	account?"	11:01:05
24	the term 'institutional account,'" thank you, "shall	10:58:29	24	A. That's such a vague question, I can't	11:01:09
25	mean the account of any other person, whether a	10:58:33	25	answer it.	11:01:11
61			63		
1	natural person, with total assets of at least \$50	10:58:37	1	Q. Well, in other words, FINRA has a	11:01:11
2	million." Do you see that?	10:58:41	2	purpose presumably in establishing a rule in	11:01:14
3	A. Yes.	10:58:43	3	defining what an institutional account is. What are	11:01:16
4	Q. All right. Do you have any	10:58:43	4	the implications for an account being denominated as	11:01:20
5	understanding -- that's my question -- do you have	10:58:44	5	institutional?	11:01:23
6	any understanding of why FINRA suggests that \$50	10:58:47	6	A. I have no --	11:01:25
7	million in assets constitutes an institutional	10:58:50	7	MR. WISE: Object, object to the form	11:01:26
8	account of a person?	10:58:54	8	of the question.	11:01:27
9	A. No. It must have something to do	10:58:56	9	A. I'm sorry. I have no idea what FINRA	11:01:28
10	with the internal -- the bookkeeping or the way the	10:58:57	10	had in their mind, in this or many things that FINRA	11:01:30
11	firm accounts for it. But they're not an	10:59:00	11	does, I don't know what --	11:01:33
12	institutional investor. An institutional investor	10:59:03	12	Q. What does the term "institutional	11:01:33
13	is different than an institutional account.	10:59:06	13	account" mean to you based on your experience and	11:01:35
14	Q. Well, what's the difference?	10:59:09	14	expertise?	11:01:39
15	A. Well, an institutional investor is a	10:59:11	15	A. I would relate it back to an	11:01:40
16	paid person who is paid to manage money. Their	10:59:13	16	institutional investor managing an account. I don't	11:01:42
17	purpose in life, one of the ways in which they're	10:59:17	17	believe that the sheer size of an account, whether	11:01:47
18	judged is the management of money. They're	10:59:19	18	it's \$50 million, or it's a little old lady with	11:01:50
19	compensated for it. That's an institutional	10:59:21	19	\$100 million, she is not an institutional investor.	11:01:54
20	investor.	10:59:23	20	She may have for some purpose that FINRA has a	11:01:57
21	An institutional account, according	10:59:24	21	definition of an institutional account. Maybe --	11:02:03
22	to FINRA, is an account that's over \$50 million.	10:59:27	22	maybe there's some recordkeeping requirement; I'm	11:02:06
23	I'll give you an example. Let's say	10:59:30	23	not aware of it. But, again, the lady that inherits	11:02:09
24	you have a foundation and the person who's in charge	10:59:33	24	\$100 million does not become an institutional	11:02:13
25	of the money at that foundation is a clerk who just	10:59:38	25	investor.	11:02:16

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1	Q. Okay. One moment, please.	11:02:17	1	rule." Do you see that?	11:06:15
2	MR. SHEEHAN: I'm sorry, I'm going to	11:02:54	2	A. Yes, sir.	11:06:16
3	go off the record just for a second because I'm	11:02:57	3	Q. And now I'm referring to, "The term	11:06:17
4	looking for something.	11:02:59	4	'institutional account' shall mean account of," and	11:06:18
5	THE VIDEOGRAPHER: Going off the	11:03:00	5	then it says, "2, an investment adviser registered	11:06:20
6	record, the time is 11:02.	11:03:01	6	either with the SEC under 203 of the Investment	11:06:25
7	(Pause in proceedings.)	11:03:59	7	Advisers Act or with a state securities commission,"	11:06:28
8	THE VIDEOGRAPHER: We are back on the	11:03:59	8	paren, "or any agency or office performing like	11:06:32
9	record. The time is 11:04.	11:04:10	9	functions," paren, and then it's "or any other	11:06:34
10	A. I actually had a chance, while you	11:04:18	10	person," and then it goes into the \$50 million. Do	11:06:37
11	were looking for something, to completely read this	11:04:19	11	you see that?	11:06:42
12	document, which I should have done before. But if	11:04:21	12	A. Yes.	11:06:42
13	you look at subheading number 2, it says:	11:04:23	13	Q. All right. Is it your understanding,	11:06:43
14	"For each account other than an	11:04:27	14	based upon reading that, that institutional account	11:06:46
15	institutional account, and accounts in which the	11:04:29	15	and investment adviser are the same?	11:06:48
16	investments are limited to transactions in	11:04:32	16	A. No. I believe what it's saying is	11:06:52
17	open-ended investment company shares that are not	11:04:35	17	that for the purposes of the exclusion above, that	11:06:55
18	recommended by the member or its associated person,	11:04:37	18	an investment adviser falls under that exclusion.	11:07:00
19	each member shall also make reasonable efforts to	11:04:39	19	Q. Isn't -- isn't it saying -- a fair	11:07:07
20	obtain, prior to settlement of the initial	11:04:43	20	reading is that the term "institutional account" is	11:07:10
21	transaction in the account, the following	11:04:46	21	an account of an investment adviser?	11:07:14
22	information to the extent it is applicable to the	11:04:50	22	A. No. I think what it's saying, I	11:07:18
23	account." And then it lists the customer's tax ID	11:04:52	23	think what it's saying is that you can open, from a	11:07:20
24	number --	11:04:55	24	functional standpoint you can open an account for an	11:07:23
25	Q. Right.	11:04:56	25	investment adviser without getting all the requisite	11:07:26
65			67		
1	A. -- the occupation and whether the	11:04:56	1	information that's up under subheading 2 above.	11:07:30
2	customer is an associated person.	11:04:58	2	Q. Okay. Now, in connection with your	11:07:34
3	So, again, I don't know what FINRA is	11:05:01	3	review of the documents that you did review in	11:07:48
4	doing for sure because I can't read their mind, but	11:05:05	4	connection with this case, did you do any	11:07:49
5	it appears to me here that this definition of	11:05:08	5	qualitative analysis? And do you understand what I	11:07:51
6	institution provides a safe harbor for the broker	11:05:13	6	mean by qualitative analysis?	11:07:57
7	opening an account of a certain size not to have to	11:05:15	7	A. I understand the term. I'm not sure	11:07:59
8	get tax ID numbers, not to have to get occupation,	11:05:19	8	what you mean in connection with this case.	11:08:01
9	and whether the person is an associated member. And	11:05:24	9	Q. Well, in connection with this case	11:08:02
10	this would seem to be an extrapolation of a merged	11:05:27	10	and looking at these accounts, did you do a	11:08:05
11	rule, New York Stock Exchange 405, which mandated	11:05:31	11	qualitative analysis of the investment?	11:08:07
12	that a customer -- a brokerage firm know certain	11:05:36	12	A. No.	11:08:09
13	preliminary information about every customer and	11:05:40	13	Q. Okay. And did you do -- same	11:08:11
14	every order entered, and I think this provides an	11:05:43	14	question. Did you do any analysis -- a quantitative	11:08:14
15	exclusion to that for very large pools of money.	11:05:46	15	analysis of any of the accounts in connection with	11:08:17
16	Q. Sticking with the document, looking	11:05:53	16	the investment?	11:08:19
17	at, as you just did, looking at other portions of	11:05:58	17	A. No.	11:08:21
18	it. Let's go back to subparagraph C.	11:06:00	18	Q. Do you know what the purpose is to be	11:08:26
19	MR. WISE: There are a number of	11:06:03	19	served by doing either a qualitative or quantitative	11:08:33
20	subparagraph C's.	11:06:06	20	analysis of an investment?	11:08:36
21	MR. SHEEHAN: You're right. Thank	11:06:08	21	A. That's, I'm sorry, that's so broad I	11:08:40
22	you, Mr. Wise.	11:06:09	22	can't...	11:08:42
23	Q. I'm going back to the one we were	11:06:09	23	Q. Well, if you were going to try to	11:08:44
24	talking about earlier down at the last quarter of	11:06:11	24	assess the risk associated with a particularly -- an	11:08:46
25	the page where it starts, "For the purposes of the	11:06:13	25	equity investment with a particular institutional	11:08:50

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1	adviser, how would you go about doing that?	11:08:53	1	A. He cleared his own trades.	11:11:25
2	A. You would do an analysis of the	11:08:59	2	Q. All right. And my question remains:	11:11:27
3	account.	11:09:00	3	Is there a risk associated in dealing with a broker	11:11:28
4	Q. Okay. And did you -- would it be	11:09:01	4	who clears his own trades?	11:11:31
5	fair to say, then, that you have not determined in	11:09:04	5	A. I'm not aware of any, unless the	11:11:35
6	this case the risk associated in investing with	11:09:07	6	broker becomes insolvent.	11:11:37
7	Mr. Madoff?	11:09:10	7	Q. Now, in your --	11:12:10
8	A. You mean before the end? Because we	11:09:13	8	MR. SHEEHAN: Let's -- did we mark	11:12:13
9	know that there was --	11:09:15	9	the second report? Let's do that.	11:12:15
10	Q. Well, we know the outcome. I'm	11:09:16	10	MS. ZUBERI: 256.	11:12:53
11	talking about whether or not you, having not done a	11:09:17	11	(Exhibit Trustee 256, Rebuttal Report	11:12:53
12	quantitative or qualitative analysis, that you're	11:09:22	12	of John Maine, marked for identification.)	11:12:54
13	not in a position to assess the risk associated	11:09:25	13	Q. Mr. Maine, I've asked the reporter to	11:12:54
14	prior to the demise of investing with Mr. Madoff.	11:09:27	14	mark the next exhibit as 256 and it's been handed to	11:12:57
15	A. If I understand your -- your	11:09:33	15	you. Can you identify it for us for the record?	11:13:01
16	question, I -- I did not do any analysis of the	11:09:34	16	A. Yes. This is my rebuttal report.	11:13:03
17	account, so I could not render an opinion in that	11:09:37	17	Q. Okay. And I want to walk through	11:13:06
18	regard.	11:09:41	18	some of this, if we could.	11:13:07
19	Q. Okay. Just in that regard, turn, if	11:09:41	19	Starting on the first page, and one	11:13:11
20	you would, to page 10 of your report.	11:09:57	20	of the criticisms -- I'm going to characterize it	11:13:14
21	A. I'm there.	11:10:11	21	and then you can correct me if I mischaracterize it.	11:13:17
22	Q. For some reason I'm not there. Sorry	11:10:13	22	One of your criticisms of Dr. Pomerantz's report is	11:13:20
23	about that.	11:10:19	23	that he is referring to the defendants in sort of an	11:13:24
24	A. It's between 9 and 11.	11:10:23	24	institutional way as Sterling. Do you recall that?	11:13:27
25	Q. Your expertise is just overwhelming	11:10:24	25	A. Yes, sir.	11:13:29
69			71		
1	me.	11:10:27	1	Q. Okay. And rather than have me	11:13:31
2	In any event... let me just ask the	11:10:30	2	articulate it, could you explain to me what your	11:13:32
3	question because I can't find it in your report.	11:10:38	3	criticism is of Dr. Pomerantz there?	11:13:35
4	You speak in your report of the fact	11:10:40	4	A. Yes. Because these were individual	11:13:39
5	that Mr. Madoff cleared his own trades. Do you	11:10:42	5	accounts. There was no -- I mean, Sterling may well	11:13:42
6	remember that?	11:10:45	6	have had an account. But the accounts in question,	11:13:47
7	A. Yeah.	11:10:46	7	I believe, are the accounts -- and maybe Sterling is	11:13:49
8	Q. Is there any risk in your experience	11:10:46	8	one of the accounts in question, but we're talking	11:13:52
9	with dealing with a broker who clears his own	11:10:49	9	about Mr. Katz, Mr. Wilpon, Mr. David Katz, all	11:13:54
10	trades?	11:10:53	10	those other people, they were individual brokerage	11:13:56
11	A. When you say cleared their own	11:10:55	11	accounts similar to the millions and millions of	11:13:59
12	trades, exactly what do you mean by that?	11:10:57	12	other individual brokerage accounts that are opened.	11:14:02
13	Q. Let me ask you that. What do you	11:10:59	13	And it appeared to me that Dr. Pomerantz seemed	11:14:04
14	mean by clearing your own trades?	11:11:00	14	unclear about that.	11:14:10
15	A. Well, it can mean either processing	11:11:02	15	Q. In what sense?	11:14:12
16	the trades or paying for the trades or -- can mean	11:11:03	16	A. Well, that he kept referring to them	11:14:14
17	various things.	11:11:08	17	as sort of an institutional entity, a combined	11:14:16
18	Q. Doesn't clearing the trade have a	11:11:08	18	entity as opposed to the individually maintained	11:14:19
19	very traditional meaning in your industry?	11:11:10	19	classic brokerage accounts, which these were.	11:14:22
20	A. Yes, that's what I just said. But it	11:11:14	20	Q. And how did you come to that	11:14:25
21	can mean several things; the processing of the	11:11:16	21	conclusion, that that's what they were?	11:14:27
22	trade, the clearing of the trade, the communications	11:11:18	22	A. Well, from reading the deposition	11:14:29
23	with the DTC.	11:11:20	23	testimony and looking at the confirmations and trade	11:14:31
24	Q. Taking all that into account, what	11:11:21	24	tickets.	11:14:34
25	did Mr. Madoff do?	11:11:24	25	Q. Just so we can get some clarity here,	11:14:36

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1	can you tell me what you understand Sterling	11:14:44	1	I could see which would show that these investors,	11:17:32
2	Equities to be?	11:14:46	2	who I just ran through, in any way would qualify to	11:17:37
3	A. Sterling Equities I'm not 100 percent	11:14:48	3	be investment professionals. And I thought that was	11:17:42
4	sure what it was, but I believe it was an entity	11:14:52	4	a real lack in the reports, that they made these	11:17:44
5	that the partners used in certain transaction --	11:14:54	5	allegations, but really backed it up with no	11:17:48
6	transactional functions.	11:14:59	6	training, with no prior expertise.	11:17:51
7	Q. And what transactional functions	11:15:02	7	Q. Was it your understanding based on	11:17:53
8	would those be, if you know?	11:15:05	8	reading the depositions you've spoken of that each	11:17:55
9	A. I'm not 100 percent clear how they	11:15:06	9	of the defendants dealt directly with Mr. Madoff?	11:17:57
10	use it. But what I focused on Sterling Equities was	11:15:08	10	A. No. I don't believe that -- I don't	11:18:03
11	not as much from a functional standpoint as a	11:15:12	11	believe some of them interfaced directly with	11:18:06
12	staffing standpoint, an expertise standpoint,	11:15:16	12	Mr. Madoff.	11:18:08
13	whether they -- whether housed in Sterling was any	11:15:20	13	Q. Do you know how many, if any, of the	11:18:08
14	invest -- equity investment expertise,	11:15:26	14	defendants interfaced with Mr. Madoff in connection	11:18:11
15	decision-making, research capability. Those types	11:15:29	15	with all of these accounts?	11:18:13
16	of things. Because I was trying to ferret out	11:15:34	16	A. When you say interfaced, do you mean	11:18:16
17	whether there in fact was a professional investor	11:15:36	17	met him -- met him, or talked to him about the	11:18:19
18	involved with Sterling.	11:15:39	18	accounts? In other words --	11:18:22
19	Q. And did you reach a conclusion as to	11:15:41	19	Q. All of the above.	11:18:23
20	whether or not there was such an investor?	11:15:43	20	A. Well, I think more met him in terms	11:18:25
21	A. Yes.	11:15:44	21	of just social interaction. But I think the only	11:18:27
22	Q. And what is that conclusion?	11:15:45	22	ones that I really could say spoke to him about the	11:18:34
23	A. That there was not.	11:15:46	23	accounts were Mr. Friedman and perhaps Mr. Saul	11:18:38
24	Q. And what is the basis for that	11:15:47	24	Katz. I don't think many of them had substantive	11:18:46
25	opinion?	11:15:49	25	conversations about the accounts.	11:18:49
73			75		
1	A. The basis for that opinion would be	11:15:50	1	Q. Do you know, based on your reading of	11:18:51
2	the deposition testimony, the way, it's my	11:15:53	2	this record that you've spoken of, whether any of	11:18:56
3	understanding, that the assets were handled, that	11:15:59	3	the defendants, other than the ones you've	11:18:58
4	there was no one in-house except from a ministerial	11:16:03	4	identified, were permitted to talk to Mr. Madoff?	11:19:00
5	standpoint at Sterling who was running, to use that	11:16:07	5	A. I don't know one way or another.	11:19:06
6	term, or managing the assets.	11:16:10	6	Q. So as far as you know, they could	11:19:08
7	Q. What specifically are you referring	11:16:21	7	have been told they can't talk to Mr. Madoff?	11:19:10
8	to as deposition testimony? Can you enlighten us?	11:16:23	8	A. I knew that certain outside	11:19:16
9	A. Yeah. I read the depositions of	11:16:27	9	investors, if you were one of the outside accounts,	11:19:18
10	Mr. Wilpon, Mr. Fred Katz, Mr. David Katz,	11:16:29	10	so to speak, that I think they were encouraged not	11:19:21
11	Mr. Peskin, Mr. Stamos, Mr. Friedman, Ms. Rongierio	11:16:34	11	to speak to Mr. Madoff. Whether Mr. David Katz or	11:19:27
12	(phonetic). I think I said Mr. Chachra, I think I	11:16:41	12	Mr. Michael Katz or somebody could pick up the phone	11:19:31
13	said Mr. Stamos before. Let me think, are there	11:16:44	13	and call Mr. Madoff, I don't know. I didn't see any	11:19:36
14	any -- those would be ones that would bear on --	11:16:53	14	of them saying I was precluded from calling, that I	11:19:39
15	there may be another one or two, but those would be	11:16:59	15	remember.	11:19:42
16	the ones that would bear on the question on the	11:17:02	16	Q. What do you mean by outside accounts?	11:19:42
17	table.	11:17:05	17	A. Well, there seem to have been other	11:19:45
18	Q. And what specifically in their	11:17:06	18	investors who wished to get into investments with	11:19:48
19	testimony led you to your conclusion that there was	11:17:07	19	Mr. Madoff, and friends, family of the Wilpon/Katz	11:19:53
20	no professional investor involved?	11:17:09	20	group, who were facilitated in doing that by being	11:20:02
21	A. I saw no indication there or, for	11:17:13	21	directed to Mr. Friedman. And in instances where	11:20:12
22	that matter, the other thing which would be	11:17:16	22	they did not have what I believe was a two million	11:20:15
23	important, would be in your expert reports. They	11:17:18	23	dollar minimum, they could be linked up with another	11:20:21
24	referred in broad generalities to investment	11:17:22	24	investor or group to make that minimum.	11:20:25
25	expertise, but they never isolated one instance that	11:17:27	25	Q. And is it your understanding that	11:20:31

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1	those outside accounts, as you've just described	11:20:33	1	Turning to the first page, do you see	11:23:48
2	them, would deal with Mr. Madoff through	11:20:36	2	the email that's there?	11:23:51
3	Mr. Friedman?	11:20:38	3	A. Yes, sir, I do.	11:23:54
4	A. That's my understanding, yes.	11:20:40	4	Q. And have you had a chance to read it?	11:23:55
5	Q. Okay. And that in certain instances	11:20:42	5	A. Now I have.	11:24:06
6	some of those outside accounts would be aggregated	11:20:46	6	MR. SHEEHAN: Now I need a moment.	11:24:18
7	to add up to two million dollar minimums that	11:20:48	7	Let's go off the record.	11:24:20
8	Mr. Madoff required?	11:20:52	8	THE VIDEOGRAPHER: Going off the	11:24:21
9	A. That's my understanding.	11:20:53	9	record, the time is 11:24.	11:24:22
10	(Comments off the record.)	11:21:45	10	(Pause in proceedings.)	11:24:45
11	Q. For the record, what I've just handed	11:22:01	11	THE VIDEOGRAPHER: We are back on the	11:24:45
12	to the witness through the reporter is an exhibit	11:22:04	12	record, the time is 11:24.	11:24:46
13	that's been previously marked as Trustee Exhibit	11:22:06	13	BY MR. SHEEHAN:	11:24:49
14	110. It was previously marked on December 15th of	11:22:10	14	Q. Actually, I misspoke. We're only	11:24:49
15	last year. And it is a document that was produced	11:22:13	15	going to look at one page of this. So let's look at	11:24:51
16	by Sterling Stamos as revealed by the Bates stamp	11:22:17	16	page 6761, which is about four or five pages from	11:24:54
17	that's on here. And it's presented to you, just so	11:22:21	17	the back. It's entitled "The Sterling Stamos	11:25:01
18	you understand, Mr. Maine, as the document -- the	11:22:26	18	Difference."	11:25:08
19	way we received the document as it was produced to	11:22:29	19	MS. ZUBERI: It's 6781.	11:25:10
20	us. All right?	11:22:32	20	MR. SHEEHAN: 6781.	11:25:13
21	A. Yes, sir.	11:22:33	21	MR. WISE: 6761 is something else.	11:25:13
22	Q. All right. Having done that prelude,	11:22:33	22	MR. SHEEHAN: Sorry, sorry about	11:25:15
23	my question to you is have you seen this document	11:22:36	23	that.	11:25:16
24	before today?	11:22:38	24	MR. WISE: You now have us at 6781.	11:25:16
25	A. No, sir.	11:22:39	25	MR. SHEEHAN: Yup.	11:25:19
77			79		
1	Q. Okay. I want you to take a few	11:22:40	1	MR. WISE: All right.	11:25:22
2	minutes, just to take a look through it in fairness,	11:22:42	2	MR. SHEEHAN: Thank you.	11:25:22
3	because I'm going to ask you a number of questions	11:22:44	3	BY MR. SHEEHAN:	11:25:40
4	about it, and I realize it's fairly extensive, so	11:22:46	4	Q. Now directing your attention, if I	11:25:40
5	take whatever time you need.	11:22:50	5	could, to the second paragraph; do you see that?	11:25:45
6	MR. WISE: Well, I'll just note for	11:22:59	6	A. Yes, sir.	11:25:49
7	the record that the document is, I don't know, it's,	11:23:01	7	Q. I'm going to read that into the	11:25:50
8	based on the Bates numbers, it appears to be almost	11:23:07	8	record and then ask you a few questions. It's	11:25:51
9	30 pages.	11:23:09	9	entitled "Internal Due Diligence Network," and it	11:25:54
10	MR. SHEEHAN: Yeah, it is long.	11:23:10	10	reads:	11:25:58
11	MR. WISE: Want him to sit here and	11:23:14	11	"Sterling Stamos leverages the	11:25:59
12	study this 30-page document.	11:23:16	12	business expertise of its 50 percent partner,	11:26:00
13	MR. SHEEHAN: That's a very fair	11:23:18	13	Sterling Equities. Founded over 30 years ago by the	11:26:03
14	document, Mr. Wise, and I appreciate that. Thank	11:23:19	14	Wilpon and Katz families, Sterling Equities has	11:26:07
15	you.	11:23:21	15	developed deep expertise in hedge funds, private	11:26:11
16	Q. Why don't I try to shorten it up	11:23:21	16	equity, and real estate. In addition to providing a	11:26:14
17	then, okay. But in fairness, then, if I do ask you	11:23:24	17	perspective that only experience can generate, the	11:26:20
18	something, I think Mr. Wise's admonition is indeed	11:23:28	18	Wilpon and Katz networks also provide unique	11:26:22
19	wise, and we will not go through the entire	11:23:32	19	proprietary sourcing and due diligence	11:26:25
20	document. I will direct you to certain portions of	11:23:32	20	capabilities."	11:26:28
21	it. But in fairness to you, if you need more time,	11:23:33	21	Now, had you seen this prior to	11:26:32
22	because I'm moving around the document, feel free to	11:23:36	22	today?	11:26:34
23	tell me. Okay?	11:23:38	23	A. No.	11:26:34
24	A. I appreciate that.	11:23:38	24	Q. Does this in any way alter your	11:26:34
25	Q. That's good.	11:23:40	25	opinion as to the sophistication of Mr. Katz and	11:26:36

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1	Mr. Wilpon?	11:26:39	1	And what I'd like to do is to walk	11:31:10
2	A. No.	11:26:39	2	you through some of the pages here, if I may.	11:31:12
3	Q. And why not?	11:26:40	3	A. My copy has red tabs. Should I just	11:31:17
4	A. Well, because I put this in the	11:26:41	4	go to --	11:31:20
5	context of a couple of things. First of all, the 30	11:26:42	5	Q. Does it have red tabs? That's great.	11:31:20
6	years of deep expertise in hedge funds, I think I've	11:26:47	6	MR. WISE: I think we all got them.	11:31:22
7	seen that referred to as their investment with	11:26:52	7	MR. SHEEHAN: Good. Solves the	11:31:24
8	Madoff, which they incorrectly or which Mr. Stamos	11:26:58	8	problem.	11:31:27
9	put in here as investment in a hedge fund. I've	11:27:02	9	(Comments off the record.)	11:31:31
10	seen no other evidence that they invested in any	11:27:07	10	Q. So the first tab should be 5450?	11:31:31
11	other hedge funds. There may be some, but I haven't	11:27:09	11	A. It is.	11:31:36
12	seen any that they invested in any hedge funds. And	11:27:12	12	Q. Okay, thank you.	11:31:36
13	in reading Mr. Stamos' deposition, he -- he said	11:27:16	13	And directing your attention, take a	11:31:37
14	that this was a puff piece and meant as a marketing	11:27:21	14	look at, if you look, it's the firm background	11:31:39
15	piece, and this, and in other areas, which I may be	11:27:26	15	paragraph and I'm looking at paragraph number 3.	11:31:45
16	questioned about later --	11:27:33	16	A. Yes.	11:31:48
17	Q. Sure.	11:27:34	17	Q. And I'm directing your attention to	11:31:51
18	A. -- they, shall we say, took literary	11:27:35	18	Saul Katz and David Katz in that paragraph and their	11:31:53
19	license with the backgrounds and that this was -- he	11:27:40	19	identification as general partners in Sterling	11:31:58
20	did not believe that the Wilpon/Katzes were	11:27:44	20	Stamos and as portfolio and business advisers. Do	11:32:02
21	sophisticated equity investors with a deep history	11:27:48	21	you see that?	11:32:10
22	in classic hedge funds, equity private equity.	11:27:51	22	A. Yes.	11:32:11
23	Although they had done some private equity in a	11:27:56	23	Q. Do you consider this also to just be	11:32:11
24	couple of, I forget, it was network something or	11:27:59	24	puffery?	11:32:14
25	other, they'd done a little bit of that, and this	11:28:02	25	A. Well, this is not an advertising	11:32:15
81			83		
1	was just basically a puff piece.	11:28:09	1	piece. This is a due diligence background, so it's	11:32:17
2	Q. Okay. Let's go to the next exhibit	11:28:13	2	-- it's a different document.	11:32:19
3	then.	11:28:15	3	Q. So, when they say here that they're	11:32:20
4	(Exhibit Trustee 257, Email, Bates	11:29:25	4	portfolio and business advisers, what does that mean	11:32:24
5	SSMT01855447-584, marked for identification.)	11:29:39	5	to you?	11:32:27
6	(Comments off the record.)	11:29:39	6	A. I really don't know what they meant	11:32:32
7	Q. Mr. Maine, sorry about that, the	11:30:14	7	by this business. I can tell you what came out of	11:32:33
8	reporter has handed you an Exhibit 2 -- that's been	11:30:16	8	Mr. Stamos' deposition as to how he instructed, but	11:32:36
9	marked as 257. It's a very extensive document. I	11:30:19	9	just looking at the words I can't give you an	11:32:39
10	am going to direct your attention to about three or	11:30:24	10	interpretation.	11:32:41
11	four pages on it. Have you seen it prior to today?	11:30:27	11	Q. Yeah, I understand that. Just	11:32:42
12	A. No, sir.	11:30:30	12	putting aside Mr. Stamos, because we're familiar	11:32:43
13	Q. Okay. Clearly for purposes of	11:30:30	13	with him, and your understanding of that is not what	11:32:46
14	identification, because I'm certainly not a witness,	11:30:32	14	I'm looking for.	11:32:48
15	but the cover page here, at least, purports to be an	11:30:34	15	A. Okay.	11:32:49
16	email from a person apparently at Merrill Lynch, all	11:30:40	16	Q. You're reading what, as you say, this	11:32:50
17	right, private equity group. It's to an individual	11:30:45	17	document identifies these people as key principals	11:32:57
18	that, as I understand it, is associated with the	11:30:48	18	in connection with Sterling Stamos. Do you see	11:32:59
19	government of Qatar. And it's enclosing a series of	11:30:51	19	that?	11:33:01
20	documents in connection with a presentation being	11:30:56	20	A. Yes.	11:33:02
21	made to the government of Qatar, with regard to a	11:30:59	21	Q. And based on your years of	11:33:02
22	potential investment. That's not, obviously,	11:31:03	22	experience -- and you've seen documents like this	11:33:05
23	testimony, but that's what we understand that to be.	11:31:05	23	before, have you not?	11:33:06
24	A. Fine.	11:31:09	24	A. Yes, sir.	11:33:08
25	Q. All right, fine.	11:31:09	25	Q. All right. Did you put together	11:33:09



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1	documents like this?	11:33:10	1	your fund of funds?	11:35:16
2	A. No, sir.	11:33:11	2	A. Well, professional training. In	11:35:17
3	Q. All right. But when you examined	11:33:12	3	other words, if you look at the background of	11:35:18
4	them in the past, would you look at who the key	11:33:14	4	Mr. Chachra, for instance, he was a hands-on fund	11:35:21
5	principals are as a basis for making your	11:33:17	5	manager. These people, if you read the depositions,	11:35:24
6	investment?	11:33:19	6	they really did not participate -- and this would	11:35:27
7	A. Yes.	11:33:20	7	come from Mr. Stamos' deposition, Mr. Chachra's	11:35:30
8	Q. And would you expect, based on your	11:33:20	8	deposition and the Katzes' deposition, they didn't	11:35:33
9	experience, that the people listed were people who	11:33:23	9	participate in the due diligence. They were	11:35:36
10	were sophisticated with regard to the nature of	11:33:26	10	presented with the end product and decided in some	11:35:39
11	Sterling Stamos' business?	11:33:29	11	cases whether that sounded like an agreeable money	11:35:42
12	A. The nature of their business?	11:33:32	12	manager.	11:35:45
13	Q. Yeah. What they did.	11:33:33	13	Q. All right, fine. Let's go to the	11:35:46
14	A. As opposed to -- well, an investment	11:33:34	14	next page, if we could.	11:35:49
15	manager does a lot of things. They run a business,	11:33:37	15	A. Okay. It isn't the next page --	11:35:53
16	they prospect for new clients, they have personnel,	11:33:39	16	MR. WISE: The next page or the next	11:35:53
17	they have offices, they have staffing. And then	11:33:43	17	one that's tabbed?	11:35:54
18	they have other people who you see identified as	11:33:46	18	MR. SHEEHAN: The next one that's	11:35:55
19	portfolio managers who run the portfolios.	11:33:48	19	tabbed. Well, mine was the next page.	11:35:57
20	Q. That's right. So you would therefore	11:33:50	20	MR. WISE: Mine too. Okay. I didn't	11:36:04
21	understand those people to be -- have the capability	11:33:53	21	see it.	11:36:18
22	to run a portfolio?	11:33:55	22	Q. Okay. I'm directing your attention	11:36:18
23	A. Yes. Mr. Chachra and Ms. Horing.	11:33:56	23	again, this is still under -- this is under Roman	11:36:22
24	Q. And also Mr. Katz?	11:33:59	24	Numeral II, investment strategy, it's, again,	11:36:27
25	A. No, Mr. Katz is a portfolio and	11:34:01	25	paragraph 3 and directing your attention to	11:36:28
85			87		
1	business adviser.	11:34:03	1	"Internal Due Diligence Network," which I don't know	11:36:30
2	Q. And what would you understand that to	11:34:05	2	if it's word for word the same, Mr. Maine, but it's	11:36:32
3	be?	11:34:07	3	very similar to what I showed you earlier in terms	11:36:36
4	A. That's some sort of an overall	11:34:08	4	of the due diligence capabilities of Sterling	11:36:38
5	supervisory role. But the business adviser would	11:34:10	5	Equities. Do you see that?	11:36:41
6	mean that -- the Katzes would be more involved with	11:34:12	6	A. Yes.	11:36:43
7	the business end of the business. In other words,	11:34:15	7	Q. All right. I could read this, starts	11:36:44
8	making decisions as to how much space to occupy, how	11:34:17	8	out, "Sterling Stamos leverages the business	11:36:46
9	many people to hire, how much advertising to do,	11:34:24	9	experience --" "-- expertise of its 50 percent	11:36:49
10	things such as that.	11:34:28	10	partner, Sterling Equities." That's what I'm	11:36:51
11	Q. What about the first half, portfolio	11:34:29	11	referring to.	11:36:54
12	adviser, what would that entail?	11:34:32	12	A. Yes.	11:36:55
13	A. Well, I really don't -- the words	11:34:34	13	Q. All right. Is it your testimony that	11:36:55
14	speak for themselves. It would assume -- I would	11:34:38	14	as it appears here it's still puffery?	11:36:56
15	assume that at some level they would give advice on	11:34:40	15	A. Yes. I think it's poetic license	11:36:59
16	macro portfolio things. In other words, maybe	11:34:45	16	because, again, their deep expertise in hedge funds	11:37:02
17	listen to a presentation from a money manager and	11:34:48	17	was their investment which -- with Madoff, which	11:37:07
18	make a decision. Remembering that this is a fund of	11:34:50	18	actually wasn't a hedge fund, but that's what the	11:37:12
19	funds, make a decision whether that fund manager was	11:34:56	19	testimony in depositions says that this refers to.	11:37:14
20	somebody that should be included in the portfolio to	11:34:59	20	And the private equity I believe were a couple of	11:37:18
21	be managed by the other people. But this is a fund	11:35:02	21	individual companies which they had made equity	11:37:22
22	of funds, which is very different than a money	11:35:07	22	investments in, which is stretching the term	11:37:27
23	manager.	11:35:11	23	"private equity" which involves -- which implies	11:37:30
24	Q. What would it take to make that	11:35:11	24	that you're a BlackRock or a TPG Group or somebody	11:37:32
25	assessment that somebody should be a fund manager in	11:35:13	25	whose business is assessing private equity	11:37:36

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1	opportunities. So...	11:37:39	1	THE VIDEOGRAPHER: We are back on the	11:54:12
2	Q. Okay. So let's flip this around now.	11:37:40	2	record. The time is 11:54. This is disk number 3.	11:54:14
3	You're now, using your expertise, you're sitting	11:37:43	3	MR. SHEEHAN: Which number is this?	11:54:21
4	there and this is presented to you. You haven't	11:37:46	4	258. Okay.	11:54:24
5	read the Stamos deps, you haven't done any of that.	11:37:48	5	(Exhibit Trustee 258, Emails and	11:54:34
6	You're in your capacity as in your earlier roles in	11:37:52	6	Presentation to Dupont, Bates SSMT01238214-266,	11:54:34
7	the securities industry; this is presented to you	11:37:54	7	marked for identification.)	11:54:34
8	and you read this. What would it mean to you?	11:37:57	8	BY MR. SHEEHAN:	11:54:34
9	A. Well, this would be a starting place	11:38:00	9	Q. For the record again, Mr. Maine, I've	11:54:44
10	and then you'd talk to -- if this passed the smell	11:38:01	10	handed you a document that's been marked by the	11:54:46
11	test, this whole document, then you'd get in-depth	11:38:06	11	reporter as Trustee Exhibit 258 which, again, is a	11:54:48
12	as to what their expertise was, and I think what	11:38:09	12	multi-page document. Again, we have tabbed it so	11:54:52
13	would come out would be exactly what I've said.	11:38:12	13	that we won't have to worry about where we're going.	11:54:57
14	Q. Okay. Let's go I guess to the next	11:38:15	14	But, again, just for purposes of the record, again	11:55:00
15	tab, which I guess is 5537?	11:38:21	15	what this -- the initial page of this is a document	11:55:04
16	A. Yes.	11:38:27	16	that again was produced by Sterling Stamos, and it	11:55:09
17	Q. Directing your attention to the last	11:38:43	17	references a meeting for a presentation to Dupont,	11:55:16
18	entry which is Saul Katz.	11:38:46	18	and people that are attendees are listed here and	11:55:21
19	A. Yes.	11:38:47	19	attached to it is what purports to be a presentation	11:55:25
20	Q. Do you see that? And it starts off	11:38:48	20	put together in December of 2004. That's on page	11:55:34
21	with, and this is what I'm focusing on, is	11:38:51	21	8219 which is where the emails stop and the document	11:55:44
22	actively -- "Mr. Katz is a general partner of	11:38:55	22	begins. Do you see that?	11:55:52
23	Sterling Stamos and actively involved in the	11:38:57	23	A. Yes.	11:55:53
24	investment decisions, as well as the management of	11:39:00	24	Q. Okay. Again, just do me a favor.	11:55:54
25	Sterling Stamos." Do you see that?	11:39:04	25	Take a quick look at this document in its entirety,	11:55:59
		89			91
1	A. Yes.	11:39:06	1	if you would. I don't mean for you to read it, but	11:56:02
2	Q. And what would you understand that to	11:39:08	2	in your experience in the industry, what do you	11:56:05
3	mean in terms of him being involved in investment	11:39:11	3	understand this document to be? Starting at that	11:56:08
4	decisions?	11:39:15	4	page, Sterling Stamos presentation.	11:56:10
5	A. Just what the words say, they're	11:39:16	5	(Witness examining document.)	11:57:51
6	implying that he was involved in the investment	11:39:18	6	A. Okay. And your question was what do	11:58:11
7	decisions.	11:39:21	7	I understand this document to be.	11:58:14
8	Q. Okay, fine. Let's just go to the	11:39:22	8	Q. Yeah.	11:58:16
9	next page, which will be the last question. Do you	11:39:28	9	A. It appears to be -- I was just	11:58:17
10	see "David Katz"?	11:39:31	10	restating your question.	11:58:18
11	A. Yes, sir.	11:39:32	11	Q. Yeah, sure.	11:58:19
12	Q. And would your answer be the same,	11:39:33	12	A. It appears to be a background	11:58:21
13	that when it talks about his being involved in	11:39:35	13	marketing document by Sterling Stamos.	11:58:25
14	investment decisions, it simply means what it	11:39:37	14	Q. Okay. And I'm just going to walk	11:58:27
15	implies, that he's involved in investment decisions?	11:39:40	15	through a couple of those tabs. Let's go to the	11:58:29
16	A. Yes, sir.	11:39:45	16	first one, if we could. It's 8226. Do you see	11:58:33
17	Q. All right. Let's go to the next one.	11:39:48	17	that?	11:58:36
18	THE WITNESS: I'm going to take you	11:39:51	18	A. Yes, sir.	11:58:36
19	up on one of your short breaks.	11:39:52	19	Q. I should have asked you this but, I	11:58:38
20	MR. SHEEHAN: Sure. Take your time.	11:39:54	20	think -- have you ever seen this document before	11:58:41
21	Let's try to get back here at ten to. Ten minutes	11:39:57	21	today?	11:58:43
22	good?	11:40:00	22	A. No, sir.	11:58:44
23	THE VIDEOGRAPHER: Going off the	11:40:01	23	Q. Okay, fine.	11:58:45
24	record, the time is 11:40. This ends disk 2.	11:40:06	24	So, directing your attention to page	11:58:46
25	(Recess taken.)	11:40:15	25	8226, and it's entitled at the top, "Security Fund,	11:58:47

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1	Overview - Differentiating Characteristics of the	11:58:52	1	people that we talked about earlier. The document	12:00:52
2	Security Fund." Do you see that?	11:58:57	2	showed them just before.	12:00:54
3	A. Yes.	11:59:00	3	MR. SHEEHAN: Okay, fine. All right.	12:00:55
4	Q. And I'm specifically identifying	11:59:01	4	Q. I direct your attention to Saul Katz	12:00:57
5	the -- or directing your attention to the second	11:59:03	5	and David Katz. Do you see them?	12:00:58
6	entry there, "Access to Sterling Equities'	11:59:05	6	A. Yes.	12:01:00
7	Experience and Unique Proprietary Sourcing." Do you	11:59:08	7	Q. They purport here to be members of	12:01:00
8	see that?	11:59:11	8	the senior investment team. Based on your	12:01:02
9	A. Yes.	11:59:12	9	experience again, looking at this document, what	12:01:04
10	Q. And then it says, "Sterling Stamos is	11:59:12	10	would you understand their role to be?	12:01:07
11	able to leverage Sterling Equities' 40 years of	11:59:15	11	A. They would not look to me to be part	12:01:09
12	alternative investment experience." Do you see	11:59:17	12	of the investment group because if you notice	12:01:11
13	that?	11:59:21	13	Mr. Chachra is a portfolio manager, Ms. Horing is a	12:01:15
14	A. Yes.	11:59:21	14	portfolio manager, and these guys are part of the	12:01:18
15	Q. Based on your background, what would	11:59:22	15	ownership group of Sterling Stamos and general	12:01:24
16	that have meant to you when you read that?	11:59:24	16	partner. So it does not imply any investment role	12:01:30
17	A. Well, that they had alternative	11:59:28	17	except at the top where it says "senior investment	12:01:34
18	investments other than stocks.	11:59:30	18	team."	12:01:37
19	Q. Right.	11:59:31	19	The other thing I focus on is if you	12:01:37
20	A. So it could be an asset class such as	11:59:32	20	look at the backgrounds and experience of the two	12:01:39
21	real estate. So, in other words, they had -- real	11:59:35	21	people identified as portfolio managers, Morgan	12:01:41
22	estate is an -- in modern portfolio theory real	11:59:37	22	Stanley, Chase Securities and then you've got	12:01:44
23	estate is an alternative to asset class, so it means	11:59:41	23	Highgate, Gabelli, Weiss, Peck, Greer, which is a	12:01:46
24	something like real estate, could be private equity.	11:59:44	24	brokerage firm, and Merrill Lynch.	12:01:52
25	Something such as that.	11:59:48	25	So, clearly these people, there are	12:01:52
93			95		
1	Q. Okay, fine.	11:59:49	1	certain people who are the investment people and	12:01:55
2	Let's go to the next entry.	11:59:51	2	there are other people who are the executives. Why	12:01:56
3	A. Next tab?	11:59:55	3	they're listed under senior investment team, I don't	12:01:59
4	Q. Yeah, next tab, I'm sorry.	11:59:56	4	know, but it's not borne out by the titles, the	12:02:01
5	Apologize.	11:59:59	5	functional titles after their names.	12:02:04
6	And I believe that's page 8242.	11:59:59	6	Q. Okay. Let's go to the next one.	12:02:25
7	A. Yes.	12:00:04	7	This is page 8244. Do you see that?	12:02:31
8	Q. It lists "Professionals, Senior	12:00:05	8	A. Yes, sir.	12:02:39
9	Investment Team." Do you see that?	12:00:08	9	Q. Just to move this along a little more	12:02:44
10	A. Yes.	12:00:10	10	quickly, the only entry I'm interested in is	12:02:46
11	Q. This lists on this page five people,	12:00:11	11	obviously the one at the top, Fred Wilpon. Do you	12:02:49
12	Mr. Stamos, Mr. Chachra, Mr. Wong -- or Ms. Wong,	12:00:15	12	see that?	12:02:52
13	Saul Katz and David Katz. Do you see that?	12:00:20	13	A. Yes, sir.	12:02:52
14	A. Yes. Ms. Wong, you said?	12:00:23	14	Q. This is on the category of other	12:02:54
15	Q. I thought -- well, I'm pronouncing	12:00:25	15	investment professionals and they're listing Mr.	12:02:56
16	that...	12:00:27	16	Wilpon as a part of that group. Do you see that?	12:02:58
17	MR. WISE: It's Ms. Horing.	12:00:31	17	A. Yes.	12:03:00
18	MR. SHEEHAN: Horing? I can't even	12:00:36	18	Q. If you'd have seen this, again in	12:03:01
19	see it.	12:00:37	19	your experience, what would your reaction have been	12:03:02
20	MR. WISE: Horing. It's Ellen	12:00:37	20	to seeing Mr. Wilpon as another investment	12:03:04
21	Horing.	12:00:38	21	professional?	12:03:06
22	MR. SHEEHAN: Oh, good. Well, my	12:00:39	22	A. The same that I said for the Katzes.	12:03:06
23	copy I couldn't get it, but appreciate the	12:00:42	23	Q. Well, here it says that he is the --	12:03:09
24	correction for the record, thank you.	12:00:44	24	his background is that he's at Bear Stearns on the	12:03:12
25	MR. WISE: Well, they're the same	12:00:51	25	board, Lowes Corporation on the board. Would that	12:03:17

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1	impact your opinion in any way?	12:03:19	1	next document. Thanks.	12:05:54
2	A. No.	12:03:21	2	(Comments off the record.)	12:06:09
3	Q. Did you -- do you know what	12:03:22	3	MS. ZUBERI: This has been marked	12:06:23
4	Mr. Wilpon did when he was on the board at Bear	12:03:24	4	before, so it's 187.	12:06:25
5	Stearns?	12:03:27	5	Q. Okay, Mr. Maine, you've been handed	12:06:57
6	A. No.	12:03:28	6	an exhibit that's been previously marked as Trustee	12:06:59
7	Q. Okay. Let's go to what's called the	12:03:35	7	Exhibit 187, which purports to be a Sterling Stamos	12:07:01
8	"Executive Summary" on page 8255. And again, I	12:03:39	8	company overview discussion with Merrill Lynch. I'm	12:07:07
9	think we're familiar with this language. Do you see	12:04:05	9	just reading, again not testifying, as to what the	12:07:10
10	it? I'm directing your attention to access to	12:04:07	10	document purports to be. Do you see that?	12:07:14
11	investment expertise and experience of Sterling	12:04:09	11	A. Yes, sir.	12:07:16
12	Equities. Do you see that?	12:04:12	12	Q. Have you seen this document before	12:07:17
13	A. Yes, I do.	12:04:13	13	today?	12:07:18
14	Q. Okay. The fact that it's in this	12:04:14	14	A. No, sir, I have not.	12:07:18
15	context, a marketing document, does it change in any	12:04:15	15	Q. All right, fine.	12:07:20
16	way your opinion of what this purports to be?	12:04:18	16	Again, what you did a moment ago for	12:07:21
17	A. No.	12:04:20	17	me would be helpful. Could you just take a quick	12:07:24
18	Q. Do you still see this as just mere	12:04:20	18	look at this and then, based on your experience in	12:07:27
19	puffery?	12:04:23	19	the industry, what would you understand this	12:07:29
20	A. Well, no, this is functionally close	12:04:23	20	document to be?	12:07:30
21	to accurate in that they did -- their investment	12:04:29	21	(Witness examining document.)	12:10:18
22	with Madoff was not in a hedge fund, but they were,	12:04:34	22	A. The question was, what did I	12:11:35
23	I believe from testimony that's what this is	12:04:39	23	understand this document to be, and it appears to be	12:11:38
24	referring to, the hedge funds. Private equity were	12:04:41	24	a profile of Sterling Stamos.	12:11:41
25	companies that they bought, with the view toward	12:04:44	25	Q. Have you seen this document prior to	12:11:56
97		99			
1	operating. So not a classic private equity thing,	12:04:48	1	today?	12:11:57
2	but they did do some private equity investments, and	12:04:51	2	A. No.	12:11:58
3	real estate. So, there's really no change.	12:04:54	3	Q. Okay, fine. Again, directing your	12:11:58
4	Q. Okay. Let's go to the last entry	12:04:58	4	attention to the first tab --	12:12:02
5	here. And actually you have to go to the page just	12:05:00	5	A. I don't have any tabs.	12:12:09
6	prior to that, if you would, that's page 8261 and	12:05:11	6	Q. Oh, you don't have any tabs this	12:12:10
7	the title of this is "Sterling Stamos Senior	12:05:15	7	time. I apologize.	12:12:12
8	Investment Team." Do you see that?	12:05:18	8	A. I'm tabless.	12:12:14
9	A. Yes.	12:05:20	9	Q. Let me tell you all the pages.	12:12:15
10	Q. And it lists Mr. Stamos, Mr. Chachra,	12:05:21	10	A. Bait and switching here.	12:12:17
11	Ellen Horing, H-o-r-i-n-g.	12:05:24	11	Q. I apologize.	12:12:19
12	A. Right.	12:05:24	12	If you look down, there's an SE	12:12:20
13	Q. Is that correct?	12:05:27	13	number. Do you see that, in the -- if you hold it	12:12:22
14	A. Yes, sir.	12:05:28	14	this way, in the lower right-hand corner?	12:12:25
15	Q. And then the next page it carries	12:05:29	15	A. Yes, sir, I do.	12:12:27
16	over and again has Saul Katz and David Katz. Do you	12:05:31	16	MR. WISE: And if you've got really	12:12:28
17	see that?	12:05:33	17	good eyes.	12:12:29
18	A. Yes.	12:05:34	18	MR. SHEEHAN: Yeah, I know.	12:12:30
19	Q. And what would that have meant to you	12:05:37	19	Q. 4281. And, actually, it's page 8, I	12:12:33
20	if you'd seen this as a marketing document in your	12:05:39	20	just realized that, they're actually paginated.	12:12:37
21	experience?	12:05:42	21	Wow. So it's page 8.	12:12:43
22	A. Well, in other words, they're just	12:05:44	22	A. Yes.	12:12:45
23	part of the -- that's what the word says, they're	12:05:48	23	Q. And the title of this page is simply	12:12:48
24	part of the investment team.	12:05:51	24	"Advantages." And there's a listing of items under	12:12:51
25	Q. Okay, all right. Let's go to the	12:05:52	25	"Advantages." Directing your attention to the --	12:12:55

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1	this is speaking again of Sterling Stamos.	12:12:59	1	discussion with Merrill Lynch. And it talks about	12:15:29
2	A. Right.	12:13:01	2	20 years experience investing in hedge funds. Do	12:15:32
3	Q. As you understand it. Let me stop	12:13:01	3	you see that?	12:15:35
4	right there.	12:13:04	4	A. Yes.	12:15:36
5	MR. WISE: I'm not sure that's	12:13:06	5	Q. And it says, "Over \$600 million of	12:15:36
6	correct. You want to take a look at that more	12:13:07	6	principals' capital invested." Do you see that?	12:15:39
7	closely?	12:13:09	7	A. Yes.	12:15:42
8	MR. SHEEHAN: Okay. Well, I was	12:13:10	8	Q. Would that indicate to you that that	12:15:43
9	basing that, Mr. Wise, on the fact that it's	12:13:13	9	experience demonstrated a degree of sophistication	12:15:47
10	Sterling Stamos company overview. So -- and then it	12:13:16	10	on the part of Sterling Stamos?	12:15:49
11	talks about the background of Sterling Stamos, is	12:13:23	11	A. No. There's a big difference in	12:15:52
12	what I thought it did. So if I'm wrong about that,	12:13:25	12	investing in hedge funds and running a hedge fund.	12:15:55
13	I'd rather have the record clear.	12:13:30	13	I invest -- have invested in the same hedge fund for	12:15:59
14	MR. WISE: I only say that because	12:13:32	14	ten years. I have no idea how he makes and loses	12:16:03
15	looking at the -- looking at the page, it says 40	12:13:34	15	money for me.	12:16:06
16	years experience. Well, Sterling Stamos was only	12:13:38	16	Q. Um-hum.	12:16:07
17	formed in 2003, so I can't -- that can't possibly be	12:13:41	17	A. So, it's different in managing a fund	12:16:08
18	referring to Sterling Stamos.	12:13:46	18	rather than just owning a fund. And I think this	12:16:11
19	MR. SHEEHAN: I think what they're	12:13:47	19	does relate to the Madoff, Madoff thing because they	12:16:14
20	referring to there, because they then had 20 years	12:13:48	20	started investing in hedge funds in '84, which is I	12:16:18
21	experience, I think obviously -- Mr. Maine, this	12:13:51	21	think when they started investing with Madoff. If	12:16:21
22	little colloquy with counsel here -- I think what	12:13:54	22	you look at the next page.	12:16:24
23	we're talking about here is that if you combine what	12:13:56	23	Q. Right. So, is your testimony based	12:16:26
24	Sterling brought and what Stamos brings, these are	12:13:58	24	on your personal experience then? Because you don't	12:16:29
25	the advantages. I think that's what this -- I'm not	12:14:01	25	know what your hedge fund does, you assume everybody	12:16:33
101			103		
1	testifying, again, that's what I understand the	12:14:04	1	else doesn't know what their hedge fund does?	12:16:35
2	document to be. So what Sterling had was 40 years	12:14:05	2	A. No. I don't -- I make no assumptions	12:16:37
3	of experience in real estate, 20 years experience in	12:14:09	3	about that. What I'm saying --	12:16:39
4	hedge funds, many years in private equity.	12:14:12	4	Q. (Inaudible.)	12:16:41
5	MR. WISE: I think we can agree on	12:14:17	5	A. -- I'm saying it's not conclusiary	12:16:41
6	this: It's not clear from the face of the page	12:14:18	6	that if you engage in a hedge fund -- if you buy a	12:16:43
7	itself what the -- who they're referring to there,	12:14:21	7	hedge fund, that you know anything about hedge	12:16:46
8	although I think you and I can agree they're	12:14:23	8	funds. You may know everything about a hedge fund,	12:16:47
9	obviously not referring to Sterling Stamos. They	12:14:25	9	but it's not -- ownership doesn't connote knowledge.	12:16:50
10	must be referring to something, Sterling Equities or	12:14:28	10	It just connotes ownership. Knowledge is a separate	12:16:54
11	something else. I think the record is pretty clear	12:14:32	11	thing.	12:16:58
12	that Sterling Stamos only started in 2003.	12:14:35	12	Q. Well, if you're putting this in a	12:16:58
13	MR. SHEEHAN: That's true. And I	12:14:38	13	document for having a discussion with a potential	12:17:00
14	don't think anyone disagrees with that.	12:14:40	14	investor in your fund, what would you understand,	12:17:03
15	MR. WISE: Mr. Stamos I think was --	12:14:49	15	based on your experience, the purpose for putting	12:17:06
16	how old is Mr. Stamos? Peter Stamos?	12:14:50	16	that in there?	12:17:08
17	MS. WAGNER: I don't know what he is	12:14:54	17	A. I think it's just giving their	12:17:09
18	but I think he's...	12:14:55	18	background and, again, if you go to the very back of	12:17:11
19	MR. WISE: I don't know that he's	12:14:57	19	this document, you'll see that when they put in the	12:17:15
20	been around 40 years. But anyway...	12:14:58	20	selected biographies they don't list the Katzes and	12:17:18
21	BY MR. SHEEHAN:	12:15:17	21	Mr. Wilpon as part of their real investment	12:17:22
22	Q. Okay. With that background, let's	12:15:17	22	management team, if you go to the very back.	12:17:27
23	just deal with it this way, Mr. Maine, all right.	12:15:19	23	So I think they do, in that regard,	12:17:29
24	This is a document, at least appears from the cover	12:15:24	24	sort of separate the importance of the various	12:17:33
25	of it, put together by Sterling Stamos for a	12:15:26	25	people in terms of what they do because at the back	12:17:36

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1	they give selected biographies of the investment	12:17:38	1	Q. All right. It's the lawyer thing, is	12:19:51
2	people.	12:17:41	2	he dead yet. I apologize. But we do get carried	12:19:53
3	Q. I want to go back to your earlier	12:17:42	3	away and thank you for pointing it out.	12:19:58
4	testimony where you said you're clueless with regard	12:17:44	4	All right. Let's go to the next	12:20:11
5	to what your hedge fund does. Is that a fair	12:17:48	5	page. Oh, they're not tabbed, I forgot. It's 13.	12:20:14
6	statement?	12:17:50	6	A. 13 was not my next page. 13 is	12:20:25
7	A. Well, no, I know he invests in small	12:17:52	7	Sterling Stamos people. Is that --	12:20:28
8	cap value stocks.	12:17:54	8	Q. Yeah, Sterling Stamos people, 13.	12:20:30
9	Q. Um-hum.	12:17:58	9	A. Yeah, that's it. It wasn't the next	12:20:33
10	A. But I have no idea which stocks he's	12:17:59	10	page.	12:20:34
11	investing in. He also has the ability to go short.	12:18:02	11	Q. I'm using next in the sense of tab.	12:20:34
12	I have no idea on an ongoing basis how much he's	12:18:06	12	Apologize.	12:20:38
13	short and how much he's long. So I know the basic	12:18:10	13	And you see that it lists here the	12:20:41
14	overview, very similar to, say, Madoff investors	12:18:13	14	investment professionals, including Mr. Katz,	12:20:43
15	knew what he did, but they didn't know what the	12:18:17	15	Mr. Wilpon and David Katz? Do you see that?	12:20:47
16	secret sauce was. I know what Arnie Schneider does,	12:18:19	16	A. I see that.	12:20:50
17	but I don't know what his secret sauce is.	12:18:23	17	Q. All right. And then I'm going to go	12:20:51
18	Q. Well, then is it your testimony that	12:18:26	18	to the -- I don't know if I skipped a page or not?	12:20:52
19	you would know what he does but -- what's the secret	12:18:28	19	I might have. Hang on a second here.	12:20:56
20	sauce, by the way?	12:18:33	20	Q. Just for sake of completeness, and	12:21:07
21	A. In other words, how -- somebody can	12:18:33	21	I'm going to ask you some other questions about it,	12:21:09
22	say, for instance, that they are a split-strike	12:18:36	22	but on page 10, if you go back, I did skip a page.	12:21:11
23	manager or a small cap value manager. But then how	12:18:38	23	I'm directing your attention to origins of Sterling	12:21:14
24	they then manipulate that, what they do is up to the	12:18:43	24	Stamos. Do you see that?	12:21:18
25	manager how to go from there.	12:18:49	25	A. Yes, sir.	12:21:21
105			107		
1	Q. Would a hedge fund investor -- in	12:18:51	1	Q. It talks about the Katz, Wilpon and	12:21:22
2	your experience now, your own included -- understand	12:18:53	2	Stamos families jointly -- I'm reading now. "Katz	12:21:24
3	what a short sale is?	12:18:57	3	Wilpon and Stamos families jointly invest in hedge	12:21:26
4	A. Well, they might or they might not.	12:19:02	4	funds, public equities and private equities." Do	12:21:29
5	In other words, I --	12:19:04	5	you see that?	12:21:33
6	Q. Well, in your experience would it	12:19:06	6	A. Yes.	12:21:33
7	more likely be that a hedge fund investor would know	12:19:07	7	Q. Now, if you were to read those two	12:21:34
8	what a short sale is?	12:19:10	8	pages together, the origins of Sterling Stamos, Katz	12:21:35
9	A. I would think they might. I just	12:19:12	9	and Wilpon, and then see Fred, Saul and David Katz	12:21:38
10	don't -- I don't know. I mean, I've never seen a	12:19:15	10	listed as investment professionals, based on your	12:21:42
11	survey, I've never queried people about that, so I	12:19:17	11	experience, what would that mean to you?	12:21:46
12	don't know. I do know what a short sale is. You	12:19:20	12	A. That they invest -- this is what	12:21:51
13	said in my experience. I do know what a short sale	12:19:23	13	Sterling Stamos does, it invests in hedge funds,	12:21:54
14	is.	12:19:25	14	public equities and private equities. I mean, it's	12:21:57
15	Q. Let me ask you that question: Are	12:19:25	15	just the words.	12:21:59
16	you aware of any studies in which an analysis has	12:19:28	16	Q. Would it suggest to you that	12:22:00
17	been made of what knowledge hedge fund investors	12:19:32	17	Mr. Wilpon, Mr. Stamos -- or, no, Mr. Saul Katz,	12:22:01
18	have with regard to their investments?	12:19:36	18	Mr. Fred Wilpon and David Katz have expertise with	12:22:04
19	A. No.	12:19:39	19	regard to investing in hedge funds?	12:22:09
20	Q. Have you ever done such a study?	12:19:39	20	A. No. I don't think -- again, I don't	12:22:12
21	A. No.	12:19:41	21	think making an investment connotes knowledge one	12:22:15
22	Q. Have you ever consulted anything	12:19:41	22	way or another. In other words, private equity, you	12:22:18
23	like -- a study like that?	12:19:43	23	might think somebody has expertise in investing in	12:22:22
24	A. Well, if I didn't know of a study	12:19:45	24	private equity, which I see defined in here as	12:22:25
25	then, I mean, it's tautology.	12:19:48	25	Sterling American partnerships. Private equity, you	12:22:29

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1	know, you might have to have more expertise there	12:22:34	1	A. Yes, sir.	01:13:16
2	because it's more of a hands-on thing. But hedge	12:22:39	2	Q. Okay. Prior to today, had you seen	01:13:17
3	fund is just looking at somebody's records, at its	12:22:42	3	this document?	01:13:19
4	very basic level, listening to a description of how	12:22:45	4	A. No, sir.	01:13:20
5	they invest their money, and then saying, I'll go	12:22:48	5	Q. All right. I'm only going to ask a	01:13:21
6	with it. Because by their nature hedge funds are	12:22:50	6	couple of questions about it, but if you could	01:13:22
7	opaque. That's one of the drawbacks of investing in	12:22:53	7	turn -- is this tabbed? It is.	01:13:27
8	hedge funds. They don't give you much information	12:22:58	8	A. Yes, it is.	01:13:29
9	about what's going on, they don't give you	12:23:01	9	Q. Good. So if you could go to the	01:13:29
10	statements or confirmations about what's happening.	12:23:03	10	first tab, and I'm directing your attention to C.	01:13:32
11	Q. Okay.	12:23:07	11	Do you see that?	01:13:51
12	I'm going to start a new line; I want	12:23:08	12	A. Yes, sir.	01:13:52
13	to break for lunch here, okay? Okay, good. Thanks.	12:23:11	13	Q. And it identifies the employer as	01:13:53
14	THE VIDEOGRAPHER: Going off the	12:23:14	14	Sterling Equities Associates?	01:13:55
15	record, the time is 12:23.	12:23:16	15	A. Yes.	01:13:57
16	(Luncheon recess taken.)	12:23:20	16	Q. And then E identifies the employer as	01:13:58
17	THE VIDEOGRAPHER: We are back on the	01:11:10	17	the plan administrator; do you see that?	01:14:01
18	record. The time is 1:11.	01:11:15	18	A. Yes.	01:14:06
19	BY MR. SHEEHEN:	01:11:19	19	Q. If you turn the page, just one last	01:14:06
20	Q. Just a couple of other questions	01:11:21	20	item, you'll see that G says the trustees are Arthur	01:14:09
21	before I get into some more documents, Mr. Maine.	01:11:22	21	Friedman and Michael Katz. Do you see that?	01:14:13
22	A. Okay.	01:11:25	22	A. Yes, sir.	01:14:15
23	Q. One of them is this, is that -- what	01:11:25	23	Q. Do you have any understanding who	01:14:16
24	is your understanding, if any, of the relationship	01:11:28	24	Arthur Friedman is?	01:14:18
25	of Sterling partners to Sterling Stamos?	01:11:31	25	A. Yes, sir.	01:14:20
109			111		
1	A. I really don't -- I've never looked	01:11:38	1	Q. And what is your understanding?	01:14:21
2	at the structure. I have no understanding.	01:11:40	2	A. Mr. Friedman, I believe, is a partner	01:14:24
3	Q. If I were to suggest to you	01:11:43	3	of Sterling, and that's my understanding.	01:14:27
4	something, and just exploring this, that Sterling	01:11:46	4	Q. What about Mr. Michael Katz; do you	01:14:35
5	partners are in fact general partners of Sterling	01:11:51	5	have an understanding of who he is?	01:14:37
6	Stamos, would that mean anything to you?	01:11:53	6	A. Same understanding.	01:14:38
7	A. No. Again, I don't have any -- I	01:11:55	7	Q. When you say Sterling, do you mean	01:14:39
8	couldn't say yes or no.	01:11:59	8	Sterling Equities?	01:14:41
9	Q. Okay. Do you have any understanding	01:11:59	9	A. Again, I never really delved into the	01:14:42
10	of any compensation that the Sterling partners may	01:12:02	10	corporate structure because it wasn't of particular	01:14:45
11	derive from their being general partners in Sterling	01:12:06	11	interest to me.	01:14:47
12	Stamos?	01:12:11	12	Q. So your understanding, it could be	01:14:48
13	A. No, I don't.	01:12:12	13	either one, Sterling Stamos or Sterling Equities?	01:14:49
14	MR. SHEEHAN: All right.	01:12:12	14	A. Yes, sir.	01:14:52
15	Let's go to this.	01:12:20	15	Q. Okay, thanks.	01:14:54
16	MS. ZUBERI: Trustee Exhibit 95.	01:12:20	16	Let's go to the next one. It's been	01:15:01
17	MR. SHEEHAN: 95.	01:12:20	17	marked. 34.	01:15:04
18	A. Thank you.	01:12:47	18	MS. ZUBERI: Trustee 34.	01:15:05
19	Q. Mr. Maine, the reporter has handed	01:12:53	19	Q. Mr. Maine, you've now been handed	01:15:25
20	you an exhibit previously marked as Trustee 95, and	01:12:56	20	Trustee Exhibit 34 that's been previously marked.	01:15:28
21	for purposes of identification only, I'll read the	01:12:59	21	The first two pages were attached to this exhibit	01:15:32
22	face page which says, "Sterling Equities Associates,	01:13:03	22	when it was produced, but we're not interested in	01:15:35
23	Sterling Equities Associates Employees Retirement	01:13:08	23	that today, so you can disregard that. What I would	01:15:37
24	Plan, Summary Plan Description," and it's dated	01:13:11	24	ask you to take a brief look at is the pages that	01:15:40
25	January 1, 2003. Do you see that?	01:13:14	25	follow, up through and including, I'll give you the	01:15:45

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1	Bates number -- well, it's the next-to-last page.	01:15:49	1 Sterling Equities partners are suggesting in this	01:19:11
2	If you would look at that, I think the last page is	01:15:52	2 write-up that we see here that they've had many	01:19:17
3	actually sort of blank. It's not really blank,	01:15:55	3 years of success with Mr. Madoff be viewed, from	01:19:20
4	it's --	01:15:59	4 your professional experience, as an endorsement of	01:19:23
5	A. No, I mean -- I'm sorry. I was	01:15:59	5 that investment over any other investment?	01:19:26
6	starting to read. You want me to read everything --	01:16:00	6 A. I think they're just giving	01:19:30
7	Q. No, no. I don't just want you to	01:16:05	7 background. I don't know whether -- because they	01:19:32
8	read it. I just want you to get familiar enough	01:16:07	8 give the records of the others and since Madoff	01:19:36
9	with it that if I start asking you questions, you'll	01:16:08	9 doesn't have a published record, they're giving	01:19:39
10	feel comfortable.	01:16:11	10 their experience with it as, I would think and,	01:19:42
11	(Witness examining document.)	01:16:59	11 again, I don't know, but I think that would be for	01:19:45
12	A. Okay, I've...	01:17:18	12 employees to judge some of the other records of the	01:19:48
13	Q. Prior to today, did you have any	01:17:22	13 other choices within the plan.	01:19:51
14	understanding that Sterling Equities had a 401(k)	01:17:24	14 Q. If the facts were that the vast	01:19:53
15	plan?	01:17:26	15 majority of investors did indeed invest in the	01:19:56
16	A. Yes.	01:17:27	16 Madoff option, would that in any way affect the	01:20:00
17	Q. Okay. What was your understanding	01:17:27	17 opinion you just expressed?	01:20:03
18	with regard to that plan?	01:17:29	18 A. No.	01:20:10
19	A. Just that they had a plan, and it was	01:17:32	19 Q. I've got to go back to the beginning,	01:20:18
20	trusted by the two gentlemen that we looked at a	01:17:35	20 didn't ask some foundation questions here. I	01:20:19
21	second ago, Mr. Friedman and Mr. Michael Katz.	01:17:39	21 thought I did ask, but I guess I didn't.	01:20:21
22	Q. Did you have any understanding of the	01:17:42	22 Prior to today had you ever seen	01:20:24
23	nature of the investments that were offered to plan	01:17:44	23 Exhibit Trustee 34?	01:20:26
24	participants?	01:17:46	24 A. No, sir.	01:20:28
25	A. Only that I think at some point an	01:17:47	25 Q. Okay. So therefore it wasn't part of	01:20:31
113		115		
1	investment in Madoff became part of the investment	01:17:48	1 your -- it wasn't anything that you considered in	01:20:33
2	mix.	01:17:50	2 rendering your opinion in your two reports?	01:20:35
3	Q. Okay. Does the fact that Madoff	01:17:52	3 A. No, sir.	01:20:38
4	became part of the investment mix in any way affect	01:17:56	4 Q. Okay.	01:20:39
5	your testimony as to whether or not Mr. Katz,	01:17:58	5 Mr. Maine, are you familiar with the	01:20:51
6	Mr. Wilpon or any of the defendants were acting in	01:18:03	6 term "hell sheets"?	01:20:53
7	an institutional capacity?	01:18:05	7 A. Yes.	01:20:54
8	A. No, sir.	01:18:08	8 Q. What does that term mean to you?	01:20:55
9	Q. What do you understand -- and I'm not	01:18:09	9 A. There was a woman in -- somewhere in	01:20:59
10	asking you a legal question here, all right -- but	01:18:14	10 the Madoff structure -- in the Sterling structure	01:21:02
11	what do you understand the obligation of the	01:18:16	11 whose first name, I believe, was Helene or something	01:21:05
12	trustees to be in offering various investment	01:18:21	12 such as that, and it's my understanding that she,	01:21:08
13	vehicles to employees?	01:18:24	13 for a period of time, I think she's now retired, she	01:21:13
14	A. That's not really an area of my	01:18:27	14 for a period of time put together sheets which would	01:21:17
15	expertise.	01:18:29	15 show, I believe the monthly performance. I haven't	01:21:20
16	Q. Okay, fine. And this may be beyond	01:18:30	16 seen these, but from reading deposition testimony,	01:21:23
17	it too, but if it falls within it you'll tell me.	01:18:39	17 would show the monthly performance of select Madoff	01:21:26
18	Is it -- does the fact that Sterling Equities	01:18:45	18 accounts. I think they took a large account and a	01:21:30
19	partners had investments in Madoff in any way, and	01:18:47	19 smaller account, and they were known as the hell	01:21:33
20	from your point of view, in your experience, seem	01:18:53	20 sheets. And then I think they were picked up by	01:21:37
21	out of the ordinary that it would be offered as part	01:18:56	21 somebody else within the organization.	01:21:40
22	of the 401(k) plan?	01:18:59	22 MS. ZUBERI: Exhibit 259.	01:21:49
23	A. I don't really have any basis to say	01:19:03	23 (Exhibit Trustee 259, Sterling	01:22:03
24	anything one way or another.	01:19:05	24 Equities Investments 12/31/07, Bates SE_T579076,	01:22:03
25	Q. Okay. Would the fact that the	01:19:08	25 marked for identification.)	01:22:16



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1	MR. WISE: My goodness.	01:22:16	1	MS. ZUBERI: Right.	01:24:14
2	MR. SHEEHEN: It's a test.	01:22:18	2	MR. WISE: Was this printed from a,	01:24:15
3	MR. WISE: Well, I flunked.	01:22:20	3	what do you call it, native file, spreadsheet?	01:24:17
4	THE WITNESS: You've got it upside	01:22:22	4	MS. ZUBERI: Yes.	01:24:20
5	down.	01:22:24	5	MR. WISE: I see. And were the	01:24:21
6	Q. Mr. Maine, while you're doing this,	01:22:29	6	yellow stripes on -- is that something that you all	01:24:22
7	let me just ask, for the record, again not	01:22:31	7	put on there?	01:24:25
8	testifying, just identifying, I've handed you	01:22:35	8	MS. ZUBERI: I don't know.	01:24:26
9	Exhibit 259. Do you see that?	01:22:40	9	MR. WISE: You don't know where those	01:24:27
10	A. Yes, sir.	01:22:42	10	came from?	01:24:29
11	Q. This is, as I understand it, is a	01:22:43	11	MS. ZUBERI: No.	01:24:30
12	document that constitutes one of the hell sheets	01:22:46	12	MR. WISE: Okay. I just wanted to	01:24:31
13	that was prepared for Sterling Equities investments?	01:22:49	13	clarify what we were looking at. So this is a	01:24:33
14	A. I guess.	01:22:55	14	printout from a native file prepared two days ago,	01:24:35
15	Q. Okay. Again, I'm not testifying.	01:22:56	15	and you can't tell us whether the highlighting that	01:24:38
16	A. Oh, okay.	01:22:56	16	appears on the document was put there by somebody	01:24:41
17	Q. It's my understanding that that's	01:22:59	17	from Baker Hostetler or whether that was in the	01:24:43
18	what this is and I'm representing to you for	01:23:00	18	native file?	01:24:46
19	purposes of your testimony here that you consider it	01:23:03	19	MS. ZUBERI: Yeah.	01:24:47
20	as such.	01:23:05	20	MR. WISE: Okay. No problem.	01:24:49
21	A. Okay.	01:23:06	21	MR. SHEEHEN: Just to complete that,	01:24:58
22	Q. So, my first question would be, have	01:23:06	22	though, at least as I understand looking at the	01:25:00
23	you ever seen it prior to today?	01:23:08	23	document, I certainly didn't ask for the yellow	01:25:02
24	A. I'm not certain because I may have	01:23:11	24	markings, is that this was a Sterling Equities	01:25:04
25	seen -- it looks vaguely familiar. I certainly	01:23:14	25	document that was produced to us.	01:25:06
117			119		
1	never studied it or never analyzed it, but whether	01:23:19	1	MR. WISE: I think we produced the	01:25:07
2	it's part of something that your experts produced or	01:23:23	2	native file.	01:25:09
3	excerpted in one of their reports, it's possible. I	01:23:26	3	MR. SHEEHEN: Right, exactly.	01:25:10
4	just -- I may have seen it, but I don't remember.	01:23:31	4	MR. WISE: And then of course what	01:25:11
5	Q. This is stretching it a bit, but I'm	01:23:34	5	you do with it --	01:25:12
6	going to ask you anyway.	01:23:36	6	MR. SHEEHEN: We can create whatever	01:25:13
7	At the time that you may have seen	01:23:38	7	document.	01:25:16
8	it, do you recall having any discussions with	01:23:39	8	MR. WISE: Right. I just don't know.	01:25:16
9	anybody about it?	01:23:40	9	MR. SHEEHAN: Okay.	01:25:25
10	A. I would recall that I have not had	01:23:41	10	THE WITNESS: The more I look at	01:25:25
11	any discussions.	01:23:43	11	this, the less familiar it becomes.	01:25:26
12	Q. All right, fine.	01:23:44	12	BY MR. SHEEHEN:	01:25:35
13	MR. WISE: Could I ask this --	01:23:47	13	Q. Do you know how often this was	01:25:35
14	MR. SHEEHEN: Go right ahead.	01:23:49	14	prepared?	01:25:37
15	MR. WISE: As a point of information,	01:23:52	15	A. No, sir.	01:25:38
16	Mr. Sheehan. Again, my eyes are struggling here a	01:23:53	16	Q. Do you know who prepared it?	01:25:39
17	little bit. The typing is very small. It appears	01:23:59	17	A. Well, that woman Helene did and then	01:25:42
18	in the upper right-hand corner of the first page, I	01:23:59	18	I think it probably would have -- and this is not a	01:25:44
19	see a date of 1/3/2012, which would be the day	01:24:01	19	guess but my assumption, but not certainty, is that	01:25:49
20	before yesterday. Is that right?	01:24:06	20	somebody under Mr. Friedman prepared it and then I	01:25:53
21	MS. ZUBERI: The print date.	01:24:09	21	think that probably was Ms. Rongione, but I'm not	01:25:57
22	MR. WISE: I'm sorry, what?	01:24:09	22	certain, toward the end.	01:26:01
23	MS. ZUBERI: Printed.	01:24:10	23	Q. Do you know what was done with this	01:26:02
24	MR. WISE: Oh, so that was when this	01:24:10	24	document once it was prepared?	01:26:04
25	was printed?	01:24:13	25	A. No.	01:26:05

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1	Q. Do you know whether it was ever	01:26:06	1	Q. No. My first question will be, have	01:29:36
2	circulated to the Sterling Equities partners?	01:26:08	2	you ever seen it before today?	01:29:38
3	A. That would be my assumption. I don't	01:26:11	3	A. No, sir, I have not.	01:29:40
4	know for sure. That would be my assumption.	01:26:13	4	Q. All right. And did you consider --	01:29:41
5	Q. Do you know the purpose for which	01:26:15	5	you know, this is one of those lawyer questions, but	01:29:45
6	this document was prepared?	01:26:17	6	did you consider it in connection with rendering	01:29:46
7	A. I don't know.	01:26:21	7	your report in this case?	01:29:48
8	Q. Okay. I think we're done with that	01:26:37	8	A. No, sir.	01:29:49
9	document.	01:26:41	9	Q. All right, fine.	01:29:52
10	I'm eliminating stuff.	01:27:09	10	I'm going to direct your attention,	01:29:53
11	I've got one last document here.	01:27:29	11	if I may, to page 3, and under Roman Numeral II	01:29:55
12	(Comments off the record.)	01:27:46	12	where it says, "Exclusion of sophisticated	01:30:03
13	MS. ZUBERI: Exhibit 260.	01:27:54	13	investors." Do you see that?	01:30:07
14	(Exhibit Trustee 260, Documents Bates	01:28:04	14	A. Yes.	01:30:08
15	SSKW00012772-893, marked for identification.)	01:28:04	15	Q. All right. And I'm going to direct	01:30:09
16	MR. SHEEHAN: This is a compilation	01:28:12	16	your attention to the last sentence of the first	01:30:11
17	of a number of documents, only one of which I want	01:28:13	17	paragraph under Roman II, and I'm going to read it	01:30:15
18	to ask you a couple of questions about. It's a	01:28:16	18	into the record and ask you a question. It reads:	01:30:18
19	document -- as a matter of fact, it's got the	01:28:23	19	"In line with the Commission's stated	01:30:20
20	letterhead of the law firm of Davis Polk & Wardell	01:28:26	20	objective of monitoring the retailization of hedge	01:30:22
21	on it.	01:28:30	21	fund investors, we believe that the Commission	01:30:26
22	MR. WISE: Wardwell.	01:28:31	22	should exclude from the proposed rule hedge fund	01:30:30
23	MS. ZUBERI: The number is on the	01:28:34	23	advisers that provide advice primarily to wealthy,	01:30:33
24	bottom.	01:28:35	24	sophisticated investors that are well positioned to	01:30:38
25	MR. SHEEHEN: Wardwell. How many	01:28:32	25	safeguard their own interests."	01:30:41
121			123		
1	people make that mistake?	01:28:37	1	My question simply is: Do you agree	01:30:43
2	MR. WISE: You'd be surprised.	01:28:38	2	with that statement?	01:30:45
3	MR. SHEEHEN: I apologize to	01:28:40	3	A. I don't even know what it means.	01:30:46
4	Mr. Wardwell.	01:28:42	4	Q. It was clearly written by a lawyer.	01:30:49
5	MR. WISE: He's a very nice	01:28:44	5	That's the problem. With all due respect to my	01:30:52
6	gentleman.	01:28:46	6	colleagues across the table here.	01:30:54
7	THE WITNESS: Can you give me a clue	01:28:52	7	A. And I'm not trying to be obtuse.	01:30:56
8	as to --	01:28:54	8	Q. No, no. Why don't you reread it and	01:30:58
9	MR. WISE: It's three documents in.	01:28:54	9	if you don't understand, that's your answer, but if	01:31:00
10	(Multiple speakers.)	01:28:54	10	you could reread it, rather than have me read it out	01:31:02
11	MR. WISE: Take the clip off. Now go	01:28:58	11	loud to you, might be better.	01:31:05
12	by the staples, it's about three documents in.	01:29:02	12	A. Okay. I think I understand it.	01:31:25
13	(Comments off the record.)	01:29:02	13	Q. You understand now? Maybe it would	01:31:26
14	MR. SHEEHAN: This is 250 what --	01:29:14	14	be good if you told me what your understanding of it	01:31:28
15	260. Well, can we -- you guys all right with making	01:29:17	15	is before you tell me whether you agree with it or	01:31:31
16	this 260A so that we can talk about it as a separate	01:29:21	16	not.	01:31:34
17	document? Is that all right?	01:29:24	17	A. Yes. I may understand but it may not	01:31:34
18	MR. WISE: Sure.	01:29:25	18	be the correct...	01:31:38
19	BY MR. SHEEHAN:	01:29:26	19	In the last ten years or so, in	01:31:39
20	Q. Okay. So we're going to call this	01:29:26	20	response to demand, the securities industry has	01:31:44
21	260A, Mr. Maine.	01:29:28	21	developed hedge fund type products that are	01:31:52
22	A. Okay.	01:29:30	22	available to a broader array of investors than	01:31:57
23	Q. And my first question to you is --	01:29:30	23	traditionally, where they were only for qualified	01:32:03
24	well, have you had a chance to look at it?	01:29:32	24	investors or whatever it might be, Reg D investors.	01:32:07
25	A. Do you want me to read it?	01:29:35	25	So, in line with that, in an effort	01:32:12

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1	to try and monitor that because some of these folks	01:32:15	1	A. Yes, sir. And it's also based on my	01:34:38
2	might be unsuitable, and the people selling them the	01:32:18	2	interpretation of this, which I -- may be incorrect,	01:34:43
3	product might not be properly schooled, the SEC	01:32:21	3	but that's...	01:34:48
4	encouraged the brokerage firms -- or the SROs, they	01:32:25	4	Q. Okay.	01:34:50
5	encouraged FINRA to put out a series of rules and	01:32:29	5	A. ...just my best horseback guess, so	01:34:51
6	regulations and guidelines for those firms who would	01:32:35	6	to speak.	01:34:54
7	be selling more of a retail product. They had to	01:32:38	7	Q. Let me turn your attention to the	01:34:55
8	perform a basic suitability that this product would	01:32:43	8	next page. It's the second full paragraph. Again,	01:34:57
9	be suitable for anybody. Then you had to	01:32:46	9	for sake of the record, I'll read it in but you take	01:35:00
10	do whatever was suitable for that specific investor,	01:32:49	10	your time and read it yourself. It reads:	01:35:03
11	and whether the broker properly -- you had to have,	01:32:53	11	"We note that sophisticated investors	01:35:08
12	the firm had to have a reasonable basis that the	01:32:57	12	frequently undertake an extensive due diligence	01:35:10
13	broker selling the product understood the product	01:32:59	13	process prior to investing with a hedge fund	01:35:13
14	that he or she was selling.	01:33:02	14	adviser. This due diligence tends to address many	01:35:17
15	So I think that's what it's talking	01:33:04	15	of the concerns identified by the Commission, such	01:35:19
16	about when it says this word in quotes,	01:33:05	16	as valuation of assets and disclosures of conflict	01:35:22
17	"retailization" of hedge fund investors. And then I	01:33:08	17	of interest."	01:35:26
18	guess what the law firm is saying, that the	01:33:12	18	My question again is, do you agree	01:35:28
19	Commission should exclude from any of these rules	01:33:14	19	with that statement?	01:35:29
20	advisers that provide advice primarily to wealthy,	01:33:20	20	A. They may or they may -- I don't know.	01:35:37
21	sophisticated investors.	01:33:26	21	They may have done some study when they used the	01:35:39
22	I think what they're doing here is	01:33:27	22	word "frequently."	01:35:42
23	trying to shear out from this group not as much the	01:33:29	23	Q. Right.	01:35:43
24	investors but the firms, the boutique firms that	01:33:34	24	A. I don't know what statistically	01:35:43
25	only cater to a certain group of investors in	01:33:38	25	frequently would be. Some may or some may not.	01:35:44
125			127		
1	selling hedge funds.	01:33:43	1	Q. Right.	01:35:48
2	Q. And that group would be?	01:33:44	2	A. I just -- I don't have any basis to	01:35:49
3	A. Well, I don't know. It says --	01:33:47	3	agree or disagree.	01:35:52
4	Q. Well, it says wealthy, sophisticated	01:33:49	4	Q. Okay.	01:35:53
5	investors.	01:33:52	5	MR. SHEEHEN: I think I'm done. I	01:35:57
6	A. Yeah, primarily. No, but -- I'm	01:33:53	6	just need to consult with my colleagues.	01:35:59
7	terribly sorry, I interrupted you.	01:33:54	7	MR. WISE: Sure.	01:36:01
8	Q. No, no. Is that your understanding?	01:33:57	8	MR. SHEEHAN: All right? Thanks.	01:36:01
9	I'm not trying to...	01:34:00	9	THE VIDEOGRAPHER: Going off the	01:36:01
10	A. I think what they were trying to do	01:34:01	10	record, the time is 1:35.	01:36:02
11	was exclude advisers that provide.	01:34:02	11	(Recess taken.)	01:36:06
12	Q. Services to who?	01:34:07	12	THE VIDEOGRAPHER: We are back on the	01:41:38
13	A. To wealthy investors. In other	01:34:08	13	record. The time is 1:41.	01:41:39
14	words, saying that they would not have to have the	01:34:11	14	MR. SHEEHEN: Thank you, Mr. Maine,	01:41:42
15	same group of guidelines since it was assumed that	01:34:13	15	we're done today.	01:41:44
16	since that's what they did, they were already going	01:34:19	16	THE WITNESS: Pleasure.	01:41:44
17	through those steps. This was for the new entrants	01:34:23	17	MR. WISE: Thank you.	01:41:46
18	into the field as opposed to the people who had been	01:34:26	18	THE VIDEOGRAPHER: Going off the	01:41:46
19	doing it forever.	01:34:28	19	record, the time is 1:41.	01:41:46
20	Q. And is your testimony based on the	01:34:30	20	(Deposition concluded.)	01:41:50
21	history that you just related to us in your	01:34:31	21	-o0o-	
22	testimony a moment ago?	01:34:34	22		
23	A. Yes.	01:34:35	23		
24	Q. Of what -- how the industry has	01:34:35	24		
25	evolved?	01:34:37	25		

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1 CHANGES AND SIGNATURE  
2  
3 WITNESS NAME: JOHN D. MAINE  
4  
5 PAGE/LINE CHANGE REASON  
6 \_\_\_\_\_  
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1 REPORTER'S CERTIFICATION  
2  
3 I, NANCY C. BENDISH, a Certified Court  
4 Reporter and Notary Public of the States of New York  
5 and New Jersey, do hereby certify that prior to the  
6 commencement of the aforementioned examination, JOHN  
7 D. MAINE, was sworn by me to testify the truth, the  
8 whole truth and nothing but the truth.  
9 I DO FURTHER CERTIFY that the  
10 foregoing is a true and accurate transcript of the  
11 testimony as taken stenographically by and before me  
12 at the time, place, and on the date hereinbefore set  
13 forth.  
14 I DO FURTHER CERTIFY that I am neither  
15 a relative nor employee nor attorney nor counsel of  
16 any party in this action and that I am neither a  
17 relative nor employee of such attorney or counsel,  
18 and that I am not financially interested in the  
19 event nor outcome of this action.  
20  
21 \_\_\_\_\_  
22 Notary Public of the State of New York  
23  
24 Dated: January 6, 2012  
25

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1 I, JOHN D. MAINE, have read the foregoing  
2 deposition and hereby affix my signature that same  
3 is true and correct, except as noted above.  
4  
5 \_\_\_\_\_  
6 JOHN D. MAINE  
7  
8 THE STATE OF \_\_\_\_\_  
9 COUNTY OF \_\_\_\_\_  
10  
11 Before me, \_\_\_\_\_, on this day  
12 personally appeared JOHN D. MAINE, known to me (or  
13 proved to me on the oath of or through \_\_\_\_\_  
14 (description of identity card or other document) to  
15 be the person whose name is subscribed to the  
16 foregoing instrument and acknowledged to me that  
17 he/she executed the same for the purpose and  
18 consideration therein expressed.  
19 Given under my hand and seal of office on this  
20 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
21  
22 \_\_\_\_\_  
23 NOTARY PUBLIC IN AND FOR  
24 THE STATE OF \_\_\_\_\_  
25 My Commission Expires: \_\_\_\_\_.

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