

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. OIG-509
OIG-509)

A rectangular stamp with the word "COPY" in a bold, sans-serif font. To the left of the word is a small square icon containing a stylized letter 'C'.

WITNESS: Number 24
PAGES: 1 through 173
PLACE: Securities and Exchange Commission
 100 F Street, NE, Suite 4000
 Washington, D.C. 20549
DATE: Tuesday, April 14, 2009

The above-entitled matter came on for hearing, pursuant to notice, at 9:25 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, ESQ., Inspector General

5 HEIDI STEIBER, ESQ., Investigator

6 CHRISTOPHER WILSON, ESQ., Investigator

7 Office of Inspector General

8 Securities and Exchange Commission

9 100 F Street, N.E.

10 Washington, D.C. 20549

11 202-551-6037

12

13 On behalf of the Witness:

14 MICHAEL D. WOLK, ESQ.

15 TIMOTHY B. NAGY, ESQ.

16 Bingham McCutchen, LLP

17 2020 K Street, NW

18 Washington, D.C. 20006-1806

19 (202) 373-6249

20

21

22

23

24

25

C O N T E N T S

1			
2	WITNESS:		EXAMINATION
3	Eric John Swanson		6
4			
5	EXHIBITS:	DESCRIPTION	IDENTIFIED
6	1	3 Confidentiality Agreements	8
7	2	8/3/03 Memo with Documents	16
8	3	3/03/2003 Planning Memo	19
9	4	5/2/2003 S Madoff-Swanson E-mail	23
10	5	OCIE Staff Attorney to Daugherty E-mail	24
11	6	8/18/2003 Swanson-McCarthy E-mail	25
12	7	10/29/2003 McCarthy-Swanson E-mail	26
13	8	10/20/2003 OCIE Staff Attorney Swanson E-mail	28
14	9	10/31/2003 OCIE Staff Attorney Swanson E-mail	30
15	10	11/10/2003 OCIE Staff Attorney Swanson E-mail	31
16	11	5/21/2003 [REDACTED] E-mail	34
17	12	5/6/2005 E-mail	43
18	13	12/11/2003 McCarthy-Swanson E-mail	44
19	14	12/16/2003 Wood-Walker E-mail	50
20	15	12/28/2003 Richards-McCarthy E-mail	55
21	16	12/18/2003 Richards-McCarthy E-mail	56
22	17	12/19/2003 Donohue-Daugherty E-mail	58
23	18	Document Requests	59
24	19	Bernie Madoff to Eric Swanson	64
25	20	1/23/2004 Donohue-Walker/Wood E-mail	67

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

C O N T E N T S

EXHIBITS:	DESCRIPTION	IDENTIFIED
21	1/29/2004 Walker-Donohue/Wood E-mail	68
22	1/29/2004 Handwritten Notes	70
23	23/2004 Wood-Donohue E-mail	74
24	2/2/2004 Conference Call w/Bernie Madoff	76
25	Undated Notes	77
26	8/23/2004 Swanson-Donohue E-mail	79
27	Document Requests	84
28	Supplemental Document Request	85
29	2/2004 Handwritten Notes	86
30	3/1/2004 B Madoff Ltr to Swanson	88
31	3/10/2004 Walker-Donohue E-mail	91
32	3/18/2004 Conference Call w/Bernie Madoff	92
33	3/23/04 Walker-Donohue E-mail	92
34	3/4/2004 Donohue-Walker E-mail	93
35	3/4/2004 Donohue-Walker E-mail	93
36	3/23/2004 B Madoff Ltr to Donohue	94
37	3/4/2004 Donohue E-mail to Himself	95
38	4/6/2004 Walker-Sadowski E-mail	96
39	4/7/2004 Donohue-Walker E-mail	97
40	4/16/2004 Kelly-  E-mail	100
41	4/16/2004 Donohue-Swanson E-mail	104
42	3/16/2005 Swanson-Shana Madoff E-mail	107
43	5/26/2005 Swanson-Donohue E-mail	115

C O N T E N T S

1	2	EXHIBITS:	DESCRIPTION	IDENTIFIED
3	44		6/2/2005 Walker-Donohue E-mail	118
4	45		2/28/2006 McCarthy-Swanson E-mail	119
5	46		3/1/2006 Swanson-McCarthy E-mail	121
6	47		8/15/2004 Swanson-Shana Madoff E-mail	127
7	48		10/7/2004 Swanson-Shana Madoff E-mail	128
8	49		8/12/2004 Swanson-Shana Madoff E-mail	130
9	50		3/04/2004 E-mail	133
10	51		3/04/2006 Shana Madoff-Swanson E-mail	135
11	52		3/04/2006 Swanson-Shana Madoff E-mail	135
12	53		E-mail	147
13	54		4/06/2006 McCarthy-Sadowski E-mail	147
14	55		Swanson-Sadowski E-mail	149
15	56		4/27/2006 Swanson-McCarthy E-mail	150
16	57		6/29/2006 Shana Madoff-Swanson E-mail	152
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				

1 P R O C E E D I N G S

2 MR. KOTZ: All right. We are on the record at 9:25
3 a.m. on April 14th, 2009, at the United States Securities and
4 Exchange Commission.

5 I'm going to swear you in now. All right? Would
6 you please raise your right hand?

7 Whereupon,

8 ERIC JOHN SWANSON

9 was called as a witness and, having been first duly sworn,
10 was examined and testified as follows:

11 EXAMINATION

12 BY MR. KOTZ:

13 Q Okay. Could you state and spell your full name for
14 the record?

15 A Eric John Swanson, E-r-i-c J-o-h-n S-w-a-n-s-o-n.

16 Q Mr. Swanson, my name is David Kotz. I'm the
17 Inspector General of the United States Securities and
18 Exchange Commission.

19 This is an investigation by the Office of Inspector
20 General, Case Number OIG-509.

21 I'm going to ask you certain questions. You
22 provide answers under oath. The court reporter will record
23 and later transcribe everything that is said. Please provide
24 verbal answers to the questions. A nod of the head or
25 another non-verbal response will not be picked up by the
26 court reporter.

1 we may refer your testimony as appropriate.

2 I have colleagues with me, Heidi Steiber and Chris
3 Wilson, and for the record, Eric has Michael Wolk and Timothy
4 Nagy representing him.

5 I've given all three individuals, Mr. Swanson, Mr.
6 Wolk and Mr. Nagy copies of Confidentiality Agreements, and I
7 would ask them if they could just write their names and then
8 sign it, just to ensure that any information or documents
9 that are provided to them today will be kept confidential.

10 MR. KOTZ: Okay. So why don't we put in the
11 record -- we can just put it all in as Exhibit 1, the three
12 Confidentiality Agreements that are signed and dated as of
13 today's date. Please mark that as Exhibit 1.

14 (SEC Exhibit No. 1 was marked for
15 identification.)

16 BY MR. KOTZ:

17 Q Okay. I'm going to start with a little bit of
18 background and then get into some specific issues. I have
19 lots of documents to show you. I know that the documents in
20 many cases are from many years ago, but, you know, do your
21 best in terms of what you recollect.

22 A Sure.

23 Q Could you describe your education, beginning with
24 college?

25 A Sure. I started off my college going to a
26 community college in Bloomington, Minneapolis, Normandale

1 Community College. After about a year and a half, I
2 transferred to the University of Minnesota, completed my
3 Bachelor's degree with a major in Economics in the Spring of
4 1990.

5 I then attended Hamlin University School of Law in
6 St. Paul, Minnesota, from 1990 to 1993, and graduated with a
7 JD thereafter with Honors. That's it.

8 Q And what was -- what was your first job after
9 graduating law school?

10 A Well, while I was in law school, I was a law clerk
11 for the Hennepin County Public Defender's Office in
12 Minneapolis, and I continued my employment there after I
13 graduated law school and while I was sitting for the Bar.

14 I supervised a team of law clerks over the course
15 of that period of time, working on criminal matters, and left
16 that job after passing the Bar some time in March of 1994.

17 Q Okay. And what did you do after that?

18 A I moved to Richmond, Virginia, and I took a job as
19 staff counsel in the Office of Staff Counsel for the United
20 States Board of Appeals, 4th Circuit.

21 Q Okay. What kind of things did you do there for the
22 Court of Appeals?

23 A It was predominantly writing opinions on pro se
24 appeals. So it was a lot of prisoners' rights issues and
25 some other matters, as well.

26 Q Okay. Anything related to securities?

1 A No, I don't think while I was in the -- in the
2 Staff Counsel's Office, I don't think I saw any securities.

3 Q Okay. How long did you work for the U.S. Court of
4 Appeals?

5 A Well, I worked in Richmond for the Staff Counsel's
6 Office from April of 1994 until August of 1995, at which
7 point I was hired by one of the judges on the Court to work
8 in his chambers as a staff law clerk or an elbow clerk, as
9 they're referred to.

10 Q Okay. And that was 1995 till?

11 A That would have been -- well, it would have started
12 right after Labor Day in 1995 and that was in Spartanburg,
13 South Carolina, until I came to the SEC in August of 1996.

14 Q Okay. You didn't have much in the way of
15 securities experience when you came to the SEC?

16 A No. I think I worked on one matter that involved
17 an insider trading case while I was working for Judge
18 Russell, but it was -- I had -- it's fair to say I had
19 little, very little experience in securities matters.

20 Q Okay. So in August 1996, what was your first
21 position at the SEC?

22 A I came in as a staff attorney, hired into OCIE, in
23 the SRO -- I think it was called the SRO2 Group at the time
24 within OC -- I'm sorry.

25 Q And how long were you a staff attorney for?

26 A I don't know the exact dates, but I believe some

1 time in 1998, I was promoted to branch chief.

2 Q Okay. Who was your supervisor as a staff attorney?

3 A [Personal Privacy] was my direct branch chief, I believe.

4 Q Okay. And going up?

5 A [Personal Privacy] was the -- well, no. At the time
6 [Personal Privacy], I believe, was a branch chief, as well. When I first
7 started [Personal Privacy] was the assistant director in that
8 group because I think I reported directly to [Personal Privacy] and then
9 [Personal Privacy] reported to [Personal Privacy].

10 Q Okay. What were your duties generally as a staff
11 attorney for the SRO2 Group?

12 A We would do oversight inspections of the SROs for
13 specific program areas. Sales practice, arbitration,
14 disciplinary programs, and listings programs are the four
15 that jump out at me, but there probably some others, as well.

16 It was primarily focused on the retail side of the
17 business, so the interaction between brokers selling
18 securities directly to customers and the regulatory programs
19 that the SROs would have to examine for compliance with the
20 laws. We were another layer of oversight on top of that
21 process by reviewing the regulatory programs at the SROs.

22 Q Okay. And how long were you a branch chief for?

23 A I think maybe two years.

24 Q Okay. So around 2000 you were promoted again?

25 A Yeah.

26 Q What was your promotion?

1 A There were two quick promotions. One was, I think,
2 early Summer of 2000, I was promoted within the same group to
3 the position of -- I don't know what they called it -- senior
4 counsel. It was a non-supervisory position but it was a
5 promotion in terms of pay and grade, and then very shortly
6 thereafter I was promoted to assistant director in what was
7 then called the SRO1 Group. It was a completely different
8 group.

9 Q When you say very shortly thereafter, you mean a
10 few months?

11 A I think a few months. Yeah. It may have been even
12 a few weeks. It was a short period of time.

13 Q And who was your supervisor when you were a branch
14 chief?

15 A When I was a branch chief, my supervisor was Personal Privacy

16 Personal Privacy I think by that time Personal Privacy had -- well, I don't know
17 if he left the agency. I think he had left the agency and
18 Helena had been promoted to assistant director.

19 Q Okay. And who was your supervisor as an assistant
20 director?

21 A John McCarthy.

22 Q Okay. What were your duties as a branch chief?

23 A You know, very similar to my duties as a staff
24 counsel, only now I was responsible for supervising three to
25 five other individuals who were performing the same tasks.

26 Q Okay. And how long did you serve as an assistant

1 director?

2 A Up until my departure from the SEC in August of
3 2006.

4 Q Were you reporting to John McCarthy during that
5 entire time period from 2000 to 2006?

6 A I was.

7 Q Okay. And who was your second-level supervisor at
8 that time? Who was above McCarthy?

9 A Above McCarthy, it was Lori Richards.

10 Q And so in that period, 2000 to 2006, Lori Richards
11 was your second-level supervisor the entire time period?

12 A Yes.

13 Q What about Mark Donohue, did you have any reporting
14 relationship with him?

15 A Well, when he was hired, he would have been hired
16 first as a staff attorney and I don't recall whether he was
17 in my -- well, no. Yes, I definitely would have because I
18 was an assistant director. So he would have reported
19 initially -- I would have been his second-level supervisor
20 and at some point I believe he became a branch chief and I
21 would have been his first-level supervisor.

22 Q How many people were under you when you were an
23 assistant director?

24 A It varied. Maybe anywhere from, on the low end,
25 10, eight or 10, up to maybe 15 to 18 and maybe more. I'm
26 not -- I'm not completely certain.

1 MR. WOLK: You're asking about Mark Donohue and
2 reporting responsibilities and you -- you went through him
3 being promoted to branch chief. Was there a period of time
4 where he didn't -- had no reporting responsibilities to you
5 after that?

6 THE WITNESS: Yeah. There was. I mean, there was
7 a point in time and I don't remember exactly when it was, but
8 there was a point in time where he was promoted to assistant
9 director.

10 BY MR. KOTZ:

11 Q Okay. Do you remember what year that was?

12 A I don't. I mean, I would say '04-05 time frame,
13 but I don't know for certain.

14 Q And that time period he was sort of in a lateral
15 relationship with you because you were the assistant
16 director?

17 A That's right, yeah.

18 Q Okay. What were your responsibilities as an
19 assistant director?

20 A Again, you know, within that particular SRO Group,
21 OC had undergone a little bit of a restructuring, so the SRO
22 Group, the name of it was changed to Market Oversight and it
23 was -- it was responsible for overseeing the regulatory
24 programs at the exchanges that were directly related to
25 trading activity.

26 Q Mm-hmm.

1 A So that primarily involved surveillance systems to
2 monitor trading on the exchanges, but it was also -- it was
3 also related to -- I'm sorry. This -- it -- it's the pieces
4 or the -- it's distracting me.

5 Q I'm sorry.

6 A It was also any -- any sort of trading activity,
7 monitoring market-making and proprietary trading, regardless
8 of whether it was at an exchange. So it could have been at a
9 proprietary trading firm, et. cetera.

10 So I was -- to directly answer your question, I was
11 supervising people who were conducting those reviews, exams,
12 and inquiries, whatever.

13 Q Okay. When did you first hear of Bernie Madoff or
14 Madoff Securities?

15 A Some time within the first few years that I was at
16 the SEC, I became aware generally of the firm Madoff
17 Securities --

18 Q Okay.

19 A -- and that it was a market-maker.

20 Q Mm-hmm. What was Bernie Madoff's reputation at
21 that time? Were you aware of any particular reputation it
22 had?

23 A I was not aware of any -- the only -- I was aware
24 of a reputation. I didn't know anything about Bernie Madoff.
25 I was aware of a reputation of the firm and that was just
26 that it was a large market-maker in the over-the-counter

1 space.

2 Q Okay. Was there any sense at that time that Bernie
3 Madoff himself was a powerful or important figure in the
4 industry?

5 A No. In fact, I -- at that time, I don't think I
6 knew the name Bernie Madoff. I just knew the name Madoff
7 Securities.

8 Q Okay. Okay. Yeah. I want to show you a document
9 and ask you about the first matter you may have been involved
10 in that related to Madoff Securities, and this is a
11 document -- there are three documents that are put together,
12 dated August 3, 2000, and there is a memo -- that's a memo
13 from Lori Richards and John McCarthy to Richard Walker and
14 Steven Cutler and then the second document is a letter, dated
15 December 20th, 2000, from Lori Richards to Shana Madoff
16 Skuller, and the third document is a memo from John McCarthy
17 to Arthur Richardson, dated March 8th, 2001.

18 MR. KOTZ: we're going to mark these documents as
19 Exhibit 2.

20 (SEC Exhibit No. 2 was marked for
21 identification.)

22 BY MR. KOTZ:

23 Q If you could take a look at these documents, you
24 see on the third document your name is listed as a contact
25 person, one of the contact people.

26 (The witness examined the document.)

1 THE WITNESS: Okay.

2 BY MR. KOTZ:

3 Q Okay. Do you -- does this refresh your
4 recollection that this was the first matter that was related
5 to Madoff Securities that you had any involvement with?

6 A Not really. I think there were -- there were
7 examinations that were done by the SRO2 Group that predated
8 my joining the group, and I do have a recollection of a
9 limited order display sweep that was conducted by that group
10 and of the fact that it was likely that Madoff would have
11 been involved in that, but I don't believe I had any direct
12 involvement in the examination itself, beyond perhaps editing
13 a report or a memorandum or something to the effect, but I
14 certainly never, you know, went onsite to the firm or I don't
15 recall ever having reviewed trading data or being responsible
16 for any of the conclusions about any of these examinations,
17 not just Madoff.

18 Q Okay. But at least from the third document, the
19 March 8th, 2001, you were a contact person.

20 A Well, I think at that point I was working for John,
21 so, you know, it would have made sense to have me as a
22 contact person, but I don't recall anything specific about
23 these examinations.

24 Q Okay. And if you can see on the second document,
25 it's directed to Ms. Shana Madoff Skuller, --

26 A Mm-hmm.

1 Q -- that's your current wife?

2 A That's correct.

3 Q Did you meet her at that time, do you think?

4 A No. I don't believe I've ever seen this letter
5 before. I'm not positive, but it doesn't -- doesn't look
6 familiar to me at all.

7 Q Okay. Our information tells us that you were at
8 least somewhat involved in consultations with Enforcement
9 regarding the resolution of this matter. Do you have any
10 recollection of that?

11 A The matter related specifically to Madoff?

12 Q Yeah.

13 A You know, I -- I don't have a recollection of it,
14 and I can't tell you for sure that I didn't, but it's
15 possible and it would have been not uncommon during this time
16 period when I first started working with John that I would
17 have been with him constantly in meetings and learning
18 because this is an area that I didn't know very well.

19 So I -- although I don't remember that happening,
20 it's not -- it's not beyond the realm of possibility by any
21 stretch.

22 Q Okay. We understand, I guess, from the information
23 we have that there was an enforcement action recommended
24 against Madoff in this case, but it wasn't brought. The
25 decision was made to send a deficiency letter instead.

26 A Recommendation made by OC to bring an enforcement

1 action?

2 Q Yes.

3 A Yeah. I -- I have no recollection of that.

4 Q Did that happen, though, from time to time where
5 there was a recommendation to bring an action and in the end
6 they brought a deficiency letter?

7 A Oh, yeah, yeah. I think -- you know, it wouldn't
8 have been uncommon for us to refer something to Enforcement
9 and action would not have been taken on it.

10 Q Okay, okay. And then there was a later Madoff
11 matter, a QQQ examination. Do you remember anything about
12 that?

13 A I have some recollection of that.

14 Q Okay. I'll show you some documents. Maybe that
15 will help.

16 MR. KOTZ: This document we're going to mark as
17 Exhibit 3, and this is an e-mail from Matthew Daugherty to
18 Tina Barry, dated 5/29/2003, 5:09:03 p.m., with an attached
19 memorandum, dated March 3rd, 2003, from John McCarthy, Eric
20 Swanson, Matt Daugherty, to Lori Richards, and an attached
21 letter, dated April 8th, 2003, unsigned, from Eric Swanson to
22 Peter Madoff.

23 (SEC Exhibit No. 3 was marked for
24 identification.)

25 (The witness examined the document.)

26 THE WITNESS: Okay.

1 BY MR. KOTZ:

2 Q Do you remember either drafting or being involved
3 in the drafting of this planning memo, dated March 3rd, 2003?

4 A I don't specifically recall it, but I'm sure I
5 would have been.

6 Q What about the letter to Peter Madoff, dated April
7 8th, 2003?

8 A Again, I don't specifically recall it, but it makes
9 sense that I would have been, and I believe this was part of
10 the sweep of more than one firm, but I don't know that for
11 certain.

12 Q Okay. Do you remember how this examination or
13 sweep was initiated, what led to it? Was there a tip or a
14 complaint?

15 A No. You know, I know there were a lot of issues
16 with the Qs back during this time period, and as I just
17 skimmed through the letter, --

18 MR. WOLK: Well, before you skimmed through the
19 letter, do you know as you're sitting?

20 THE WITNESS: No, I don't recall this.

21 BY MR. KOTZ:

22 Q If you could take a look at the third page of the
23 planning memo, and it says, third paragraph, "The staff is
24 concerned that market-makers and exchange specialists may not
25 be honoring their quoted market during a locked or crossed
26 market and may not be fulfilling fiduciary obligations to

1 obtain execution for customers' orders."

2 And then if you could also look on the first page
3 of that memo, it says, "The staff is concerned that when the
4 market is locked or crossed, market-makers and exchange
5 specialists may be handling customer orders in violation of
6 their fiduciary best execution obligations."

7 What does that mean exactly? What is the concern
8 there?

9 A Well, I think the issue is that -- and again, I
10 don't have a recollection, outside of looking at this right
11 now, but I do know generally what we would have been
12 concerned about here.

13 A lot of the exchanges and the firms that conducted
14 market-making would have auto execution guarantees that would
15 trade at the NBBL or perhaps at a price slightly improved
16 over the NBBL. Those auto-ex systems would tend to shut down
17 if a market was locked or crossed. So if the bid crossed the
18 ask, they wouldn't auto-ex because they wouldn't know exactly
19 what price to give it and so they would manually handle the
20 order for execution.

21 And I think what we were concerned about, and this
22 goes back to a time period where we were generally concerned,
23 and this is pre-Regulation NMS, we were generally concerned
24 about the frequency of locked and crossed markets and -- and
25 trades that would trade through a better price on an away
26 market.

1 The Qs was, if not the most actively-traded
2 security, one of the most actively-traded security. So
3 that's probably why we focused on the Qs and I think what we
4 were concerned about is, okay, there's -- it's not obvious
5 from the way the systems are programmed and what they would
6 generally guarantee to their customers how they would trade
7 during a locked and crossed market, so let's find out in fact
8 what they are doing because there are ways that someone who
9 is trading proprietarily against customer order flow could
10 gain the scenario when a locked and crossed market occurred
11 to do an arbitrage and profit which, you know, would not be
12 considered in my view giving best execution to a client.

13 So -- but I -- I'm going -- I'm not going off my
14 specific recollection of what we were doing here, but that
15 just makes sense to me, given the time frame and what we were
16 asking for.

17 Q Okay. But do you -- you do remember that you were
18 involved in the triple Q exams?

19 A Yeah. Mm-hmm.

20 Q Okay. And do you remember who else was on that
21 team?

22 A No, not beyond the name, you know, Matt Daugherty,
23 and I think Matt may have been a branch chief at that time.
24 So my guess is there was staff under him.

25 Q OCIE Staff Attorney [REDACTED] ?

26 A Yeah. OCIE Staff Attorney [REDACTED], sure.

1 Q Okay. And what would have been your role and your
2 position with respect to this?

3 A Just I -- I likely wouldn't have been involved in
4 the day to day review of any files related to this, just
5 getting updates on the status from -- probably from Matt or
6 maybe directly from OCIE Staff
Attorney if he was the staff attorney that
7 was working it.

8 Q Okay. Okay. During the triple Q exam, did you
9 have contact with anyone at Madoff Securities? Let me show
10 you a document.

11 MR. KOTZ: Okay. This is a document we're going to
12 mark as Exhibit 4, and this is an e-mail from S. Madoff to
13 Eric Swanson, dated 5/2/2003, 3:27:06 p.m.

14 (SEC Exhibit No. 4 was marked for
15 identification.)

16 THE WITNESS: I don't recall specifically having
17 contact, but it seems likely, based on this e-mail, that
18 there must have been something, a phone call or something,
19 with the firm.

20 BY MR. KOTZ:

21 Q Okay. Do you think this e-mail, Exhibit 4, might
22 have been the first contact you had with Shana Madoff?

23 A I'm reasonably certain, given the fact that I've
24 misspelled her first name, and I -- I -- I didn't recall
25 having had any contact with her prior to when I actually met
26 her later that year. So, yeah, this is probably it.

1 Q Okay. So this would have been just an e-mail
2 communication, not a meeting in person?

3 A Oh, no. I know I didn't have a meeting in person.
4 It's possible that this was preceded by a telephone call.
5 The contacts, if this all there is by e-mail, it seems to
6 suggest that there was some telephone contact.

7 Q Okay. Let me show you another document, and this
8 document is somewhat later. This is August 27, 2003.

9 MR. KOTZ: We'll mark this as Exhibit 5, and this
10 is an e-mail from OCIE Staff Attorney to Matt Daugherty. I'll give you
11 a second to read it.

12 (SEC Exhibit No. 5 was marked for
13 identification.)

14 (The witness examined the document.)

15 BY MR. KOTZ:

16 Q As you can see, it says, "We had a second call with
17 Madoff and we think we understand these trades a lot better."

18 Do you know if you were on either this second call
19 or the first call?"

20 A I don't know for certain. This -- this is nothing
21 that makes any sense to me. I mean, I don't -- I don't have
22 any recollection of discussion around these trades. So it
23 seems likely to me that I was not on this call and whether I
24 was on the first call, it's -- again, as I said with respect
25 to the prior document, it does seem like I was involved in an
26 earlier call.

1 Q Okay. Do you have any idea when they say, "We had
2 a second call with Madoff," which Madoff they were talking
3 about?

4 A I assume they're talking specifically about the
5 firm. That's kind of how we would use the lingo, but --

6 Q Okay.

7 A -- not -- not an individual. But at the same time,
8 it would have been likely that at least somebody on that call
9 would have been a Madoff.

10 Q Okay. But would Shana as the compliance counsel
11 have been on the call, do you think?

12 A It's possible.

13 Q Okay, okay. Okay. I show you -- show the next.
14 I'm going to show you another document.

15 MR. KOTZ: Mark this as Exhibit 6. This is an
16 August 18th, 2003, e-mail from Eric Swanson to John McCarthy.

17 (SEC Exhibit No. 6 was marked for
18 identification.)

19 (The witness examined the document.)

20 THE WITNESS: Okay.

21 BY MR. KOTZ:

22 Q Okay. Do you recall if this e-mail referenced this
23 breakfast meeting which was the first time that you met Shana
24 Madoff?

25 A Well, I don't -- I don't recall the e-mail, but it
26 absolutely does reference that breakfast meeting.

1 Q Okay. And that breakfast meeting would have been
2 when?

3 A I have no independent recollection of exactly when
4 it is, but I did have an opportunity to look at some of the
5 documents that I think Mike has sent over to you --

6 Q Okay.

7 A -- in the aftermath of when all this happened, and
8 I want to know when that was. So I believe it was in October
9 of 2003.

10 Q Okay. So you -- you had e-mail communication with
11 Shana Madoff prior to that and perhaps phone calls, but you
12 hadn't met her in person?

13 A That's correct.

14 Q Okay. Okay. I'm going to show you another
15 document.

16 MR. KOTZ: Mark this as Exhibit 7. This is an
17 e-mail from John McCarthy to Eric Swanson, dated 10/29/2003,
18 3:52 p.m.

19 (SEC Exhibit No. 7 was marked for
20 identification.)

21 THE WITNESS: No clue.

22 BY MR. KOTZ:

23 Q Okay. So you don't know what the reference was
24 "call Madoff re Fleet ASAP"? Do you know what "Fleet" might
25 be?

26 A I'm trying to think. Fleet. It seems like there

1 may have been a firm called Fleet, but I -- no.

2 Q Okay. And you don't know when it says, "Call
3 Madoff," does it refer to the firm, a particular person?

4 A I -- I -- I will -- I'm almost certain that any
5 time there's a reference to just Madoff, it means call the
6 firm, but I -- I don't know.

7 Q And you don't remember if you did call the firm
8 ASAP as John asked you to do?

9 A I don't know. I mean, it -- I usually did what,
10 you know, John told me to do. So -- but I -- I would have --
11 I wouldn't have just called based on this e-mail. I would
12 have had to have gotten more information from John.

13 Q Okay. So you probably would have known what he was
14 talking about?

15 A I may have back at the time, but it doesn't ring a
16 bell with me at all right now.

17 Q Do you know if he or anyone else on the triple Q
18 team ever spoke to Bernie Madoff in connection with that
19 examination?

20 A I don't know.

21 Q Okay.

22 A I certainly -- I don't believe I did.

23 Q Okay.

24 A I don't know if anybody else did.

25 Q Do you know if you or anybody else spoke to Peter
26 Madoff or any of the other folks in the Madoff family?

1 A Peter would have been more possible.

2 Q Do you have a recollection as to whether you spoke
3 to Peter Madoff at that time?

4 A No.

5 Q Okay. I'll show you another document.

6 MR. KOTZ: Mark this as Exhibit 8. This is an
7 e-mail from OCIE Staff Attorney, dated Monday, October 20th, 2003,
8 2:09 p.m., to Eric Swanson, with an attachment.

9 (SEC Exhibit No. 8 was marked for
10 identification.)

11 MR. KOTZ: If you could just take a minute to look
12 at this?

13 (The witness examined the document.)

14 THE WITNESS: Okay.

15 BY MR. KOTZ:

16 Q Okay. Does this look to you like some kind of
17 final document on at least the Madoff side of the QQQ exam?

18 A It does. It looks like a summary of the findings.

19 Q Okay. And you can see in the first page of the
20 OCIE Staff Attorney memo, he says, "I've come to the conclusion that
21 MADF," referring to Bernard L. Madoff Investment Securities,
22 LLC, "specifically has violated their duty of best execution
23 for a number of trades, although perhaps not with the
24 frequency that was expected." Do you see that?

25 A I do.

26 Q Okay. And does that -- does that seem to be the

1 conclusion of the -- at least the Madoff side of the QQQ
2 exam?

3 A Well, it seems to be the conclusion of the
4 individual who was responsible for doing the examination.
5 Whether or not there's some subsequent document or deficiency
6 letter that went out to the firm, I don't know.

7 Q Okay. Do you remember if, you know, this was just
8 OCIE Staff Attorney opinion and that was not necessarily accepted by
9 others or --

10 A I don't recall that, no.

11 Q Okay.

12 BY MS. STEIBER:

13 Q Would you have made the decision whether or not to
14 send the deficiency letter?

15 A It would -- well, I would have been involved in the
16 decision. I think, you know, John McCarthy would have been
17 involved in the decision. Tom, it looks like he was probably
18 branch chief to OCIE Staff Attorney at that time, would have been involved,
19 as well. So it wouldn't have just been me.

20 BY MR. KOTZ:

21 Q Where there was a finding that a company had
22 violated their duty of best execution for a number of trades,
23 would that -- would the result of that be a deficiency
24 letter?

25 A Probably, yeah.

26 Q Okay. Let me show you the next document.

1 MR. KOTZ: Mark this as Exhibit 9, and this is an
2 e-mail, dated 10/31/2003, 4:42 p.m., from OCIE Staff Attorney to
3 Eric Swanson.

4 (SEC Exhibit No. 9 was marked for
5 identification.)

6 (The witness examined the document.)

7 THE WITNESS: Okay.

8 BY MR. KOTZ:

9 Q Okay. You can see there's communication back and
10 forth between OCIE Staff Attorney and you. "I was wondering if you
11 had a chance to look at the memo I wrote on Madoff on the QQQ
12 project," and he says, "Should I look again at Madoff
13 concentrating on best X?" and you said, "I assume what you're
14 asking is whether to look at Madoff's trades against the
15 quotes? The answer is yes."

16 What -- what does he -- what does he mean exactly
17 when he says, "Should I look again at Madoff, concentrating
18 on best X?" Do you know?

19 A Perhaps without going back to the prior exhibit, he
20 maybe was not looking at the Madoff trading against the
21 quotes that were actually in the -- actually being
22 disseminated at the time and so I think what he's suggesting
23 is -- and I don't -- I don't remember this dialogue, but I
24 think what he's suggesting is, okay, I looked and I found
25 situations where there appear to be executions that Madoff
26 benefitted from that a client maybe should and could have

1 gotten, but I didn't compare times of sales -- times of sales
2 against what the quotes were in the market at the time and so
3 he's asking me should I look at that and I'm saying yes, you
4 should look at that.

5 Q So this was after the October 20th, 2003, e-mail to
6 you that's attached to the September 12th, 2003, memo.

7 Does -- does it appear that -- that [REDACTED] was
8 looking to expand on the examination somewhat?

9 A It does.

10 Q Okay. Do you know if there was an expansion of the
11 examination that was done?

12 A I don't know.

13 Q Okay. I'll show you another document.

14 MR. KOTZ: This we're going to mark as Exhibit 10.

15 This is a memo from [REDACTED] OCIE Staff Attorney to Eric Swanson, dated November
16 10th, 2003.

17 (SEC Exhibit No. 10 was marked for
18 identification.)

19 (The witness examined the document.)

20 THE WITNESS: This appears to be an update to the
21 prior memo.

22 BY MR. KOTZ:

23 Q Okay. So in the top, "BE-Final," do you see that
24 on the first page? Is that your handwriting, by any chance?

25 A No, I don't think so.

26 Q Okay. Do you know what that means, "BE-Final?"

1 A Best Execution-Final.

2 Q Okay.

3 A But it's just a final draft of the memo, maybe.
4 I'm not sure.

5 Q If you could see on the -- if you look on the third
6 page of the document, at the Conclusion, it says, "Based on
7 the activity outlined in this memo, the staff believes
8 there's a best execution problem with MADF. The staff
9 further believes that MADF and its broker customers have thus
10 far failed to adequately monitor this behavior. Based on
11 these conclusions, the staff recommends that a deficiency
12 letter be sent outlining the problem areas as well as
13 recommending that MADF execute customer orders at ECNs when
14 it is able to do so rather than proprietarily taking that
15 price while executing the customer at a worse ITS price."

16 It seems as though OCIE Staff Attorney is making a
17 recommendation to you to send a deficiency letter, is that
18 right?

19 A That's what it appears to be.

20 Q Okay. Do you remember what your opinion on that
21 was in terms of whether you agreed with his recommendation to
22 send a deficiency letter?

23 A I don't.

24 Q Do you know if a deficiency letter was ever sent?

25 A I don't.

26 Q We have not found any evidence that a deficiency

1 letter was sent and one person testified, and I'll tell you
2 what this person said and you tell me what your comment on it
3 is, at the time there were a lot of projects that would sort
4 of die off, you'll do some initial review and go up the
5 chain, other issues would come up, old projects kind of
6 languished, it was a pretty common occurrence, I don't know
7 if we ever heard back.

8 I guess what we're trying to come up with some
9 understanding of why, if there was a recommendation made for
10 a deficiency letter, why it wasn't sent out, and this
11 individual said it was, you know, not any particular decision
12 not to send it, it just wasn't -- there was a lot of matters
13 going on and it might have gotten lost in the shuffle.

14 A Well, I -- yeah. I definitely -- I agree with
15 that -- with that testimony, and I don't know whether a
16 deficiency letter was sent on this, and, frankly, I -- I can
17 tell you that since I have -- I don't recall even this
18 document. It -- it's likely to me that we were inundated
19 with a lot of projects. This is over the same period of time
20 when we were pushing hard on the exchange trading ahead cases
21 and so I was very distracted by that at the time.

22 So I don't know, you know, the extent to which this
23 died on the vine, as it were, but there were situations where
24 we opened inquiries and, you know, to my knowledge, they may
25 never have gotten completely resolved because we were busy
26 with other more high-priority matters and this -- it's very

1 possible that this is one of those situations.

2 Q Okay. Do you know if you would have spoken to John
3 McCarthy or Lori Richards about whether to send out a
4 deficiency letter?

5 A I don't know that I would have spoken to Lori. I
6 assume I would have had conversations with John. John and I
7 spoke all day long every day.

8 Q Okay, okay. I'm going to move on to another matter
9 and show you another document.

10 MR. WOLK: Just to be clear, you don't have an
11 actual recollection that that's what occurred?

12 THE WITNESS: I'm sorry?

13 MR. WOLK: You don't have an actual recollection
14 that that's what occurred?

15 THE WITNESS: No, I don't.

16 MR. WOLK: Okay.

17 MR. KOTZ: Okay. I'm going to show you this next
18 document we're going to mark as Exhibit 11. This is an
19 e-mail from [REDACTED], dated Wednesday, May 21, 2003,
20 at 5:47 p.m., and it's a two-page e-mail with a number of
21 attachments.

22 (SEC Exhibit No. 11 was marked for
23 identification.)

24 (The witness examined the document.)

25 THE WITNESS: I've never seen this document.

26 BY MR. KOTZ:

1 Q Okay. Were you aware at any time of a complaint
2 that came in from -- that -- that made these kinds of
3 allegations in the -- in the two-page e-mail of Exhibit 11?

4 A No, I was never aware of a complaint.

5 Q Okay. Okay. I would just ask you a couple
6 questions about the document, even though you weren't aware
7 of it, just kind of generally. Okay?

8 If you look on -- kind of halfway down, it says,
9 "According to BMS," I think that refers to Bernie Madoff
10 Securities, "the options are traded with a number of traders
11 and crossed on the CBOE. With an eight to 10 billion size,
12 he must see the volume but, unfortunately, you don't. We
13 actually checked with some of the largest brokers, UBS,
14 Merrill, et. cetera, which told us they never traded with
15 them OEX options."

16 Do you know what that was referring to in terms of
17 what was being said there, what was the point?

18 A I do now, but I only understand it now. So it's
19 the newspaper articles that I've read since all this
20 happened.

21 Q Okay. But divorcing the newspaper articles for a
22 second, just what is your understanding of what is meant by
23 that paragraph or those sentences? What -- what are they
24 getting at?

25 A I think what they're saying --

26 MR. WOLK: Hold on. There's -- he's never seen the

1 document before and doesn't know the writers. How would he
2 know what they meant?

3 MR. KOTZ: Well, I'm just asking him to tell me if
4 he understands what was being said.

5 MR. WOLK: Okay. That's fine.

6 THE WITNESS: Okay. What I understand from this is
7 that the firm, Bernard Madoff Securities, has told this
8 individual that they're executing a particular strategy
9 involving options and that they're trading or crossing the
10 option, effectively trading the option on the CBOE and that
11 given the size of the transactions, you would see the volume
12 on the tape or in OCC information, but it's saying here,
13 unfortunately, you don't.

14 And it's further saying that they checked, this
15 person checked with some of the largest brokers, these are
16 probably the brokers who would be trading, taking the other
17 side of these trades on the CBOE, and they said they never
18 traded the OEX options with them, with the firm, I would
19 guess.

20 And so that the question is, the last sentence of
21 that bullet, the question is, is Bernard Madoff Securities
22 really implementing the full strategy that they're saying
23 that they're implementing.

24 BY MR. KOTZ:

25 Q So would that indicate to you that what they're
26 saying is maybe Bernard Madoff is lying about whether he's

1 doing option trading at all?

2 A Well, I think what it would indicate to me is that
3 there may be not being -- there may be not trading as much in
4 options as they're saying they're doing and so yeah.

5 Q Then above a little bit in this e-mail, it says,
6 "The firm does not charge any management or performance fees
7 to these accounts but rather brokerage commissions. We
8 estimate the amount of money managed under this strategy by
9 BMS somewhere between USD eight to 10 billion."

10 What would be the relevance of -- of the fact that
11 the firm doesn't charge management or performance fees?

12 A The typical -- from what I understand of how hedge
13 funds typically operate, they charge, you know, I think it's
14 called 2 and 20, which is two percent on the assets under
15 management and then 20 percent of profits and so this is
16 saying that they don't do that, but instead they execute
17 trades and make money off of charging brokerage commissions.

18 Q So would that be surprising that they wouldn't
19 charge management and performance fees?

20 A I think if somebody understood the hedge fund
21 world, that would probably be a little surprising, yeah.

22 Q Okay. Okay. And then, if you go further down, it
23 has a reference to "accounts are typically in cash at
24 month-end." Do you know what the relevance of that would be,
25 that "accounts are typically in cash at month-end?"

26 A Well, again, I -- I only understand the relevance

1 now from having read articles in the press since this
2 happened. I didn't understand the relevance of that. If you
3 showed me this back on December 10th, I would not have
4 understood the relevance of that.

5 Q Okay.

6 MR. WOLK: And again, you've never seen that
7 document before, correct?

8 THE WITNESS: That's correct.

9 BY MR. KOTZ:

10 Q Okay. Then it also says there, "No third party
11 brokers involved in the process. The auditor of the firm is
12 a related party to the principal."

13 Divorcing yourself from the newspaper articles but,
14 you know, as a regulator in OC, --

15 A Mm-hmm.

16 Q -- what would you understand the relevance of to
17 be?

18 A That would have been a red flag.

19 Q Yeah. How come?

20 A Well, because I think it -- it would signal some
21 level of independence or -- I'm sorry -- some level of a lack
22 of independence with respect to the auditor.

23 Q Okay. And then later on, it says, "BMS never had
24 to face redemption. In fact, given the fact that the
25 different feeders are closed for new investments, there's
26 always replacement capital, 1:5 ratio, according to some

1 . people."

2 Again, divorcing yourself from the newspaper
3 articles, just as an OC examiner, head of examiners, what
4 does that mean?

5 A Well, I want to just back up a second.

6 Q Sure.

7 A You know, my responsibility was for trading and
8 market-making. I didn't -- I didn't know anything, very
9 little anyway, about hedge funds and mutual funds and how
10 they operated.

11 Q Okay.

12 A So this specific -- this would have not meant
13 anything to me, actually.

14 Q Okay.

15 A I'm not sure I completely understand it sitting
16 here today.

17 Q Okay. And then you could see that there are
18 attachments to this e-mail. One's on Performance Statistics
19 and then there's an article from Hedge Mar. Do you see that?

20 A I do.

21 Q Have you ever seen this article before?

22 A I have not.

23 Q Okay.

24 A Not to my knowledge.

25 Q Do you know the publication at all?

26 A No, I do not.

1 Q Okay, okay. If you could just take a quick look
2 through the article?

3 (The witness examined the document.)

4 MR. WOLK: As he does that, I just want to ask, you
5 know, kind of where we're going with this. He's testified he
6 didn't see the memo. He hasn't seen the article. I know
7 he's not here as an expert to express his opinions. So we
8 want to be cooperative.

9 I'm just trying to figure out where you're going
10 with this in terms of questioning him about these documents
11 that he hasn't seen.

12 MR. KOTZ: Well, I think it'll be clear soon. I
13 don't have a tremendous amount more but I do want to ask him
14 some more questions about this.

15 THE WITNESS: Okay.

16 BY MR. KOTZ:

17 Q If you'll look at the second page of the Hedge Mar
18 article, 16 at the bottom, it says, "Skeptics who express a
19 mixture of amazement, fascination and curiosity about the
20 program wonder first about the relative complete lack of
21 volatility in the reported monthly returns."

22 Again, going back in as an OC examiner leading
23 examiners, would that raise any concerns with you, the
24 complete lack of volatility?

25 MR. WOLK: And also, as assistant director, as he
26 explained, he focused on trading and market-making.

1 THE WITNESS: You know, I was not -- I was not an
2 investment expert and I'm not today.

3 MR. KOTZ: Okay.

4 THE WITNESS: I understand how securities are
5 traded and I understand how people can, you know, violate the
6 law in terms of individual securities transactions, but in
7 terms of investment strategies and the type of returns that
8 they might generate, that's not my background.

9 BY MR. KOTZ:

10 Q So were there people in OC at that time who did
11 have that expertise that you could have shown this
12 information to and asked about what it means?

13 A Well, yeah, I think the -- the Investment Advisor,
14 Investment Company Examination Group within OCIE would have
15 been the -- and that's -- I see the cover e-mail, the name is
16 Kelly. That's the team she was in under Gene Goelke. I
17 think that would have been their area of expertise, certainly
18 much more than the market oversight.

19 Q Okay. So if a complaint like this had come in in
20 that period of time, what -- what would -- what would you
21 have suggested happen as a result of the complaint?

22 A If it came to me?

23 Q Yeah.

24 A You know, I probably would have handed it up to
25 John and there would have been a conversation with Lori about
26 who was going to handle it and, you know, it wouldn't

1 surprise me if there was -- because it does involve a trading
2 firm, that there would have been some joint effort between
3 the two disciplines within OC to -- to review it.

4 Q Okay. And would there have been a capacity within
5 OC to look at some of the issues that are raised by [REDACTED]
6 [REDACTED] in the attachments about whether they actually
7 implement -- about whether Madoff was actually implementing
8 the full strategy?

9 A It's hard for me to say. I can -- I -- because I
10 -- I don't know, you know, what the capacity in Gene
11 Goelke's group was. I don't know the science of it. You
12 know, I can tell you that they were probably not unlike our
13 group which, you know, we always had too much to do and it
14 was always a matter of triaging and prioritizations.

15 So if it was deemed to be a high priority, I'm
16 guessing that they would have looked at it.

17 MR. WOLK: But again -- wait. Now, you have no
18 specific recollection of this document?

19 THE WITNESS: I don't have any recollection.

20 MR. WOLK: And like you said, this is a guess.

21 This is the concern I'm having. We're asking him questions
22 as if he's an expert. He's here as a fact witness. He's
23 testified that he hasn't seen the document. I just don't see
24 where we're going on this.

25 MR. KOTZ: All right. Well, we'll -- we can show
26 you e-mails that seem to indicate the opposite.

1 MR. WOLK: That -- well, let's get there.

2 MR. KOTZ: All right. Well, don't push me, please.
3 You want to cooperate but don't push me.

4 MR. WOLK: I do, and I'm not trying be
5 obstructionist.

6 MR. KOTZ: Don't push me. I'm feeling like you're
7 pushing and don't push me. Okay?

8 Can you show me the e-mail that shows you sent this
9 article?

10 MS. STEIBER: Do you want to mark it?

11 MR. KOTZ: Yeah. Mark as Exhibit 12. This is an
12 e-mail, dated 5/6/2005, 5:06 p.m.

13 (SEC Exhibit No. 12 was marked for
14 identification.)

15 (The witness examined the document.)

16 THE WITNESS: Okay.

17 BY MR. KOTZ:

18 Q Does this refresh your recollection that you may
19 have actually received a copy of this article and that this
20 article might have been part of an examination you were
21 working on?

22 A No. I -- what it does refresh my recollection on
23 is that we were doing an examination, but my recollection is
24 it was based off of a Barron's article.

25 Q Okay.

26 A Not this particular article, and I'm not -- I'm

1 still not sure I ever read this particular article. It was
2 obviously an attachment. It appears to have been an
3 attachment to this e-mail, but I read the e-mail in my
4 Blackberry and responded to it. So I don't know that I would
5 have read the attachment.

6 Q Okay. Let me show you the other article then.

7 MR. KOTZ: We're going to mark this as Exhibit 13.
8 This is an e-mail from John McCarthy to you, dated Thursday,
9 December 11th, 2003, 1:53 p.m.

10 (SEC Exhibit No. 13 was marked for
11 identification.)

12 THE WITNESS: This is the article I remember.

13 BY MR. KOTZ:

14 Q Okay. So what do you remember about this article?

15 A I remember that this article raised a question
16 about whether or not the Madoff firm was using information
17 gleaned off of its Market-Making Desk to trade ahead or
18 front-run customer orders on behalf of some hedge fund
19 activity that it was engaged in. That's what I recall.

20 Q And this -- this article, Exhibit 13, precipitated
21 an examination?

22 A It did precipitate a letter being sent to the firm,
23 yes. It precipitated an examination.

24 Q Okay. And you're sure that it wasn't the complaint
25 that [REDACTED] sent in May 21, 2003, to Mavis Kelly
26 that actually precipitated the examination?

1 A Well, I was not -- I'm sure I was not aware of that
2 complaint, but whether or not, you know, Lori or John,
3 whether that was the reason why we ultimately did this, I
4 don't know, but I know that I was asked to look at this and
5 to initiate some type of review.

6 BY MS. STEIBER:

7 Q Do you see that that article references the Mar
8 Hedge article that had preceded it by a few months?

9 A I do see that.

10 BY MR. KOTZ:

11 Q But you don't think that even though you were going
12 to conduct an exam, based on this Barron's article, that you
13 would have looked at the other article that came out that's
14 referenced in the Barron's article?

15 A It's possible I did, but I just don't recall it,
16 and, you know, I can tell you that the idea of front-running
17 seemed very plausible, based on information that I knew in
18 the past, plus it was within my -- much more in my rubric of
19 what I understood about the securities world, and it seemed
20 very plausible, given what I knew about some activity that
21 appeared to have occurred at Knight Securities earlier where
22 they -- and there was a big article in the Wall Street
23 Journal about it maybe a year -- well, a couple of years
24 before this.

25 So it made sense to me that they may have good
26 access to information about retail order flow and

1 front-running.

2 Q Okay. Now, the article, the Barron's article, was
3 dated May 7, 2001.

4 A Right.

5 Q But the examination as a result of the article
6 didn't occur till several years later?

7 A Yeah. And I don't know exactly when it was
8 initiated. It makes sense to me that it was December of '03,
9 but, frankly, reading press articles, it sounded like '04, so
10 I wasn't sure, but '03 sounds more likely.

11 But yeah, I can't explain that. I don't -- I
12 hadn't seen the Barron's article prior to it being brought to
13 my attention at this time in 2003, to the best of my
14 recollection.

15 Q Okay. Now, would you consider Barron's to be a
16 credible source?

17 A Credible? You know, I don't know that I -- I -- I
18 wouldn't view them as incredible, but I don't think I would
19 take what they wrote as gospel.

20 BY MS. STEIBER:

21 Q How about reputable?

22 A Yeah.

23 Q Their reputation?

24 A Yeah.

25 BY MR. KOTZ:

26 Q Okay. Okay. So looking at this Barron's article

1 that you did see, it says, "Everyone the Street knows that
2 Bernie Madoff also manages more than six billion for wealthy
3 individuals. That's enough to rank Madoff's operations" --
4 top of the second page -- "among the world's five largest
5 hedge funds, according to a May 2001 report in Mar Hedge
6 trade publication. What's more, these private accounts have
7 produced compound average annual returns of 15 percent for
8 more than a decade. Remarkably, some of the larger billion
9 dollar Madoff-run funds have never had a down year."

10 So in -- you looked at this article. The decision
11 was made to have an exam.

12 A Mm-hmm.

13 Q . What was -- was there a concern about this
14 statement that "some of the larger billion dollar Madoff-run
15 funds had never a down year?"

16 A I don't remember a particular concern about that,
17 except in the context of perhaps their front-running their
18 retail customer orders.

19 Q Okay. And if you'd go to the next page of this
20 document, it says, "Adding further mystery to Madoff's
21 motives is the fact that he charges no fees for his money
22 management services. Indeed, while fund marketers like
23 Fairfield Greenwich offer a one percent from investors, none
24 of that goes back to Madoff nor does he charge a fee on money
25 he manages in private accounts. Why not? We're perfectly
26 happy to just turn commissions on the trade, he says."

1 What was the relevance of this in terms of the exam
2 you conducted based on this article?

3 A Again, I don't think that that would have hit me as
4 a particular red flag. I was focused predominantly on
5 whether or not there was front-running going on.

6 Q Okay. How come you were focused predominantly on
7 whether there was front-running?

8 A It just was a theory that seemed to make sense to
9 me, you know. I -- I -- my theory was, and I think I've
10 since learned or come to understand, that it's not a very
11 good theory, but what I understood about Madoff is that they
12 had cultivated a very successful market-making operation by
13 developing relationships around the country with mid-sized
14 regional broker-dealers, and I thought, you know, if there's
15 a move in, you know, a particular security, you know, where
16 all of a sudden they get an influx from a nationwide retail
17 constituency or customer base, that would be very valuable
18 information to have and they would see it in there real-time
19 and so -- and I was thinking back to a Wall Street Journal
20 article that had been written about Ken Pasternak from Knight
21 Securities. This is maybe 2000. I can't remember exactly,
22 although I remember it came out on a day that I was sitting
23 in SEC space because I remember sitting there reading it and
24 he was essentially bragging about the fact that at the open,
25 he had -- before the market opened, he had such a huge influx
26 of information about where the market was going to go from

1 the retail customer order flow that he was getting, that he
2 was able to position the firm proprietarily in the preopen to
3 trade profitably against that order flow.

4 So although this was not -- I wasn't thinking that
5 they were doing this -- this sort of preopen strategy, it --
6 it did seem likely to me that having access to that type of
7 retail order flow could be very valuable and that you could
8 profitably trade ahead of it and make money.

9 Q So was it your decision to focus the examination on
10 front-running based on that theory?

11 A No. It would have been a decision that John and I
12 made in conjunction with each other and having a conversation
13 about it.

14 Q Okay. And you were starting or looking to start an
15 examination based on the article, and our records show that
16 in May 2003, a complaint had come in that I showed you from
17 [REDACTED].

18 Would that complaint have been useful to you in
19 determining the scope of your examination?

20 A I think if I had gotten more information from
21 people in the Investment Advisor, Investment Company Exam
22 Group, it probably would have been useful, but I still think,
23 based on the information in that article, I would have been
24 thinking front-running.

25 Q But do you think if you had seen the [REDACTED]
26 [REDACTED] complaint of May 21, 2003, you would have focused

1 on front-running and on other possibilities?

2 A I can't say for certain. I can say that the
3 auditor issue, I probably would have wanted to look into a
4 little bit.

5 Q What about whether Madoff was implementing the full
6 strategy and the options issue?

7 A You know, if he was front-running trades, I think
8 that that would have -- that would have been a reason why he
9 wasn't implementing the full strategy. He was saying he was
10 implementing because he wouldn't have needed to be. He was
11 doing something completely different. So I think the
12 front-running would have gotten at that issue potentially.

13 Q Okay. But was -- is it a concern that while you
14 were going forward, opening an examination, you hadn't been
15 privy to a complaint that was given several months earlier on
16 the same subject?

17 A Yeah. I mean, it -- it -- I think that is a
18 concern, yes.

19 Q Okay. Okay. Let's talk about the exam a little
20 bit.

21 A Okay.

22 MR. KOTZ: This is Exhibit 14. This is an e-mail
23 from Jacqueline Wood to Genevieve Walker, dated
24 12/16/2003, 3:25 p.m., and you can see there's several
25 attachments to this. Mark this as Exhibit 14.

26 (SEC Exhibit No. 14 was marked for

1 identification.)

2 (The witness examined the document.)

3 THE WITNESS: Okay.

4 BY MR. KOTZ:

5 Q Okay. Do you recognize these documents?

6 A I don't recognize them, but -- I don't recognize
7 them specifically, but it seems to be the sort of thing we
8 would have done in the normal course of planning for an
9 examination.

10 Q Would you have been involved in the preparing of
11 these documents?

12 A Certainly in the review of them. It appears --
13 yeah. I would have been involved in okaying, you know, the
14 initial drafts for preparation to give to Lori, as with John,
15 I would assume.

16 Q Okay. And if you can see in -- in the Background
17 Section, there are various versions of the same memo, but in
18 the Background Section of the second and third versions, it
19 says, "The staff recently received information from an
20 outside source alleging that Bernard Madoff, through Bernard
21 L. Madoff Securities, LLC, one of the leading market-makers
22 of NASDAQ Securities, was assisting affiliated hedge fund and
23 investment advisor firms in committing front-running
24 violations."

25 So what was that outside source?

26 A The only outside source that I'm aware of is the

1 Barron's article itself.

2 Q Okay.

3 A I'm not aware of some other source.

4 Q Would that have been referred to as an outside
5 source, an article?

6 A It's possible, yeah. Yeah. It's possible, and,
7 frankly, there may have been another outside source, but I'm
8 not aware of it.

9 Q Okay. And then if you could see on the next
10 version of that planning memo, it says, "According to the
11 information received."

12 Do you still think that "recently received
13 information from an outside source," and it says, "According
14 to the information received," that would have been referring
15 to a Barron's article?

16 A Well, I don't know for certain. What I do know for
17 certain is that I did not get any information from an outside
18 source individually. So --

19 Q Okay.

20 A -- if somebody else did, then that would have been,
21 you know, I would assume, either John or Lori. That was not
22 shared with me.

23 Q Okay. And you never heard the name [REDACTED]
24 [REDACTED]?

25 A No.

26 Q Okay.

1 A Not to my knowledge, no.

2 Q Okay. Okay. If you would look at this document,
3 it --

4 MR. WOLK: Is this the last one?

5 MS. STEIBER: The last draft, yeah.

6 MR. KOTZ: Yeah.

7 BY MR. KOTZ:

8 Q Under Course of Action, it says, "The staff intends
9 to send a letter to NASD requesting execution data from
10 Madoff Securities for the time period of January 1, 2001,
11 through December 31, 2002."

12 Do you know why would the staff do that?

13 A Yeah. I think the NASD was oftentimes the best
14 source to get accurate, timely sales data. So what we would
15 have been doing is getting information about the
16 market-making trades that were reported to NASD from Madoff
17 during that time period.

18 Q And that would be consistent with looking into
19 front-running?

20 A Yes.

21 Q Okay. But if you were looking into the other
22 allegations that [REDACTED] raised about no options
23 trading, trading not seen in the market, --

24 A Mm-hmm.

25 Q -- would that request get to that issue?

26 A No.

1 Q Okay. Do you know if any trading data from the
2 NASD was ever sought?

3 A I don't know. I assume so, but I'm not certain.

4 Q Would it surprise you to learn that we have no
5 records of any letter ever going out to NASD requesting
6 execution data?

7 A It's possible that we got the information directly
8 from Madoff Securities.

9 Q Okay.

10 A I don't know for certain -- for sure. We would
11 not -- we would not have had to go to the NASD to get that
12 information.

13 Q Would there be any concerns about getting the
14 information directly from the entity that you're examining
15 rather than going to the NASD?

16 A As a general proposition, no. We, you know,
17 routinely requested trading information from registrants
18 directly.

19 Q Okay. Okay. I'm going to show you another
20 document.

21 You don't -- I'm sorry. You don't know who made
22 the decision to not send a letter to the NASD?

23 A No.

24 Q And you're not aware of, you know, what happened
25 there in terms of that decision?

26 A No. I mean, if you have a copy of the letter that

1 went to the firm, that may shed some light on it.

2 Q Okay, okay.

3 MR. WOLK: Do you actually have a recollection of
4 whether or not a letter was sent to the NASD?

5 THE WITNESS: I do not.

6 MR. KOTZ: Okay.

7 MS. STEIBER: But he also said he wouldn't be
8 surprised if the letter never went to the NASD.

9 THE WITNESS: Well, I think what I'm saying is that
10 the NASD would have been one source for getting the
11 information, but getting the information from the firm
12 directly would have been another -- another way of doing it.

13 MR. KOTZ: Okay. Let me show you another document.
14 This is dated 12/18/2003, 6:31 p.m. Mark this as Exhibit 15.
15 This is an e-mail from Lori Richards to John McCarthy with a
16 cc to you and then lower down there's an e-mail from John
17 McCarthy to Lori Richards, dated December 18th, 2003, 6:13
18 p.m.

19 (SEC Exhibit No. 15 was marked for
20 identification.)

21 THE WITNESS: I apologize. I just don't -- I just
22 don't recall this, but I -- you know, I look at it now and
23 obviously I must have been aware of it.

24 BY MR. KOTZ:

25 Q It does seem as this references the [REDACTED]
26 complaint to Mavis Kelly?

1 A Absolutely does, yes.

2 Q Okay. So is it possible that the complaint came in
3 but for whatever reason, you weren't made aware of it or you
4 didn't focus on it?

5 A It's possible, yes.

6 Q Okay.

7 MR. KOTZ: Let me show you another document, dated
8 12/18/2003, from Lori Richards to John McCarthy, 4:25:43 p.m.
9 We're going to mark this Exhibit 16.

10 (SEC Exhibit No. 16 was marked for
11 identification.)

12 BY MR. KOTZ:

13 Q Do you see it references "can we try to put a call
14 in to them today?" This is referring back to the previous
15 e-mail that's Exhibit 15.

16 A Okay.

17 Q Our records show that there were -- was a call put
18 in to [REDACTED] about the complaint that he -- okay,
19 okay.

20 Do -- do you -- do you remember anything about any
21 conversation, any reports of any conversation back with
22 somebody who provided a tip or complaint?

23 A I do not.

24 Q Okay. What about a call that was put in to Bernard
25 Madoff's operations? Do you remember that?

26 A I recall having a telephone conversation directly

1 with Bernard Madoff, but my recollection is that it was in
2 response to a letter that we sent to him. It could have been
3 on the front end of that letter, but it was --

4 Q Okay. Who else was on that call?

5 A From the SEC, it could have just been me. I'm not
6 sure if anybody else was with me. If somebody else with me,
7 it would have likely have been Mark Donohue and on their
8 side, I'm not sure if anybody else was on the call.

9 Q Okay. What happened in that call?

10 A Well, again, my recollection is a little fuzzy, but
11 the substance of the call, it was either we had sent the
12 letter or right before sending the letter, and the substance
13 of the call was that we wanted to take a look at how they
14 were handling, you know, the separation between whatever this
15 other, you know, hedge fund business was and the -- the
16 retail customer orders, and he said that there was a Chinese
17 wall in place, he being Bernie Madoff, and that, you know,
18 there wasn't anything there and that, you know, I think he
19 also -- I think he also explained that he himself was not
20 actually a hedge fund, that he had some black box execution
21 strategy that he utilized for hedge funds that wanted to make
22 use of it and HR sent a commission for executing trades
23 through it, and, you know, I told him, you know, this
24 shouldn't be a problem for you, send us the data that we're
25 looking for.

26 Q Getting back to the -- prior to the document

1 request going out, --

2 MR. KOTZ: Let me show you another document, dated
3 12/19/2003, 2:13 p.m., from Mark Donohue to Matt Daugherty.
4 Mark this as Exhibit 17.

5 (SEC Exhibit No. 17 was marked for
6 identification.)

7 BY MR. KOTZ:

8 Q You can see this references "Lori and John talked
9 with Madoff last night. I'll explain over that beer."

10 A Mm-hmm. Okay.

11 Q And -- and we found later several references to the
12 conversation that Lori and John had with Madoff. Do you
13 recall anything about a conversation that occurred at this
14 time period, this would be before the document requests went
15 out, where Lori and John talked to Madoff? It seemed to have
16 been kind of a critical conversation that was referenced
17 several times later in terms of decisions that were made.

18 A No, I don't recall. In fact, you know, I recall a
19 conversation -- the conversation I mentioned that I had with
20 Madoff and then I recall a subsequent conversation with Lori
21 Richards and Madoff, but I don't recall -- you know,
22 basically tracked exactly the conversation I just told you
23 about.

24 Q The second call was after the first call?

25 A Yeah.

26 Q And who was on that call?

1 A Lori and I and Bernie Madoff and I'm not sure
2 whether anybody else from the firm.

3 Q John McCarthy wasn't on that call?

4 A I don't think so.

5 Q Okay. And so you don't know -- Matt Daugherty is
6 talking in this e-mail to Mark Donohue about Madoff. He
7 says, "I need a drink now." And then Mark Donohue says,
8 "Lori and John talked to Madoff last night. I'll explain
9 over that beer." You don't have any idea what the
10 explanation was that was given based on the conversation with
11 Madoff?

12 A No.

13 Q Okay, okay.

14 MR. KOTZ: I'm going to show you another document.
15 These are drafts of document requests, and this we're going
16 to mark as Exhibit 18. An e-mail from Jacqueline Wood to
17 Eric Swanson, Mark Donohue, dated 12/19/2003, 3:13 p.m., with
18 attachments.

19 (SEC Exhibit No. 18 was marked for
20 identification.)

21 MS. STEIBER: There should be eight drafts.

22 (The witness examined the document.)

23 THE WITNESS: Okay.

24 BY MR. KOTZ:

25 Q Okay. Do you remember having some involvement in
26 these draft document requests to Bernard Madoff Securities?

1 A I don't have a specific recollection of it, but I'm
2 sure I did.

3 Q Your role, you think, would have been more in the
4 editing rather than the drafting?

5 A Most likely, yeah.

6 Q Okay. If you'll look at the third draft, there's
7 an e-mail, dated 12/24/2003, 4:03 p.m., and then on the
8 second page of that draft, right after that, under Number 2,
9 it says, "Describe in detail the hedging model or investment
10 strategy identified as split strike forward conversion and
11 the telephone conversation between Lori Richards, John
12 McCarthy and Bernie Madoff on December 19th, 2003."

13 Then the next one, Number 3 says, "Identify the
14 four hedge funds discussed in the telephone conversion," I
15 assume means conversation, "between Lori Richards, John
16 McCarthy and Bernard Madoff on December 19th, 2003, include
17 the identification of all advisors and managers of the funds,
18 all affiliated entities of the funds and all investors or
19 owners of the funds since January 1, 2001."

20 And then if you look at later drafts, you'll see
21 that that question was deleted or that part of the question
22 that referred to a telephone conversation between Lori
23 Richards, John McCarthy and Bernie Madoff.

24 Q I see reference to the conversation dropped, yes.

25 Q Right. Do you have any idea why that reference
26 would have been dropped?

1 A I assume it's not relevant. I don't know, you
2 know, who -- who edited it out, but, you know, looking at it
3 fresh today, I would say what the relevance of it having been
4 discussed in a telephone conversation is.

5 Q Do you think you might have been aware of this
6 conversation at the time but you don't remember it now years
7 ago or do you think you might not have been aware of it at
8 all?

9 A It's possible. It's also possible that I was not
10 aware of the conversation at all. I just don't know.

11 Q Okay. Okay. There's another change in the
12 document I wanted to show you. Do you see the e-mail, dated
13 1/6/2004, 4:53 p.m.? It's from Mark Donohue. It says, "John
14 and Eric, attached is a document request for the revisions we
15 just discussed."

16 If you could see the next page is a draft, dated
17 January 6th, 2004. I'm sorry. Do you know where I am?

18 A Yeah.

19 Q Okay. And if you could see on the draft, January
20 6th, 2004, under Number 1, it says, "For the time period of
21 January 1, 2001, through the present, provide the following
22 monthly profit and loss statements by security and monthly
23 commission revenues."

24 A Mm-hmm.

25 Q Previous versions has it as daily profit and loss
26 statements, daily commission revenues. Do you have any idea

1 why a change would be made from daily to monthly?

2 A The only thing I can think would have been just for
3 ease of absorbing the information. To get this type of
4 information on a daily basis would have been fairly onerous
5 to go through, but I -- I'm just speculating.

6 Q Okay. And then if you could see the last document,
7 your name is on the signature line. Do you know if you did
8 sign this document request that went to Bernard Madoff
9 Securities?

10 A I -- I don't know for certain, but I assume I did.

11 Q Was there any request made for a specific audit
12 trail trading data?

13 A Not in this request.

14 Q Okay. Any idea why that wouldn't have been done?

15 A No. I mean, I'm -- I'm a little perplexed. I -- I
16 believe we would have gotten trading data. It's possible
17 that we just called up NASD and asked them for it and they
18 sent it over, but --

19 Q Okay. But you don't know -- you don't remember if
20 that happened, actually happened?

21 A I don't, but I'm not sure how we would have done
22 the review of -- for front-running if we didn't have that.

23 Q If you could look at Version 4, which was the
24 version after the 1/6/2004 1:32 p.m. -- 1:31 p.m., do you see
25 that -- those requests in that version?

26 A I'm sorry.

1 Q I'm sorry. It's January 6th, 2004, 1:31 p.m., is
2 the e-mail attaching the version.

3 A 1:31:32 p.m.?

4 Q Yeah.

5 A And then the next letter starts December blank,
6 2004?

7 Q Right, right, right.

8 A Okay.

9 Q Were those -- were there more specific requests in
10 there?

11 A With respect to audit trail?

12 Q Yeah.

13 A No.

14 Q Okay. Do you have any recollection in general
15 about decisions made to modify the requests?

16 A No, but as a matter of standard practice, we
17 frequently modify the requests.

18 Q Okay. But do you know if -- if perhaps because of
19 the phone conversation with Lori Richards, John McCarthy and
20 Bernie Madoff, decisions were made to modify requests because
21 perhaps he gave them information over the phone or he allayed
22 their concerns in some way?

23 A I don't know. It's possible.

24 Q Okay.

25 A I don't know.

26 Q Okay, okay. I'm going to show you the response.

1 It's dated January 16th, 2004.

2 MR. KOTZ: We're going to mark this as Exhibit 19,
3 from Bernard Madoff to you, Eric J. Swanson.

4 (SEC Exhibit No. 19 was marked for
5 identification.)

6 (The witness examined the document.)

7 THE WITNESS: Okay.

8 BY MR. KOTZ:

9 Q Do you remember getting a letter from Bernard
10 Madoff?

11 A I remember receiving the response. I don't
12 specifically remember this letter, but I do remember that the
13 response came in.

14 Q Okay. It certainly looks like this is the letter?

15 A Yeah.

16 Q Okay. Do you see, he says in here, "Also, please
17 note we have no communication or disclosures from customers
18 using this strategy to investors, owners or prospective
19 investors or owners?" Did that raise any concerns, that
20 response?

21 A Communications or disclosures from customers using
22 this strategy.

23 Q He's referencing his split strike conversion
24 strategy.

25 A Right. Well, I think, given what I understood at
26 the time, which was that they were not actually an investment

1 manager but were in fact providing execution services for
2 hedge funds, I don't know that that would have raised a red
3 flag for me. Again, I was focused on front-running.

4 Q Okay. And then it says later on in this letter,
5 "Neither Madoff Securities nor any person or entity
6 affiliated with Madoff Securities manages or advises hedge
7 funds." Do you see that?

8 A I do.

9 Q Okay. Now, the Barron's article that you say led
10 to the examination referenced the fact that Madoff manages
11 more than six billion for wealthy individuals. That's enough
12 to rank Madoff's operations among the world's five largest
13 hedge funds. Given that article, wouldn't this statement by
14 Bernard Madoff that Madoff Securities nor other person or
15 entity affiliated with Madoff Securities manages or advises
16 hedge funds, wouldn't that contradict the article?

17 A It would appear to, certainly. I know that, as
18 I've stated, you know, I had a conversation and it now sounds
19 as though John and Lori may have had a conversation with
20 Bernard Madoff in which to me he explains that he was not
21 managing money, that he had a black box strategy that he ran,
22 that the hedge funds actually selected within some parameters
23 options for how it would operate, and that the black box
24 would run under those parameters, and that he wasn't in fact
25 managing money. I didn't test that. My concern was
26 front-running.

1 Q But was that what led to the conversation, this
2 statement in the letter, do you think?

3 A No. I think -- I think the conversation came
4 before this letter. It either came before we sent the
5 document request or it came shortly after we sent the
6 document request.

7 Q Okay.

8 BY MS. STEIBER:

9 Q Would you take notes of conversations you had with
10 registrants?

11 A Not often. I would frequently -- you know, if
12 there was something noteworthy, I would send an e-mail to
13 John about it, but I wasn't -- I wasn't always great about
14 taking notes.

15 BY MR. KOTZ:

16 Q So at the time this statement that "neither Madoff
17 Securities nor any person or entity affiliated with Madoff
18 Securities manages or advises hedge funds," would not have
19 been a concern?

20 A I don't think it would have raised a red flag for
21 me at this point in time.

22 Q Okay.

23 MR. KOTZ: I'm going to show you another document.
24 This document is dated 1/23/2004. We'll mark it as Exhibit
25 20. It's an e-mail from Mark Donohue to Genevieve Walker,
26 Jacqueline Wood, with a cc to you.

1 (SEC Exhibit No. 20 was marked for
2 identification.)

3 (The witness examined the document.)

4 THE WITNESS: Okay.

5 BY MR. KOTZ:

6 Q Do you have any recollection of these spreadsheets
7 or looking at the Madoff info that's referenced in this
8 e-mail?

9 A No, I don't. I'm not sure what these spreadsheets
10 are referring to.

11 Q Okay. Do you have any recollections specifically
12 about reviewing matters or, you know, what work was done in
13 connection with this exam?

14 A When the -- the recollection I do have is that when
15 the response came in, much of the response was in hard copy
16 format, physical spreadsheets, physical printer paper, and I
17 recall wanting to -- I was busy with something else, but I do
18 recall wanting to look because I was interested, look to see
19 what the executions were for these hedge funds, just to see
20 what they looked like, and I do recall doing that and seeing
21 infrequent trading but then huge positions and then trading
22 out of the positions and then nothing and then some period of
23 time later trading. That's as far as I took it.

24 BY MS. STEIBER:

25 Q Was it unusual to get trading data in hard copy
26 format?

1 A Back in this time period, it was starting to be
2 unusual. You would typically get things electronically, but
3 it wasn't so uncommon in this time period that that would
4 have in itself raised a red flag.

5 MR. KOTZ: Okay. Show you another document. This
6 is dated January 29, 2004. Mark this Exhibit 21. This is an
7 e-mail from Genevieve Walker to Mark Donohue and
8 Jacqueline Wood.

9 (SEC Exhibit No. 21 was marked for
10 identification.)

11 (The witness examined the document.)

12 THE WITNESS: Okay.

13 BY MR. KOTZ:

14 Q Okay. Do you have any recollection of a concern
15 that Genevieve Walker raised about these collars?

16 A I do not.

17 Q Do you have recollection generally of particular
18 concerns that Genevieve Walker had on going during the
19 examination?

20 A I do not.

21 Q Okay. Anyone else? Jacqueline Wood or Mark
22 Donohue have specific concerns?

23 A I mean, I think everybody was a little bit
24 concerned that there might be something going on here.

25 Q Okay. Were you aware of any problems between
26 Genevieve Walker and Mark Donohue?

1 A Now that you mention it, I do recall there were
2 some issues, yeah.

3 Q Okay. What kind of issues?

4 A I think Mark was dissatisfied with her performance
5 and I think, if I recall correctly, he had confronted her at
6 some point in a somewhat aggressive way, but I don't recall
7 the specifics or the timing of that.

8 Q Do you recall if Genevieve Walker filed a
9 complaint against Mark Donohue?

10 A I think she may have, yeah.

11 Q Okay. Do you know what happened with that
12 complaint?

13 A I don't.

14 Q Okay. Do you have any sense of, you know, who was
15 correct in this dispute or, you know, whether the complaint
16 had any merit or Mark was too aggressive?

17 A I don't remember exactly what was in the complaint.
18 However, I -- I do recall that there were some performance
19 issues with Genevieve and I also recall that Mark was
20 definitely too aggressive, in my opinion, was too aggressive
21 in dealing with her.

22 Q And the performance issues with Genevieve, were
23 they more in terms of work effort or competence of work?

24 A I believe predominantly the former, although there
25 may have been some of the latter, but I think it was mainly
26 work effort.

1 Q Okay.

2 MR. KOTZ: Let me show you another document. These
3 are some handwritten notes, dated 1/29/2004. We're going to
4 mark as Exhibit 22.

5 (SEC Exhibit No. 22 was marked for
6 identification.)

7 BY MR. KOTZ:

8 Q If you could first just look and see if you
9 recognize any of the handwriting. There's a variety of
10 handwriting on these notes.

11 (The witness examined the document.)

12 THE WITNESS: This looks like John's handwriting.

13 BY MR. KOTZ:

14 Q John McCarthy? What page is that?

15 A I can't say for certain.

16 Q That's the fourth page?

17 A Yeah.

18 Q Okay.

19 A I don't know for sure.

20 Q Any of the handwriting look like yours?

21 A I -- it's possible. It's hard for me to say.

22 Q Which -- which part do you think it's possible?

23 A The second page seems, but maybe I'm just --
24 because it's the neatest one, but my handwriting's really not
25 this neat.

26 Q This seems to refer to a call January 29th, 2004,

1 with [REDACTED], who's the complaint in the May 2003
2 complaint?

3 A Yeah.

4 Q So, I mean, I guess I'm just trying to -- I know
5 this happened some time ago, but do you think it is that you
6 just don't recollect today that you may have been aware of
7 this complaint or that you may have had -- the team had
8 communications with [REDACTED] or do you think it's possible
9 that the team did have these communications but -- and saw
10 the complaint but you just weren't made aware of it?

11 A I think either one of those is possible, but you
12 have to also understand, and I don't know the timing of all
13 this, but there was over this time period, some of my work,
14 the direct projects that I was responsible for were being
15 reassigned to Mark and so there was a point in time where I
16 was no longer directly involved in this matter and I don't
17 know how quickly that happened, but it seems to have
18 happened, in my recollection, fairly quickly after the letter
19 was sent out and Mark was taking day to day responsibility
20 for it.

21 So, you know, did I participate on a phone call
22 with [REDACTED]? I don't recall it. It's certainly possible,
23 but it's also in my opinion just as possible that I did not
24 and wasn't part of this dialogue.

25 Q Okay.

26 BY MS. STEIBER:

1 Q And what did you think of the level of Mark
2 Donohue's expertise?

3 A You know, he was -- he was learning. He was no
4 expert, but at the same time he was a diligent worker and,
5 you know, very -- what's the word I'm looking for --
6 ambitious. So I -- I -- you know, I -- I thought he was
7 capable.

8 BY MR. KOTZ:

9 Q Do you think it's possible if you had been more
10 involved with the [REDACTED] communications that might have
11 changed the focus of the examination?

12 A With 20/20 hindsight, it's an easy thing for me to
13 say, but I -- I don't -- I don't know for sure. I -- I -- I
14 don't want to make that statement. It's possible. I do --
15 you know, look, I -- I do think I had more experience just in
16 general than -- than Mark did, but I thought Mark was
17 capable, as well, and certainly with John's oversight.

18 Q Okay.

19 MR. WOLK: Were you saying in your description of
20 all these notes that [REDACTED] is just the first page?

21 MR. KOTZ: No. We -- we understand they're all
22 [REDACTED].

23 MR. WOLK: Okay.

24 MR. KOTZ: We are trying to validate that by
25 figuring out whose notes they are.

26 MR. WOLK: Okay.

1 BY MR. KOTZ:

2 Q But I guess what I'm trying to understand is, you
3 know, the [REDACTED] complaint seems to relate to issues beyond
4 front-running. The phone call following [REDACTED] seemed to
5 relate to issues beyond front-running.

6 So do you think it's -- that may -- what may have
7 happened here is the individuals who were involved in the
8 decision to focus on front-running may not have been privy
9 because of workload or whatever to all the different issues
10 that were available at that time and maybe that was why the
11 focus was somewhat limited?

12 A It's possible. I mean, my recollection of this
13 time frame and my involvement in sort of helping develop a
14 theory of what might be going on here was solely focused on
15 front-running.

16 In other words, I had no recollection of -- of any
17 other focus or -- or -- or, you know, issue in my head about,
18 you know, Ponzi scheme or anything else.

19 BY MS. STEIBER:

20 Q Do you remember just developing that front-running
21 theory just from reading the Barron's article?

22 A I don't recall specifically. I mean, it would have
23 been most likely an iterative process with John, and I don't
24 even remember exactly how, you know, I was asked to sort of
25 look at this or whether I was asked to look at it in the
26 context of front-running or whether I was given the article

1 to read and I said to myself I bet he's front-running. I
2 don't remember exactly, but I do recall in my mind settling
3 on the issue, if there's something here, it's most likely
4 front-running.

5 BY MR. KOTZ:

6 Q Okay. And you don't recall at any point anybody
7 talking about having a conversation with a person who
8 provided a complaint?

9 A I do not, no.

10 MR. KOTZ: Okay. Why don't we show the next
11 document? This is an e-mail from Jacqueline Wood to Mark
12 Donohue with a cc to Genevievette Walker, Tuesday, February
13 3rd, 2004. Mark as Exhibit 23.

14 (SEC Exhibit No. 23 was marked for
15 identification.)

16 BY MR. KOTZ:

17 Q You can certainly feel free to read the whole
18 thing. My question is about Page 2.

19 (The witness examined the document.)

20 THE WITNESS: Okay.

21 BY MR. KOTZ:

22 Q Do you see it says, "The commission revenues
23 generated from these foreign institutional clients account
24 for the overwhelming majority of commission revenues
25 generated for the firm since 2001. Obviously, this trading
26 strategy has yielded Madoff unbelievable profits which would

1 explain why the strategy is well guarded by Madoff."

2 Do you have any recollection of a concern about
3 Madoff's profits being unbelievable?

4 A I do not.

5 Q Was there ever any discussion of the fact that, you
6 know, this black box strategy seemed to be producing kind of
7 profits that were not possible?

8 A Well, again, at the time the operative theory that
9 I had, and actually I think by this point I was probably not
10 involved much at all in this exam, but, you know, the
11 operative theory was front-running. I don't recall any other
12 specific conversations about, you know, how they might be
13 generating whatever profits they were generating. I don't
14 recall ever seeing this memorandum.

15 Q Okay. If you can see on Page 3, it references
16 "follow-up questions." Do you recall having -- there was a
17 list of follow-up questions that they wanted to ask Bernard
18 Madoff Securities?

19 A No, I don't recall this.

20 Q Okay. Do you recall if any follow-up questions
21 were ever asked?

22 A I do not.

23 Q Okay.

24 MR. KOTZ: I'll show you another set of notes.

25 It's 2/4/04, Conference Call with Madoff. I'm going to mark
26 this as Exhibit 24.

1 (SEC Exhibit No. 24 was marked for
2 identification.)

3 BY MR. KOTZ:

4 Q These may be too messy for your notes?

5 A Well, this definitely is not my notes.

6 Q Okay. Have any idea whose notes they were?

7 A They could be Lori's.

8 Q Lori Richards?

9 A They could be, but I'm not -- I really don't know
10 for sure.

11 Q Okay. Do you know if this was the conference call
12 you were talking about that you were on with Madoff 2/4/04?

13 A The timing doesn't seem right.

14 Q Okay. Do you know when they had conference calls
15 with Madoff who they talked to? Did they talk to Bernie
16 Madoff or Peter Madoff?

17 A I don't know. I know that when I participated in
18 the call, it was directly with Bernie.

19 Q And you don't know if he had -- was he on a
20 speaker? Do you know if he had anybody else on the line?

21 A I don't. I don't recall.

22 Q And you had -- did you have any conversations with
23 Shana Madoff during this time period?

24 A Not outside the scope of the work she was doing for
25 SAI, but I -- I don't recall.

26 Q But you don't recall any conversations with her as

1 a part of the exam?

2 A No.

3 MR. KOTZ: All right. I'll show you another
4 document. This is another series of notes. We're going to
5 mark this as Exhibit 25, undated, six pages.

6 (SEC Exhibit No. 25 was marked for
7 identification.)

8 BY MR. KOTZ:

9 Q Would these perhaps be yours?

10 A I don't believe so, no.

11 Q Okay. See on the first page, it says, "Follow-up
12 with Madoff re inputs. Two black box." Do you remember if
13 there was any follow-up on that issue?

14 A I just don't. I don't know.

15 Q Was there any concern at that time about his black
16 box operation, any suspicions about it?

17 A Well, again, I mean at a certain point in time, I
18 was not directly involved in the examination. I was working
19 on other things.

20 Q Okay.

21 A But I -- but no, I don't recall a specific concern
22 being articulated to me about the black box, as it were.

23 Q Okay. If you look at the second page, --

24 A Well, actually, --

25 Q I'm sorry.

26 A -- can I pause on that for a second?

1 Q Please.

2 A No. The inputs regarding the black box, I do -- I
3 do recall that one of the concerns in the context of
4 front-running was that there was inputs from the
5 Market-Making Desk into the black box. It was -- in other
6 words, there was an electronic communication potentially
7 going into the black box that would tell the black box now
8 trade, but that was --

9 Q Okay.

10 A I remember that being discussed.

11 Q Okay. If you look at the second page, at the top
12 it says, "Mavis," and then it says, "Few stocks on a few days
13 with critical get OATS from NASD Act all Madoff orders." Do
14 you know what that means, "get OATS?"

15 A OATS is an acronym for the Order Audit Trail. It's
16 a unique creature of the NASD. A number of firms that trade
17 in the over-the-counter market, that at each stage in the
18 life of an order, as it's routed through, you know, the
19 various stages of an execution process, the firm that has --
20 that handles it has to submit an OATS report to the NASD.
21 The memos are all linked together to form one complete sort
22 of history of the order.

23 Q Okay. And why would one get OATS from NASD?

24 A Why would one get OATS? In this context, you know,
25 because it was available for one. If you were asking for Act
26 data, which was -- excuse me -- time in sales, it would be

1 pretty typical to get the OATS data, as well, so that you'd
2 have a little picture of, you know, where the order started,
3 which firm it started from, where it went to, how it got
4 ultimately in this case, I assume, to Madoff, but, you know,
5 probably primarily because it was available.

6 MR. KOTZ: Okay. Let me show you another e-mail
7 that we have, as well. Mark this Exhibit 26. This is an
8 e-mail, 8/23/2004, 10:02 a.m., from Eric Swanson to Mark
9 Donohue, cc John McCarthy.

10 (SEC Exhibit No. 26 was marked for
11 identification.)

12 (The witness examined the document.)

13 THE WITNESS: Mm-hmm.

14 BY MR. KOTZ:

15 Q So at this point in time, you were at least
16 somewhat involved in the exam, it seems?

17 A I don't think -- this is -- this is probably
18 unrelated to the exam.

19 Q Okay.

20 A There were a lot of issues around OATS during this
21 time period.

22 Q Okay. You don't think that was related to the
23 exam?

24 A I don't, no.

25 Q Okay.

26 A I don't know for sure, but I doubt it.

1 Q Okay. And did you know if the OATS data was
2 ever -- did they ever get the OATS data?

3 MS. STEIBER: Referred to in the notes.

4 MR. KOTZ: Referred to in the previous document.

5 MS. STEIBER: That second page.

6 THE WITNESS: I don't know. I don't know.

7 MR. KOTZ: Exhibit 25.

8 THE WITNESS: I -- but again, I want to stress I'd
9 be very surprised if this was related to this exam --

10 MR. KOTZ: Okay.

11 THE WITNESS: -- because there were a lot of issues
12 with OATS.

13 MR. KOTZ: Okay.

14 BY MR. KOTZ:

15 Q But in connection with the Madoff exam, you don't
16 remember whether they ever got the OATS data from NASD as
17 reference?

18 A I don't know if I ever knew one way or another.

19 Q Okay. And do you think that -- what would that
20 OATS data have shown in this case, do you think?

21 A You know, OATS -- OATS, as I said, what OATS would
22 show, it would show, you know, the firm that received the
23 order initially and it would have shown size, stock, price,
24 side, and then it would have, you know, had a time of receipt
25 by the receiving broker-dealer and if that broker-dealer then
26 routed it on to a wholesaler or sent it to an exchange for

1 execution, it would have indicated that and if it did go to
2 another broker-dealer, that broker-dealer would have picked
3 it up and executed the order or sent it some place, it would
4 have sent in an OATS report, and there was supposed to be a
5 unique identifier that would then enable the NASD to tie all
6 these OATS reports together to see the lifetime of the -- of
7 the order.

8 Why we would have asked for it or why in the
9 context of a front-running review, again I can only suspect
10 that because it was available. NASD was the only entity that
11 really had something like OATS and so it was just information
12 and you would get it.

13 But I will tell you OATS has -- I think maybe the
14 kinks have finally been worked out, but for years OATS was a
15 huge problem. There were mismatched orders within OATS all
16 the time because of the unique codes. The way that you coded
17 to it was a complete mess and so, you know, FINRA, NASD at
18 the time, had established a regulatory program that it was
19 trying to use to use OATS for surveillance purposes.

20 You may get offended because I think you worked
21 there during this time period, but my recollection is that
22 they had developed about eight surveillances. The idea was
23 to use OATS, you know, as a regulatory tool and about six of
24 those surveillances were designed to ensure the integrity of
25 OATS because there were so many problems with mismatched
26 trades or orders.

1 So, I'm sorry, that's my spiel.

2 Q That's okay.

3 BY MS. STEIBER:

4 Q So do you think that if they had gotten the OATS or
5 Act data, that they wouldn't have been able to tell that
6 Madoff potentially wasn't trading at all?

7 A Well, the OATS data would have been relevant only
8 as it related to the retail customer orders that they were
9 trading and I think the Act data would have been the most
10 important data.

11 No, you know what? I'm sorry. There is a reason
12 why you'd want OATS. It's because it would show the time
13 that the order arrived at Madoff, and I'm not convinced Act
14 -- I don't believe the Act data would have shown that. So
15 that is why we would have wanted to see the OATS data.

16 But this was -- again, this would have shown the
17 time that a retail order arrived at Madoff and then the, you
18 know, the options trades or whatever were happening through
19 the black box would not have been reported into OATS or Act.
20 That would have been --

21 Q So it would have just been the equity trades?

22 A Yes.

23 MR. KOTZ: Okay.

24 MR. WOLK: We've been going for about two hours.
25 Can we take a break?

26 MR. KOTZ: Sure, sure, sure.

1 MR. WOLK: Let's do that.

2 MR. KOTZ: Off the record.

3 (A brief recess was taken.)

4 MR. KOTZ: Continuing, 11:30.

5 MR. WOLK: Short break. I appreciate that. Making
6 progress, though.

7 MR. KOTZ: The most recent notes, do we still have
8 that in front of him?

9 MR. WOLK: No. We returned that.

10 MR. KOTZ: Okay. The most recent exhibit which was
11 Exhibit 26, which was the notes. I'm sorry. Go back to
12 that.

13 BY MR. KOTZ:

14 Q If you could look on the --

15 MR. WOLK: This is 25.

16 MR. KOTZ: I'm sorry. I'm sorry. Okay. Yeah.
17 I'm sorry. Exhibit 25. I'm sorry. It's a series of notes.

18 BY MR. KOTZ:

19 Q If you could look at the last page of those notes,
20 it says on it, "Questions, Continued Statements, Execution
21 Date, Settlement Date." There's a series of -- of points
22 there with question marks.

23 "Do you have any other statements or account docs,
24 signed options, wash trades?"

25 Do -- do you recall that there were kind of ongoing
26 questions that remained regarding this examination, Madoff

1 examination?

2 A I recall that it was open for awhile.

3 Q Okay.

4 A But I wasn't involved in the day to day of what
5 those questions or open issues might have been.

6 Q Okay. So you were generally aware that there were
7 questions throughout the process?

8 A Yeah. I mean, well, I knew -- I knew that it was
9 open and it was still being worked. That's what I knew.

10 Q Okay, okay.

11 MR. KOTZ: All right. I'll show you the next
12 document, which is an e-mail, dated February 4, 2004. We'll
13 mark this Exhibit 27. This is an e-mail from Genevieve
14 Walker to Mark Donohue and Jacqueline Wood.

15 (SEC Exhibit No. 27 was marked for
16 identification.)

17 (The witness examined the document.)

18 THE WITNESS: Okay.

19 BY MR. KOTZ:

20 Q Do you remember this issue that arose about Madoff
21 disclaiming himself to be an investment advisor and whether
22 he should register as an investment advisor?

23 A Not specifically, but, I mean, I recall him telling
24 me when I called him that he was not an investment advisor.

25 Q Do you recall part of the exam that the team was
26 working on this issue of whether he should register or not

1 doing research memoranda about this issue?

2 A I don't recall specifically, no.

3 Q Okay. But this would have been beyond just a
4 front-running exam, wouldn't it have been?

5 A No question, yeah.

6 Q So in some way the exam was expanded beyond what
7 you and John originally conceived?

8 A It appears to be the case, yeah.

9 Q Okay, okay. There was a second document request.
10 I don't know how much you were involved in this, but we're
11 going to give you an exhibit that has all the supplemental
12 Madoff document requests together and that we're going to
13 mark as Exhibit 28.

14 (SEC Exhibit No. 28 was marked for
15 identification.)

16 BY MR. KOTZ:

17 Q If you can just take a quick look through these. I
18 don't think I have that many questions about them
19 specifically, but I just wanted to get a sense of, you know,
20 your name obviously still appears on all of them, but I
21 wanted to get a sense of how involved you were in these.

22 (The witness examined the documents.)

23 THE WITNESS: Okay. This is audit trail, drafts.

24 BY MR. KOTZ:

25 Q It's a series of drafts.

26 A Okay. This would appear to be the document request

1 where we would have gotten the audit trail directly from the
2 firm.

3 Q Now, instead of getting it from the NASD?

4 A That's correct.

5 Q And how involved were you in this?

6 A My name's on it, so I probably -- I don't know
7 whether I would have drafted the letter. I would have
8 obviously seen it and potentially commented on it and signed
9 it.

10 Q Would you have made -- would you have been the one
11 to make the decision to go to Madoff Securities to get the
12 audit trail information as opposed to the NASD?

13 A That I'm not sure of, how that decision was made.
14 It was more common, by the way, to get the information from
15 the firm and not from the NASD. So I'm not sure why the
16 initial thought was to get it from the NASD, to be honest.

17 Q Okay. A couple documents --

18 MR. KOTZ: You want to mark this 29?

19 (SEC Exhibit No. 29 was marked for
20 identification.)

21 BY MR. KOTZ:

22 Q So I'm going to show you a draft, marked as a
23 separate document, as Exhibit 29. It's dated February 2004,
24 and there's some handwritten notes on it. I was wondering if
25 you know whose notes these are.

26 (The witness examined the document.)

1 THE WITNESS: Again, I don't believe this is my
2 handwriting, but I don't know whose notes these are.

3 BY MR. KOTZ:

4 Q Okay. Do you see on this the references you made
5 previously to the audit trail are X'd out and it says, "Save
6 for next letter?" Do you see that?

7 A I do.

8 Q Okay. And if you go back to the previous document
9 and you look at the final draft, dated February 18th, 2004,
10 that would be Exhibit 28, you see that the audit trail was
11 not included, is that right?

12 A Mm-hmm.

13 Q Is that -- I'm sorry. Is that yes?

14 A Yes.

15 Q Okay. So does it appear here that in fact the
16 audit trail was never requested from Madoff either, NASD or
17 Madoff?

18 A Well, it certainly appears that it was not
19 requested in this February 18th, 2004, letter, but I got -- I
20 gotta tell you, there's no -- it doesn't make sense that we
21 wouldn't have -- if we were looking at front-running, it
22 doesn't make sense that we wouldn't have gotten the audit
23 trail from somewhere.

24 So I don't -- I can't account for this, but it
25 would have been, frankly, asinine for us to not get the audit
26 trail. I don't understand that.

1 Q Okay. Do you know if there was a next letter, to
2 save for next letter?

3 A I don't know.

4 Q Okay. Okay.

5 MR. KOTZ: So now we have the response from Bernard
6 Madoff, dated March 1st, 2004, which we're going to mark as
7 Exhibit 30. That's again a letter from Bernard L. Madoff to
8 you.

9 (SEC Exhibit No. 30 was marked for
10 identification.)

11 (The witness examined the document.)

12 THE WITNESS: Okay.

13 BY MR. KOTZ:

14 Q Okay. Do you recall receiving this letter?

15 A I do not, no.

16 Q Do you see in the letter, Bernard Madoff says, "We
17 do not charge expenses or fees to clients nor do we prepare
18 any reports of client profit and loss or any other related
19 information?" Again, this is that same issue, but you don't
20 think this would have been a concern at the time?

21 A Well, in the context of, you know, what I
22 understood about the firm at the time, it was just executing
23 on behalf of hedge funds and not acting as an advisor, I
24 don't think it would have raised a red flag.

25 Q Okay. What about the last paragraph where it says,
26 "Madoff Securities does not communicate or correspond with

1 the investors or owners of its clients?" Would there have
2 been any concern about that, books or records requirements or
3 anything?

4 A No. Excuse me. Again, no, because, I mean, its
5 clients in this context would have been these hedge funds and
6 I -- you know, given what I understood about what the firm
7 was doing, I don't think I would have expected direct
8 communication between the executing broker and the clients of
9 the hedge funds.

10 Q Okay. Do you recall in these document requests
11 that were sent out, Madoff was sending responses, do you
12 recall that generally you felt like answers were being given,
13 things were being clarified?

14 A I don't recall actually spending -- certainly by
15 this point in time, I don't recall spending a lot of time
16 reviewing the responses at all.

17 Q Okay.

18 A My recollection is that in response to the initial
19 document request, I did a quick and by quick, I mean maybe 30
20 minute look at some of the trading records related to the
21 hedge fund activity, and then, you know, it went down to Mark
22 Donohue's office and I didn't look directly at any of the
23 information ever again.

24 Q Okay. What was the time period you think where you
25 were becoming less involved?

26 A I think it was some time in this time period,

1 February-March, late January-February-March. I'm not sure
2 exactly.

3 Q Okay. Going back to the previous document, Exhibit
4 29, do you see it says, "SEC Speaker?" Do you know what that
5 refers to?

6 A I do not.

7 Q Is it possible that Bernie Madoff was an SEC
8 speaker?

9 A I don't even know what that would mean.

10 Q Okay. At this time, later on in the early 2004
11 period, were you more aware of Bernie Madoff's reputation?

12 A Maybe a little bit but not -- not significantly.

13 Q Okay. So do you think that, I mean, the team was
14 aware of it at all in terms of, you know, that -- that, you
15 know, they were examining someone who was, you know, very
16 well-thought-of and kind of a very well-known figure?

17 A I -- I think the team -- I think -- I doubt it. I
18 mean, I think the team would have understood that Madoff was
19 a powerhouse as a market-maker and had played some important
20 role in the development of what's referred to as the "third
21 market."

22 I think the team would have kind of understood that
23 historically about the firm, but to be honest with you, I
24 didn't completely understand the reputation of Bernard Madoff
25 myself or the role he played, for example, as whatever,
26 non-executive chairman of NASDAQ, until after all this

1 happened.

2 Q Okay. So you think maybe that the other folks on
3 the team might have not also --

4 A No. I -- I definitely think they would have just
5 understood that this was a big market-making firm.

6 Q Right. Okay, okay, okay.

7 MR. KOTZ: I show you another document and this is
8 dated March 10th, 2004. Mark it as Exhibit 31. From
9 Genevieve Walker to Mark Donohue.

10 (SEC Exhibit No. 31 was marked for
11 identification.)

12 (The witness examined the document.)

13 THE WITNESS: Okay.

14 BY MR. KOTZ:

15 Q Do you recall at this point kind of lingering
16 questions still from Genevieve Walker after the document
17 production?

18 A You know, it's starting to ring a bell a little bit
19 but not really. I mean, these questions here, no. That
20 almost seems to track to some of the notes that you showed me
21 earlier, but I -- I don't recall specific questions.

22 Q Okay. All right.

23 MR. KOTZ: Why don't we show you the next document?
24 We'll mark this Exhibit 32. That is Official Notes,
25 3/18/2004. Conference Call with Bernard Madoff. It's a
26 two-page document.

1 (SEC Exhibit No. 32 was marked for
2 identification.)

3 BY MR. KOTZ:

4 Q I assume these are not your notes?

5 A They are not.

6 Q Okay. Were you aware of this particular conference
7 call in March 2004?

8 A Not to my recollection, no.

9 Q Were you aware generally that, you know, there were
10 these ongoing calls with Bernard Madoff talking about issues
11 as the examination was going forward?

12 A I may have been during the time, but I don't
13 remember it now, but it's possible.

14 Q Okay.

15 MR. KOTZ: All right. Why don't we go to the next
16 one? We'll mark this as Exhibit 33, and this is an e-mail
17 from Genevieve Walker to Mark Donohue, cc to Jacqueline
18 Wood, Tuesday, March 23rd, 2004, 7:35 p.m.

19 (SEC Exhibit No. 33 was marked for
20 identification.)

21 (The witness examined the document.)

22 THE WITNESS: Okay.

23 BY MR. KOTZ:

24 Q Do you remember the concerns about the trade dates
25 varying, inconsistencies in Madoff's trading data?

26 A No.

1 Q Okay. But at this point you might not have been
2 aware of specific concerns as they were ongoing?

3 A I don't believe I was, no.

4 Q Okay.

5 MR. KOTZ: Okay. Why don't I show you another
6 document? We can quickly look through them. We'll mark this
7 Exhibit 34. This is an e-mail from Mark Donohue to
8 Genevieve Walker, 3/4/2004, 12:14 p.m., and I guess
9 whatever recollection you have about these particular issues
10 that Genevieve was raising at this point.

11 (SEC Exhibit No. 34 was marked for
12 identification.)

13 (The witness examined the document.)

14 THE WITNESS: I don't know anything about this.

15 BY MR. KOTZ:

16 Q Okay. You don't know anything about Genevieve
17 suggesting they do their own independent analysis?

18 A No.

19 Q Okay.

20 MR. KOTZ: I show you another document just in
21 case. Mark this as Exhibit 35. This is an e-mail from
22 Genevieve to Mark Donohue, cc Jacqueline Wood, 3/4/2004,
23 5:02 p.m., and again anything about this issue about the
24 collar position, the volatility factor of the trading seemed
25 to have been raised at that time.

26 (SEC Exhibit No. 35 was marked for

1 identification.)

2 (The witness examined the document.)

3 THE WITNESS: No. There's one thing I will note,
4 though. There's reference to looking at the equity trades
5 which leads me to believe that at some point equity trading
6 data was obtained, but I don't -- you know, I don't recall
7 anything about concerns about how the collar works.

8 BY MS. STEIBER:

9 Q Is that different than audit trail data? Would you
10 think just having equity trade information --

11 A It'd be the same, yeah.

12 Q Would construe it the same?

13 A Yeah.

14 BY MR. KOTZ:

15 Q Okay. Anything else from that Document 35 that you
16 recollect?

17 A I mean, I don't actually recollect anything about
18 the document. I just am noting, though, that there's a
19 reference to equity trading.

20 Q Okay, okay.

21 MR. KOTZ: Next document is marked as Exhibit 36.
22 This is a letter from Bernie Madoff to Mark Donohue, March
23 23rd, 2004.

24 (SEC Exhibit No. 36 was marked for
25 identification.)

26 THE WITNESS: Floppy disks.

1 (The witness examined the document.)

2 THE WITNESS: Okay.

3 BY MR. KOTZ:

4 Q Do you remember Bernie Madoff providing additional
5 information?

6 A I do not.

7 Q Okay. You laughed a little bit when you saw floppy
8 disks.

9 A It just seems arcane.

10 Q Okay. Was it arcane at the time, though, in 2004?

11 A Probably, yeah. I mean, you know, it could have
12 been used to reference those non-floppy, you know, disks that
13 people used, but it sounds arcane to me.

14 Q Okay. And you don't remember anything about these
15 supplemental information that Bernie Madoff provided?

16 A No, I don't think I was involved at this point.

17 Q Okay, okay.

18 MR. KOTZ: Okay. Next document, marked as Exhibit
19 37, 3/4/2004, to Mark Donohue. This seems to be an e-mail
20 from Mark to himself.

21 (SEC Exhibit No. 37 was marked for
22 identification.)

23 THE WITNESS: Okay.

24 BY MR. KOTZ:

25 Q If you look at -- he has issues about the sway and
26 then if you look on the second page, it says, "Although

1 Madoff executes the strategy, does that mean he also executes
2 any assignments that may occur? Would he consider these type
3 of transactions part of the strategy? I think we can assume
4 in some instances that an option trade can be assigned after
5 the position is transferred to the custodial bank account,
6 right? The trades in the fund accounts seem to reflect that
7 all executions are transferred to the custodial bank on
8 settlement date. What broker would handle that assignment?"

9 A Okay.

10 Q Anything that you recall about Mark Donohue having
11 these particular concerns in this time period, March of 2004?

12 A No.

13 MR. KOTZ: Okay. The next document we're going to
14 mark as Exhibit 38. This is an e-mail, dated 4/6/2004, from
15 Genevieve Walker to Alex Sadowski.

16 (SEC Exhibit No. 38 was marked for
17 identification.)

18 BY MR. KOTZ:

19 Q If you could take a look at this, reference from
20 Genevieve to Alex about what projects should be a
21 priority, and you see Alex says, "Get the mutual fund work
22 completed first."

23 A Mm-hmm.

24 Q Do you know what the mutual fund work was?

25 A Probably market timing, just based on the date.

26 Q And was the market timing work considered a

1 priority at that time period?

2 A Very high priority.

3 Q How come?

4 A I think that the SEC had gotten a lot of bad
5 publicity around market timing and it turned out that it was
6 prevalent in the industry and I think that we wanted to get
7 on top of it.

8 Q And do you remember Elliot Spitzer had brought some
9 cases?

10 A Right. That sounds right, but, you know, --

11 Q Okay. So it was a very significant priority at
12 that time?

13 A No doubt, yes.

14 MR. KOTZ: All right. Let me show you the next
15 document we're going to mark as Exhibit 39. That's an e-mail
16 from Mark Donohue to Genevieve Walker, cc Jacqueline Wood,
17 4/7/2004.

18 (SEC Exhibit No. 39 was marked for
19 identification.)

20 BY MR. KOTZ:

21 Q Do you see in this e-mail Genevieve Walker says,
22 "Hi, Mark. I know you have Mike working on the Madoff
23 project with us now. I'm not sure you what want Jackie and I
24 to do concerning Madoff, but I'm focusing on the mutual fund
25 project as requested. Should we just focus on mutual funds
26 and return to Madoff when we're done? Gen." The answer is,

1 "Concentrate on mutual funds for the time being."

2 A Yeah.

3 Q Do you recall at a certain point in time that the
4 decision was made to have the team working on this Madoff
5 exam focused on market timing cases?

6 A You know, was the decision made? It was -- you
7 know, this type of thing was not uncommon where there would
8 all of a sudden be, you know, high priority and other things
9 had to get set aside. So I doubt that there was anyone, you
10 know, who was specifically saying, all right, everybody drop
11 everything you're doing and just work on market timing, but I
12 think when there was a priority, like market timing, it was
13 fairly obvious and clear to everybody that that was what you
14 had to focus your time on.

15 Q Okay. So you do, though, remember that this Madoff
16 examination was set aside because of other priorities?

17 A I don't recall that. I'm just saying I'm not
18 surprised that that would happen.

19 Q Okay. What do you recall about the Madoff exam?
20 You say you don't recall that it was set aside.

21 A I don't -- I don't -- I don't recall exactly how it
22 was ever resolved, except for that at some point the
23 documents were shipped up to NERO. That's -- that's as much
24 as I recall.

25 Q And do you recall if it ever was resolved?

26 A I -- I don't.

1 Q Okay.

2 BY MS. STEIBER:

3 Q But Donohue was reporting to you at that time?

4 A I don't believe so. I think he was reporting to
5 John. Yeah.

6 Q So you were both reporting to John?

7 A Yes.

8 BY MR. KOTZ:

9 Q Okay. So you wouldn't have -- you don't remember
10 being involved at all in discussions with Genevieve at
11 that time about what our priorities should be?

12 A No. There was a point in time, again I don't know
13 exactly when it was, when Mark was promoted and several
14 projects, this being one of them, was -- and I think it is
15 whatever projects Mark was working on with me, were directly
16 assigned to him.

17 BY MS. STEIBER:

18 Q But prior to that, was he reporting to you? Is it
19 possible right now he's -- at this point he's a branch chief
20 reporting to you on this?

21 A It's possible, but I -- I don't -- like I said, I
22 don't remember the time period, but yes, prior to -- prior to
23 him being promoted, he was a branch chief and he would have
24 reported to me, --

25 MR. KOTZ: Okay.

26 THE WITNESS: -- I believe.

1 MR. KOTZ: Let me show you the next document. This
2 is a document we're going to mark as Exhibit 40. This is an
3 e-mail from Mavis Kelly, Friday, April 16th, 2004, to [Personal Privacy]
4 [Personal Privacy] Brian Snively or Snively, [Personal Privacy] and [Personal Privacy]

5 [Personal Privacy]

6 (SEC Exhibit No. 40 was marked for
7 identification.)

8 (The witness examined the document.)

9 THE WITNESS: I do kind of remember this.

10 BY MR. KOTZ:

11 Q Okay.

12 A I was in New York. I think this was in New York.
13 Let me see what it says. Yeah. It was in New York. He was
14 testifying on a public hearing on NMS.

15 Q You see Mavis Kelly is asking, Mavis Kelly being
16 the one who got the [redacted] complaint?

17 A Mm-hmm.

18 Q Okay. Does this refresh your recollection at all
19 of having communications with Mavis Kelly? She states that
20 she provided copies of this [redacted] complaint to --

21 A To me?

22 Q To you and the team --

23 A But to me specifically?

24 MS. STEIBER: To the team.

25 MR. KOTZ: Yeah. I don't know if she mentioned
26 your name specifically.

1 THE WITNESS: I mean, look, it's possible that she
2 did. I -- I honestly just don't recall.

3 MR. KOTZ: Okay, okay.

4 MS. STEIBER: She said she circulated it in a paper
5 because of a confidentiality concern and that's what's
6 referenced by the file.

7 THE WITNESS: Yeah. I -- I mean, it's possible
8 that I got it. I just don't recall.

9 BY MR. KOTZ:

10 Q Okay. Now, I guess one question I have from this
11 is you, in responding back to her, say, "The examination is
12 ongoing. We're in the process of reviewing trading on the
13 NMS Desk and comparing it against the trades in the hedge
14 funds," but it seems, though, about nine days earlier, the
15 project was kind of put on hold in favor of the market timing
16 cases.

17 Do you think you might not have been aware that it
18 was put on hold?

19 A Well, I mean, it's entirely possible that I -- I --
20 I wouldn't have been known. However, it would have still
21 been considered ongoing.

22 Q So you might still have said it's ongoing, even
23 though it had been kind of temporarily put on hold?

24 A Right.

25 Q Okay. Now, you say in here, "Preliminarily, we are
26 fairly suspicious that something is going on simply because

1 we've always known the industry is in MM," I assume that's
2 market-maker. "It is clear he makes the vast majority of his
3 money from commissions earned on executing trades on behalf
4 of the hedge funds."

5 Do you recall at that point you were fairly
6 suspicious? That's kind of where you were with the exam?

7 A I -- I don't recall, but it would appear that I
8 was.

9 Q Okay.

10 A Yeah. It would definitely appear that I was. I
11 know there -- there were points in time I thought, based on
12 the timing of the letter being sent out, that it would have
13 been earlier, January-February, -- well, actually, no. Yeah.
14 I mean, from day one, before we event sent the letter, I
15 think I was fairly suspicious that something might be going
16 on, but again front-running.

17 Q Right. And you say, "We don't know for a few more
18 weeks, however. I'll keep you posted."

19 A Right.

20 Q But it doesn't seem like there was anything going
21 on with the exam at that point because the team was now
22 working on market timing. There's just a bit of a disconnect
23 here in that I don't know how you would know in a few more
24 weeks because nobody was doing anything at that point.

25 A Well, two things. First of all, I'm not sure it's
26 right to say that the Madoff thing was completely on hold. I

1 mean, it was just -- it was prioritized and your first
2 priority is market timing. I'm not sure that I knew at the
3 time that --

4 Q Okay.

5 A -- communication was made.

6 Q Okay. I mean, in reviewing records, you know,
7 we're reviewing e-mails, we -- there's a lot, as you can see,
8 of e-mail communication back and forth about the Madoff
9 examination up until that point.

10 A Right. Mm-hmm.

11 Q There's nothing after that, and I'll show you an
12 e-mail a year later, almost a year later about it, but we
13 don't have any record of anything happening on the case
14 subsequent to this e-mail and really, you know, your e-mail.

15 A Mm-hmm.

16 Q So could it have been that either you were kind of
17 out of the loop a little bit because it was Mark Donohue's
18 matter, Madoff went back to you because you were involved
19 originally, and you may not have been aware of how -- how
20 much work they were doing at that point?

21 A Well, I think -- I think you're right, that I was
22 somewhat out of the loop at this point because Mark was
23 working on it, that I may not have known the exact status and
24 probably didn't know the exact status of where things were
25 going on the examination, and I would add that I very likely
26 gave Madoff -- Mavis a response that would please her a

1 little bit, to let her know that, you know, it was still
2 being looked at and --

3 Q All right. So you may have --

4 A -- might have overstated my case a little bit.

5 Q Okay. I gotcha. Okay. So you don't know whether
6 something happened in a few more weeks or whether you ever
7 got back to her?

8 A I don't.

9 Q And you don't know if you ever provided an update
10 to her subsequent to that?

11 A I don't know.

12 Q Okay.

13 MR. KOTZ: So then the next document that we have
14 is a document, dated 3/16/2005. So this was April 16th,
15 2004. This is 3/16/2005. We're going to mark this as
16 Exhibit 41. This is an e-mail from Mark Donohue to Eric
17 Swanson.

18 (SEC Exhibit No. 41 was marked for
19 identification.)

20 THE WITNESS: This is a year later?

21 MR. KOTZ: Yeah. Well, 11 months.

22 BY MR. KOTZ:

23 Q And in this you say, "What is the status of the
24 Madoff hedge fund thingie?" The response is "deadie." I
25 assume it means dead in some reference to "thingie" and
26 "deadie. We never found any real problems. Does it need to

1 be revised?"

2 A Okay.

3 Q Do you have any idea what -- what needed to be
4 revised? What that would refer to?

5 A I wonder if he's not saying revisited and just
6 mistyped it.

7 Q Mm-hmm.

8 A But I don't know.

9 Q Okay. And so what we -- we're trying to understand
10 here is in April 16th, 2004, you're saying we're fairly
11 suspicious, doesn't seem there was much, if any, work that
12 occurred between April 16th, 2004, and March 16th, 2005, and
13 then the response from Mark Donohue at that point is "we
14 never found any real problems."

15 A Mm-hmm.

16 Q Any idea?

17 A All I -- all I can tell you is that at this point,
18 it was clearly -- and the last thing I want to do is cast any
19 aspersions towards Mark Donohue, but it was reassigned to him
20 and it's my belief that he and I'm not sure whomever else
21 would have been working on it with him but was -- there was
22 work that continued on it and that, you know, they didn't
23 find any -- any front-running problems, as it were.

24 Q Why do you believe that there was continuous work
25 and there was actually some determination of a finding of no
26 front-running?

1 A I guess in part because I find it hard to believe
2 that Mark would have concluded that it was dead and say that
3 we never found any real problems without having actually done
4 some work to see if there were real problems.

5 Q Okay. But other than that, do you have any other
6 independent knowledge that there was any decision made, any
7 further work done?

8 A No. No, I do not.

9 Q Okay. I mean, isn't it possible that there were
10 other priorities in the office, those priorities took
11 precedence, the matter was held in abeyance, nothing was done
12 on it, a year later they get a question, maybe they hadn't
13 found anything up to that point, and the response would be we
14 never found any real problems?

15 A That's possible, but I would have thought that if
16 that was the case, the definitive statement would have been
17 it's still open and to this date we haven't found any
18 problems, not that it was dead, but --

19 Q Okay. But you don't know that from your
20 independent knowledge?

21 A I do not.

22 Q Okay. All right. Okay. Do you -- do you have any
23 idea why this Madoff hedge fund was triggered in your mind
24 when you sent this e-mail?

25 MR. KOTZ: Let me show you a document before you
26 answer. I'm not trying to trip you up, but I just want to

1 show you the document. This document we're going to mark as
2 Exhibit 42. This is an e-mail between you and Shana Madoff,
3 3/16/2005.

4 (SEC Exhibit No. 42 was marked for
5 identification.)

6 THE WITNESS: I think I was probably just
7 concerned. My guess is, and I don't know because I don't
8 have all the timelines, but there may have been some period
9 of time where we didn't do one of these breakfasts and then I
10 was doing another one and I was probably just concerned.

11 I will tell you definitively right now I never once
12 had a conversation with Shana Madoff about this review that
13 was going on.

14 MR. KOTZ: Okay. I mean that's just what I to
15 get --

16 THE WITNESS: I want to --

17 MR. KOTZ: -- for the record.

18 THE WITNESS: -- get that clear.

19 BY MR. KOTZ:

20 Q So you think it's possible, though, that because
21 you were meeting with her, it kind of struck in your head
22 whatever happened with that Madoff thing?

23 A Yeah. And given the time on here.

24 Q Yes, one is, you know, several hours later.

25 A This would have been -- we would have been gone and
26 have left wherever we were, still at the Hyatt. I don't know

1 where this would have been.

2 Q SIAB Conference in St. Louis?

3 A St. Louis, yeah, probably. But we would have been
4 gone and -- and not with Shana at this time.

5 Q Okay. So did Shana ever ask you about the status
6 of an examination?

7 A No. In fact, I don't believe she ever knew about
8 this examination.

9 BY MS. STEIBER:

10 Q I'm sorry. Did you say we would have been gone and
11 not with Shana at this time at that conference?

12 A No. At this -- well, if this -- I should probably
13 be a little less definitive, but if this is what I think it
14 is, this would have been one of those compliance breakfast
15 meetings. They usually ran from 8:30 to 10:30 and then we'd
16 go our separate ways and fly back to D.C

17 BY MR. KOTZ:

18 Q Oh. So you think that you might have actually seen
19 Shana around the 8:42 a.m. time period but then by the time
20 this second e-mail occurred on 2:34, you were back in
21 Washington?

22 A Well, if in fact this is tied to a conference, one
23 of the SIAB breakfast things we did in St. Louis, then yeah,
24 that would be the typical pattern.

25 Q Okay. Although you sent it from your Blackberry,
26 so you might have been on the road when you sent all these

1 e-mails?

2 A Well, no, I would have been on the road. What I'm
3 saying is I would have been in St. Louis. This would have
4 been a communication at Starbucks. Yeah, okay. So this
5 would have just been a communication. I was probably with,
6 you know, the other speakers, Personal Privacy, et. cetera, and
7 letting her know -- she's letting me know, I guess, that
8 she's at the Starbucks in the Mall. There was a mall
9 attached to that hotel, and I don't know why I writing back
10 "still at the Hyatt waiting," but in any event, we would have
11 been done the breakfast and by this point in the day, in this
12 second e-mail, we would not have been with Shana Madoff.

13 Q Okay.

14 MR. WOLK: Exhibit 41?

15 THE WITNESS: Yeah. In Exhibit 41.

16 BY MR. KOTZ:

17 Q Okay. But it's possible that because you had just
18 been with Shana Madoff at this conference, that triggered in
19 your mind whatever happened with the Madoff hedge fund?

20 A It's likely.

21 Q Okay. But again, Shana never asked you about the
22 status of the exam?

23 A Shana never once asked me about the status of an
24 exam.

25 Q And you never talked to her about the status of the
26 exam?

1 A Never talked to her about the status of the exam,
2 and I will add that I don't believe she even knew about this
3 particular examination.

4 Q Okay. So just to be clear, so we have it for the
5 record, you weren't -- you didn't report back to Shana what
6 Mark Donohue said about what they found in the exam?

7 A I want to be 100 percent clear on that point.

8 Q Okay.

9 A I did not report back to Shana --

10 Q Okay.

11 A -- what Mark Donohue told me.

12 Q Okay, okay. Good. That's what I wanted to
13 clarify.

14 Okay. Okay. Yes, this is a document we previously
15 marked as Exhibit 12, but I wanted to bring it to your
16 attention again. This is a document, dated 5/26/2005, from
17 you to John Nee, cc McCarthy and Donohue.

18 A Mm-hmm.

19 Q As you see in this document, John Nee is saying to
20 you, "John" -- I'm sorry. He's saying to John McCarthy, it's
21 then eventually forwarded to you by John McCarthy, but he's
22 saying to John McCarthy, "We're currently conducting an exam
23 on Madoff," and some specifics about the exam and McCarthy
24 forwards it to you and you say to John, "John, we should
25 discuss. OC has an open exam with Madoff on this issue. I'm
26 on the road today but available tomorrow a.m."

1 A Right.

2 Q Okay. And so what do you recall about this in
3 terms of John Nee coming forward and saying that the New York
4 office was doing an exam?

5 A Well, I don't know if it was prompted by this
6 particular e-mail or if John Nee was the person that I spoke
7 to, but I do know that at some point around this time period
8 I had a conversation with NERO, it could have been John Nee,
9 at which point, you know, I told him about the review that we
10 had -- that we had done and that was open, and he told me
11 that they were doing a review that touched on the same
12 issues.

13 I -- again, I don't remember if it was John Nee
14 that I spoke to, but it -- it could have been, and I
15 remember -- I remember having a discussion about whether he
16 was a hedge fund or wasn't a hedge fund and, you know, what
17 Bernie had told me way back when I had first spoken with him
18 about how he was -- had this black box and was an executing
19 broker for these other hedge funds.

20 But I recall at some point, and whether it was this
21 conversation or a subsequent one, but I recall, you know,
22 telling him we'll send him all of our files, the ones that
23 they haven't.

24 Q Okay. And if you see at the bottom of this page,
25 John Nee's e-mail to McCarthy, he says, "When he finally
26 admitted to executing trades for billions of dollars of

1 customers' hedge fund money using specific proprietary
2 trading algorithm, he said we should know about this, as he
3 told Lori Richards and John McCarthy about this 1.5 years
4 ago. We are hoping that if what he is saying has any truth
5 at all to it, you might have some info related to his hedge
6 fund-related activities that you could send us."

7 It seems again to go back to this phone call
8 between Lori, John McCarthy and Bernie Madoff --

9 A Mm-hmm.

10 Q -- and that that phone call provided some
11 information. Does that refresh any of your recollections?

12 A I'm just -- I'm not aware of that particular phone
13 call.

14 Q Okay. Okay. So let's show --

15 BY MS. STEIBER:

16 Q Should the New York team have been aware that there
17 was an examination, an open examination, as you've described
18 it, in the home office on Bernie Madoff?

19 A You know, there was -- there was no actual policy
20 on this, but -- and I think it actually came up in -- in this
21 context, this particular review.

22 Bob Sollazzo was particularly protective of, you
23 know, his territory and -- and was -- was very political
24 about how he would approach this if he found out that we had
25 some into New York and done a trading exam, but he really did
26 want to know in advance when we had done it and we were not

1 always good about -- about telling him.

2 Again, there was no rule or policy about it, but I
3 think the information-sharing at that level between offices
4 was not always great. I can elaborate if you want.

5 MR. KOTZ: Sure.

6 THE WITNESS: I sometimes sensed at the SEC that
7 there was a bit of eat what you kill kind of -- a bit of
8 competitiveness between the offices. I'm sure we were that
9 way and I know some of the regional offices were that way.

10 So it felt a little bit like Corporate coming in
11 when Washington would come in and do something without
12 telling the regional offices, and I think, you know, I think
13 on some level rightfully so, they didn't like it.

14 So should they have known? I assume, but after
15 this process you're going through, there may be a more
16 formalized way that that information flows, but there wasn't
17 back then.

18 BY MR. KOTZ:

19 Q So given the culture at that time, you're not
20 surprised that the New York office wouldn't know that you
21 guys were doing the same exam as them?

22 A No, I'm not surprised.

23 Q Okay. And in fact, given the competitiveness, that
24 information might not have been shared with the New York
25 office?

26 A It wasn't -- you know, my recollection, it -- we

1 wouldn't have just -- we just wouldn't have even thought to
2 call them, which is, I think, bad. I think they probably
3 should have been made aware.

4 BY MS. STEIBER:

5 Q But were there -- I guess it's called the STARS
6 System that would -- you would put the exam in and when they
7 start an exam, they would have searched the STARS System, is
8 that incorrect?

9 A No. You're right. There -- there is a STARS
10 System or there was that was for use by the actual
11 broker-dealer examination groups that would do the routine
12 broker-dealer examinations and the group that I was in that
13 John and I were running was -- you know, we didn't use it.
14 We did more sort of very targeted, focused kind of reviews
15 that were not part of a routine exam program.

16 Q Would you call those cause exams?

17 A I mean, they were cause or, I guess I might call
18 them, special purpose exams, but the simple fact of the
19 matter is, to my knowledge, I never used STARS. We did
20 not -- we did not log things into STARS.

21 Q Okay.

22 MR. KOTZ: Let me show you the next document. Mark
23 that as Exhibit 43. This is an e-mail, dated 5/26/2005, 5:41
24 p.m., from you to Mark Donohue. This is a continuation of
25 the previous e-mail where, after you say to John Nee, "We
26 should discuss, OC has an open exam," you then say to Mark

1 Donohue, "Can you refresh my recollection about what we did
2 on the exam? I know we talked about the other month, but I
3 forget." Mark Donohue replies, "Nothing's happened since we
4 last spoke. I'll gather the stuff and figure out what we
5 have. The article's from 2001, so they probably have the
6 same intel we have." And then you say, "I thought we had
7 formed some conclusions about this."

8 (SEC Exhibit No. 43 was marked for
9 identification.)

10 BY MR. KOTZ:

11 Q I guess the question is do you remember what the
12 conclusions you thought were formed?

13 A I -- I don't remember, but I'm guessing, based on
14 the other information, exhibits that you've shown me, that
15 I'm referring back to the "deadie" e-mail.

16 Q Okay. Even though when you communicated with Mavis
17 Kelly, you were saying you were fairly suspicious?

18 A That e-mail, I guess, comes after.

19 Q That's -- that's April 16th. So I guess that's
20 about a month before. Yeah. If you recall -- oh, I'm sorry.
21 Yeah. That's -- that's -- well, that's the last kind of
22 substantive e-mail.

23 A Right.

24 Q And then a year later, you had the communication
25 about the "deadie" issue.

26 A Right. So I'm guessing in this e-mail, I'm

1 referring back to, you know, Mark having told me that they
2 didn't -- they had completed their review or some stage of
3 the review and hadn't found anything.

4 Q Okay, okay. But that was based on what, you know,
5 Mark had done that you hadn't really been involved in the
6 specifics?

7 A Absolutely.

8 Q Okay, okay. Now, let me ask you this question.
9 The focus was on front-running. An exam -- if an exam had
10 been done and it was "deadie" in terms of, you know, Donohue
11 determining there was no front-running, would that have
12 answered all the potential issues that were raised?

13 Then I refer you back to the [REDACTED] complaint
14 which you don't recall but seems to think was distributed at
15 that time.

16 A Yeah. Would have answered all the questions that
17 were raised. I mean that's -- I would have to spend some
18 more time thinking about that to be able to answer that
19 question completely, but to the extent that the complaint
20 alleges outsized returns and, you know, we operate under a
21 theory that they may be getting outsized returns from
22 front-running and we failed to find front-running, does it
23 answer all the concerns? I guess not, because you still have
24 opened the question of whether or not the returns are
25 outsized. I don't know. I think -- I'm not sure. I'm just
26 not sure.

1 Q Okay. So do you remember then discussing or
2 engaging in any discussions with John Nee or the folks in New
3 York about what you were doing, what you guys were doing?

4 A I remember having a couple of calls and, you know,
5 one was -- I think one was just to tell them what we have
6 done or explain it a little bit and what we had or hadn't
7 found, and then the next one, if there was another one, and I
8 think there may have been, was just to tell them we were
9 shipping all the documents up to New York. It's possible
10 even that I had Mark make that call, but I -- I don't recall.

11 Q Okay. All right. Let me see that June 1 --

12 BY MS. STEIBER:

13 Q Let me ask you.

14 MR. KOTZ: You had a question?

15 BY MS. STEIBER:

16 Q So you said you had reached some conclusion in that
17 "deadie" e-mail. At that point should there be a closing
18 report that we see in the workpapers?

19 A It would be good practice, but there wasn't. That
20 wasn't always the case.

21 Q And do you recall in this case if you ever saw any
22 type of closing report?

23 A No.

24 MR. KOTZ: Okay. Let me show you this document
25 we're going to mark as Exhibit 44. This is an e-mail from
26 Genevieve Walker to Mark Donohue, dated 6/2/2005, 9:42

1 a.m.

2 (SEC Exhibit No. 44 was marked for
3 identification.)

4 BY MR. KOTZ:

5 Q And you can see kind of halfway down -- you can go
6 back to the first one where Jacqueline Wood says to
7 Genevieve Walker, "Mark is looking for the Madoff junk. I
8 remember giving them to you so that we would have all the
9 Madoff stuff in one central location. Mark's saying we need
10 to send the stuff to New York ASAP. Then Former OCIE Attorney Advisor may
11 have some items."

12 Then on the second page, Personal Privacy says, "Hello,
13 Gen. Can you remember if the boxes marked Madoff are in the
14 hallway near your office or if not which hallway?" And then
15 Genevieve Walker responds, "It was the top box at my eye
16 level which is why I noticed it, but they were boxes, not
17 file folders. I remember seeing them because I thought to
18 myself, I never heard anything more about that case, but
19 it's going to storage." Do you see that, the first page?

20 A I do, yeah.

21 Q So, I mean given this, isn't it -- doesn't it seem
22 as though there was no work done on this and in fact the
23 boxes, the Madoff boxes were -- they were then kind of
24 searching for them and in fact they might have been sent to
25 storage?

26 A Yeah. It's possible. I don't believe they were

1 sent to storage, but it is possible that there was not a
2 significant amount of work done on it over that time period.

3 Q Right. I mean that seems to be what Genevieve
4 Walker is saying, that I never heard anything more about that
5 case. We don't show anything substantive done from the time
6 that she was told to concentrate on mutual funds --

7 A Right.

8 Q -- to this time period, is that fair?

9 A It appears that way, yes.

10 Q Okay. So given that, given that there was no
11 closing report, it -- it's at least possible that there was
12 no conclusions really formed in connection with that
13 examination?

14 A Well, I don't take the lack of a closing report as
15 the most definitive on that, but this e-mail is suggestive of
16 that for sure.

17 Q Okay. Okay. Yeah. We haven't been showing you
18 any records of requests to Madoff past February 2004, any
19 further document requests or any communications at all.

20 MR. KOTZ: All right. Let me -- why don't we go to
21 that 2/26 e-mail? Okay. The next exhibit we'll mark as
22 Exhibit 45. This is an e-mail, dated 2/28/2006. Okay. So
23 again, this is many months later. This is an e-mail from
24 McCarthy to you at the bottom there saying, "Any news on that
25 NREO," I assume that refers to New York, "exam of Madoff?"

26 (SEC Exhibit No. 45 was marked for

1 identification.)

2 (The witness examined the document.)

3 THE WITNESS: Okay.

4 BY MR. KOTZ:

5 Q All right. So as you can see in this document
6 which we've marked as Exhibit 45, there's a couple of
7 e-mails. There's a second e-mail, dated 2/28/2006, 11:53
8 a.m., from you to John Nee, a third e-mail, dated 2/28/2006,
9 2:06 p.m., from you to John McCarthy with some attachments.

10 A Okay.

11 Q Okay. So do you remember any point following up on
12 the New York regional exam that was done of Madoff?

13 A I don't specifically recall it, but I'm looking at
14 this e-mail and it seems as though I did send an e-mail to
15 John Nee in response to McCarthy asking me about it.

16 Q Okay. If you see on the third page of this
17 document, John Nee says to you, "Eric, we closed the
18 examination after looking for and not finding any evidence of
19 front-running. See attached report. However, shortly
20 thereafter our Enforcement people got an anonymous complaint
21 alleging Madoff is either front-running or is the biggest
22 Ponzi scheme ever."

23 Do you remember becoming aware that there was a
24 complaint that Madoff was running the biggest Ponzi scheme
25 ever?

26 A Absolutely don't recall being aware that there was

1 this complaint.

2 Q And you don't remember anything about a complaint
3 about him running a Ponzi scheme?

4 A No.

5 Q Okay. Now I want to ask you about a couple
6 e-mails, give you an opportunity to kind of see whether
7 there's any connection or explain it. I just want to put
8 that out there.

9 MR. KOTZ: This is an e-mail, dated 3/1/2006.
10 We're going to mark this as Exhibit 46. From you to John
11 McCarthy, and there's a reference below from an e-mail from
12 McCarthy to Swanson. This is the day after John Nee e-mails
13 you to tell you that, "Thereafter our Enforcement people got
14 an anonymous complaint alleging Madoff is either
15 front-running or is the biggest Ponzi scheme ever."

16 (SEC Exhibit No. 46 was marked for
17 identification.)

18 THE WITNESS: Mm-hmm.

19 BY MR. KOTZ:

20 Q You can see John McCarthy says two things. One,
21 "Put the squeeze on Shana. Two, Cutler gave Lori a tip we
22 should follow up on."

23 A Mm-hmm.

24 Q Okay. You respond, "I will call her tomorrow.
25 What's the tip? Remind her we have a meeting scheduled with
26 NYSE tomorrow p.m."

1 Do you know what that squeeze was?

2 A Yes.

3 Q Okay.

4 A John -- John wanted me to get him on a panel at
5 SIFMA or SIA CNL and I don't know if I had reached out to
6 Shana prior to this or not, but Shana was the avenue to get
7 him on that panel.

8 Q Okay. So just for the record to be clear, there
9 was no connection between you finding out that Madoff was
10 allegedly the bigger Ponzi scheme ever and putting the
11 squeeze on Shana?

12 A No connection whatsoever.

13 Q Okay.

14 A Yeah.

15 Q And do you know what this tip was?

16 A I do -- I don't -- I will remember this because
17 I -- this was after Steve left the SEC and --

18 Q Because there was a tip that Cutler gave Lori about
19 Madoff. Was this the tip about Madoff?

20 A Oh, I don't know. I don't --

21 Q I mean, we don't know necessarily that was it, but
22 there was a tip out there. Do you know whether that tip --

23 A It seems unlikely that this would be it because
24 there's no way in hell John would be wanting me to use Shana
25 to get him on a panel if he also had a tip from Cutler about
26 something at Madoff, but --

1 BY MS. STEIBER:

2 Q But what about the prior day, he said that there's
3 this Enforcement investigation that you find out about
4 involving Madoff Securities and a Ponzi scheme and then the
5 next day he sends this e-mail trying to get on a panel?

6 A Yeah. I don't know. You're right. I mean, but
7 the only thing I can say is that there was, you know, lots of
8 open inquiries and investigations of lots of different things
9 and, you know, that e-mail about the Ponzi scheme does not
10 resonate with me right now, having read it, digested it and
11 thought a whole lot about it at that point in time.

12 Q Did you and John discuss the e-mail that you got
13 from John Nee?

14 A I don't believe so. I don't -- I don't recall
15 having discussion with him about it.

16 Q You weren't concerned that you -- you had an
17 investigation of the same issues that were open in New York?

18 A No. I mean, I think I was glad that we had
19 forwarded our files to NERO. That's all I recall thinking
20 about.

21 BY MR. KOTZ:

22 Q And there was no concern that the fact that there
23 was an allegation out there that Madoff was potentially
24 running the biggest Ponzi scheme ever and here there were
25 communications or efforts to get on a panel arranged by
26 somebody in his family?

1 A You know, John had asked me to help him get on the
2 panel and I was trying to be helpful to him. So I don't
3 recall, you know, the timing of this. I don't recall
4 being -- having a heightened concern about a Ponzi scheme at
5 Bernie Madoff. It just doesn't -- I just don't recall it.

6 Q Okay. Did you ever learn that there was a
7 complaint that Enforcement was looking at related to Bernie
8 Madoff prior to, you know, December 2008?

9 A Well, I think, had I not seen this e-mail right
10 here, I would have said no, but I think there's an e-mail
11 from John Nee that says they got an anonymous tip.

12 Q Right. But, I mean, anything else that you can
13 recall about being aware of that?

14 A No.

15 Q Did you ever hear the name Harry Markopolos before
16 December 2008?

17 A No.

18 Q And you never learned the results of the
19 Enforcement investigation?

20 A No, not until after everything was all over.

21 Q And you didn't have any concerns really about
22 Bernie Madoff at that time? You eventually got involved with
23 somebody in his family.

24 A Yeah. No, I -- but no, I didn't, and I can't
25 explain to you exactly why. I mean, I could tell you
26 personally what was going on in my life at this point that,

1 you know, probably helps to explain some of it, but -- but
2 no, I -- I really didn't. It wasn't even -- you know, when
3 Shana and I started dating, it wasn't even remotely on my
4 mind that there might be some major fraud going on at the
5 firm.

6 Q And it never kind of harkened back to the fact that
7 you had done this front-running exam or started a
8 front-running exam about --

9 A No.

10 Q Okay. We're into the next stage which is the
11 relationship. So, I mean, you know, I'm happy to keep going.
12 If you want to take a few minutes, it's probably, you know, I
13 don't know, half an hour, 45 minutes left. So it's up to you
14 what you want to do.

15 A Intentionally not taking a bio break to kind of
16 keep up my level of discomfort. Just kidding. I'm okay
17 continuing.

18 MR. WOLK: We are okay.

19 MR. KOTZ: Okay.

20 BY MR. KOTZ:

21 Q Okay. Okay. We've already established this, but
22 let me just get this again. When was the first time that you
23 met Shana personally, in person?

24 A I believe it was in October of 2003.

25 Q Okay. But you had had communications with her
26 previously, just not in person?

1 A Yeah. I didn't recall that, but I've seen the
2 e-mails here today as exhibits, yes.

3 Q Okay. Were there -- do you recall whether there
4 were kind of ongoing e-mails back and forth in that time
5 period, 2003-2004-2005, between you and Shana?

6 A I think they would have been sporadic and probably
7 more frequently involving her assistant than Shana
8 directly, --

9 Q Okay.

10 A -- but I don't really recall.

11 Q But some of the e-mails that you had during that
12 time period were friendly with Shana, right?

13 A Sure. But, I mean, you know, e-mails that I had
14 with many people in the industry --

15 Q Right.

16 A -- would have been friendly.

17 Q And is it fair to say that she was a friendly
18 person where she would send e-mails that seemed kind of
19 friendly, even though there wasn't anything actually going
20 on?

21 A Yeah. I think sometimes disproportionate to the
22 nature of the relationship, yeah.

23 Q Okay. You guys were discussing appearing on
24 panels, is that right?

25 A Yeah.

26 Q And she wanted to get you on these panels?

1 A Correct.

2 Q So she wanted to keep some kind of relationship
3 with you, you know, work relationship in order to, you know,
4 be friendly and get you to appear on these things?

5 A I mean, I guess that's accurate.

6 Q All right.

7 MR. WOLK: Just to be clear, you weren't the only
8 one on the panels?

9 THE WITNESS: Right. No, and there were other
10 regulators.

11 MR. KOTZ: Okay. So let me just show you an e-mail
12 just to kind of explain a little bit about this. Exhibit 47,
13 we're going to mark an e-mail from you to Shana, 8/15/2004,
14 9:39 a.m.

15 (SEC Exhibit No. 47 was marked for
16 identification.)

17 (The witness examined the document.)

18 THE WITNESS: Okay.

19 BY MR. KOTZ:

20 Q Okay. So it seems in this e-mail that you're --
21 you're kind of talking about non-work-related issues, --

22 A Mm-hmm.

23 Q -- is that right? Sorry. Could you say yes?

24 A Oh, yes. I'm sorry. Yes.

25 Q But you weren't involved in a relationship, a
26 romantic relationship with her at that time, is that right?

1 A No.

2 Q So how would you describe it? If you could just
3 kind of explain, you know, why you were talking about moving
4 and things like that?

5 A Well, I mean, we would go to these conferences and,
6 you know, typically the gaggle of us who were speaking at
7 these things would end up having coffee together or something
8 and so there was definitely a rapport that developed and so
9 that we were friendly and I could have had a very similar
10 e-mail dialogue with [Personal Privacy], [Personal Privacy], [Personal Privacy].

11 It wouldn't have been that unusual, and, you know, this
12 particular e-mail, I don't -- I don't recall what the context
13 was for the telephone call, but nothing's surprising in it to
14 me.

15 Q Okay.

16 MR. KOTZ: Let me show you another one, just to
17 give you an opportunity to talk about that, as well. We're
18 going to mark this as Exhibit 48.

19 (SEC Exhibit No. 48 was marked for
20 identification.)

21 THE WITNESS: I should say this is titled Sale of
22 Topical Breakfast. So it's probably in the context of
23 scheduling that breakfast that we needed to talk.

24 MR. KOTZ: Okay. This is from Shana Madoff to you
25 and the date below here is 10/7/2004. Take a look at this
26 one.

1 (The witness examined the document.)

2 THE WITNESS: Mm-hmm.

3 BY MR. KOTZ:

4 Q So she's saying here, "You're so great. No matter
5 what, you and John will always be my A-team players. You are
6 my first round draft picks."

7 A Mm-hmm.

8 Q So, I mean, if you could just talk a little bit
9 about, you know, this kind of communication back and forth?

10 A Sure. I mean, you know, we had -- we had
11 established this program, you know, that SIA was sponsoring
12 and the people that were participating in the program,
13 including myself and John, and I think Personal Privacy and Personal Privacy
14 Personal Privacy and Personal Privacy. I think we all developed a bit of a
15 rapport and I think the context for this was whatever
16 conference it was, I was not going to be able to attend and
17 nor was John, I believe. Yeah. So I -- I had helped her get
18 Mark and Personal Privacy to speak at the event.

19 Q So when she's saying, "Eric, you're so great," she
20 must mean in terms of your participation in this -- in these
21 panels?

22 A No. I think she's saying for helping her line up
23 additional speakers.

24 Q Okay.

25 MR. KOTZ: Okay. Let me show you another document.

26 Mark this as --

1 THE WITNESS: This is actually for Dallas, I think,
2 not that it matters.

3 MR. KOTZ: Mark this as Exhibit 49. This is dated
4 8/12/2004, 4:21 p.m., from you to Shana Madoff.

5 (SEC Exhibit No. 49 was marked for
6 identification.)

7 (The witness examined the document.)

8 THE WITNESS: Okay.

9 BY MR. KOTZ:

10 Q Do you recall having conversations with Shana about
11 industry-related issues?

12 A Mm-hmm. Sure.

13 Q Okay. And you say, "Question. In acknowledging
14 that Madoff is the exception to the above, do you think this
15 theory is plausible?"

16 A I'm being cute.

17 Q Okay. You're saying that kind of because she's
18 involved, so you don't want to, you know, --

19 A Right.

20 Q Okay.

21 A I remember this. I was -- I was an occasional
22 speaker for an NASD-Wharton session and I was -- this was
23 coming on the heels of a lot of scandals, like one after
24 another, about market analysts and market timing and there
25 were others in there, as well, and I was trying to
26 understand -- the audience was compliance officers and I was

1 trying to understand if there was a cultural problem and how
2 to address it and I was looking for some guidance, some help
3 from somebody, you know, that I knew worked in this space and
4 that I had dealt with through the SAI Program.

5 Q But there's no connection between this statement
6 and ongoing examinations?

7 A Zero, absolutely none.

8 Q Okay. Okay. And isn't it the case that during
9 this time period, 2003-2004-2005, you actually were involved
10 with other people, is that right, romantically?

11 A Yes.

12 Q Okay. And, you know, we don't need to go into too
13 much detail, but I do think it's helpful for that point if
14 you could just kind of sketch out briefly, you know, without
15 going into detail the fact that you were involved with other
16 women during that time period.

17 A Okay. Want me to just --

18 Q Yeah.

19 A Okay. So I had an on-again/off-again relationship
20 with a woman named [REDACTED]. She's an [REDACTED] in

21 [REDACTED] that was -- I'm sorry. What time period do you want me
22 to span? '03 to --

23 Q '06.

24 A '03 to '06. Okay. I'm not sure. There was a
25 period of time probably in '04 -- yeah. I mean, I -- I dated
26 a couple of different women, but I don't think I was in any

1 serious relationship at that point and then I was in a very
2 serious relationship with a woman named Jane Doe .

3 Q And you were engaged to her, is that right?

4 A I was.

5 Q Okay. Was a wedding date set up?

6 A There was.

7 Q But eventually you didn't get married?

8 A That's correct.

9 MR. WOLK: What time period was that?

10 THE WITNESS: Late '04 through late '05. The
11 wedding was scheduled in October of '05 and we split up in
12 November, maybe.

13 BY MR. KOTZ:

14 Q Okay. So during this time period, prior to the
15 early part of 2006, although you had friendly communications
16 with Shana Madoff, you were involved with other women, didn't
17 have any romantic interest in her?

18 A Right. That's exactly right.

19 Q Okay. So it wasn't a situation even of, you know,
20 you meet somebody, you kind of like them but then you never
21 get back to them. The romantic feelings didn't start until
22 later?

23 A That's exactly right.

24 Q Okay. And -- and -- and Shana Madoff was married,
25 as well?

26 A Not during that time period.

1 Q Okay. Prior?

2 A Prior.

3 Q Okay. And just again to clear the record, the --
4 the fact that your engagement broke off had nothing to do
5 with Shana Madoff?

6 A Absolutely not.

7 Q Okay, okay. Now we'll talk about a -- a little bit
8 about when you did start having a romantic relationship with
9 Shana Madoff.

10 A Mm-hmm.

11 Q Okay. And, you know, there's some e-mails.

12 A Right.

13 Q Okay.

14 MS. STEIBER: What number are we on?

15 MR. KOTZ: 50. So this e-mail is 3/4/2004. Okay,
16 okay. So why don't I show you this e-mail first and have you
17 look at it?

18 (SEC Exhibit No. 50 was marked for
19 identification.)

20 (The witness examined the document.)

21 THE WITNESS: Okay.

22 BY MR. KOTZ:

23 Q Could it be ^{Personal Privacy} something?

24 A Yeah. ^{OCIE Branch Chief} So, yeah, I recall this.
25 So this was the Friday night of SEC Speaks. I had arrived to
26 the cocktail reception at Speaks at the Ronald Reagan Trade

1 Center and pretty quickly after arriving there, I ran into
2 Shana and we started talking and at that particular event,
3 there's obviously a lot of former SEC people, current SEC
4 people, people that I just know from industry. So it's a
5 fairly social event in terms of, you know, shaking hands and
6 small talk with people, and Shana and I continued to talk
7 throughout the evening at that event while -- while I was
8 there.

9 Q So would you say that this was the kind of
10 beginning of the romantic feelings?

11 A Little bit less so, I think, for me, to be honest
12 with you. I -- I -- I had a sense from that night that --
13 and I was having a good time hanging out with her. I found
14 her to be a lot funnier than I had -- than I thought she was
15 and we were out with a big group of people and we went from
16 SEC Speaks to a bar across the street to yet another bar and
17 Personal Privacy was there, Alex was there, and I got the distinct sense
18 that she was kind of flirting with me that night.

19 But, you know, I also felt like if I had wanted to
20 take it further that night, I could have, but I didn't.

21 Q Okay. And what was this about "caught an earful
22 about apparently I'm a sycophant?"

23 A Oh, I don't know. I'm not sure. I think Personal Privacy was
24 giving me a hard time because I was being maybe a little too
25 nice to Shana or I -- I actually don't know for sure.

26 Q Okay. Was there any concern that -- that because

1 this was -- she worked for an entity that the SEC was
2 regulating, that there would be concern about developing a
3 relationship with her?

4 A I don't think that was the context for the comment.
5 But no, not a particular concern about that. I mean, those
6 things happen.

7 Q Okay. And again just to make this clear for the
8 record, you know, this is March 4th. 2/28 was when you
9 learned in that e-mail about Madoff Securities being one of
10 the largest Ponzi schemes and 3/1 was when McCarthy said to
11 put the squeeze on her, but that has nothing to do with the
12 3/4 e-mail here and your developing a relationship?

13 A I swear to you, I mean I know I'm already under
14 oath, but I'll swear it under oath again, there is no way
15 that that put the squeeze on Shana and the tip comment are
16 connected. The "put the squeeze" on was to get John on a
17 panel.

18 Q Okay, okay. I just want to get that on the record.

19 A Yeah.

20 Q Okay. Okay.

21 MR. KOTZ: So these are a couple e-mails we'll put
22 in together as Exhibit 51. Oh, okay. We can do the first
23 one as Exhibit 51, which is 3/4/2006, 11:54 a.m., from Shana
24 Madoff to Eric Swanson, and then 52 is 3/4/2006, 2:45 a.m.,
25 from Eric Swanson to Shana Madoff.

26 (SEC Exhibit Nos. 51 and 52 were marked

1 for identification.)

2 (The witness examined the documents.)

3 THE WITNESS: Okay. So -- yep. Okay. So this is
4 Shana went back to her hotel after being out with us SEC
5 folks and other industry people. She sent me this -- this
6 e-mail, "made it home." I got it. I was obviously already
7 asleep. It got it the next morning, and I sent this e-mail
8 saying, "I had a great time. You're a riot," and telling her
9 that I'm too old for this essentially.

10 Shana writes me back, "Did you get your car back?"
11 She's asking me that because John McCarthy had borrowed my
12 car that night because I had it in the city and rather than
13 take a cab, he borrowed my car and I respond, "No, but I have
14 spoken to John." So by this point in the morning I have
15 spoken to him and, you know, I make he comment that "he's
16 shocked to hear that you were the ringleader of last night's
17 debauchery," meaning the let's go to this bar and whatever.

18 MR. KOTZ: Right. Okay.

19 THE WITNESS: And it was a karaoke bar. So she was
20 responds, "You can't knock a girl for wanting to have a
21 little karaoke."

22 BY MR. KOTZ:

23 Q And then you made plans to see her on Thursday?
24 Look at the second e-mail.

25 A That's this one. No, I don't think so. Maybe we
26 had -- maybe we had -- we must have had a thing. One of the

1 compliance dinners.

2 Q Okay. It was another compliance thing in St.

3 Louis --

4 A Yes.

5 Q -- you would have seen her at?

6 A Yes.

7 Q Okay. Okay. Now, do you remember later that month
8 there was a conference in Florida?

9 A I assume --

10 Q March 19th to 20th?

11 A I assume that's the SIFMA Non-Compliance and Legal
12 Conference in Hollywood, Florida?

13 Q Yeah.

14 A Yeah. That's the conference where John wanted to
15 get on a panel.

16 Q Okay. So John did go to that conference?

17 A Yes.

18 Q Okay. That was the panel you set him up?

19 A Yes.

20 Q Okay.

21 BY MS. STEIBER:

22 Q Did you attend that conference?

23 A I did not.

24 MR. KOTZ: Okay.

25 BY MS. STEIBER:

26 Q Did Shana go to that conference?

1 A She did.

2 Personal Privacy

3
4
5
6
7
8
9
10
11
12
13

14 A Okay. So -- and I'm sure you'll go through this,
15 but as we move into April then, there's a clear point in time
16 where Shana and I enter into a relationship. There's also a
17 point in time shortly thereafter where John is indicating
18 some fairly extreme displeasure with me dating Shana and, you
19 know, he explains to me that he's worried about me, you know.

20 He saw me go through a really painful period the
21 prior fall, doesn't believe that Shana's a good person on
22 some level, relates a story to me about a woman that he
23 likenes to Shana from his past that broke his heart, and he is
24 being, you know, fairly paternalistic towards me, which was
25 not an unusual aspect of my relationship with John. I mean,
26 we were very close and in some ways it felt to me sometimes

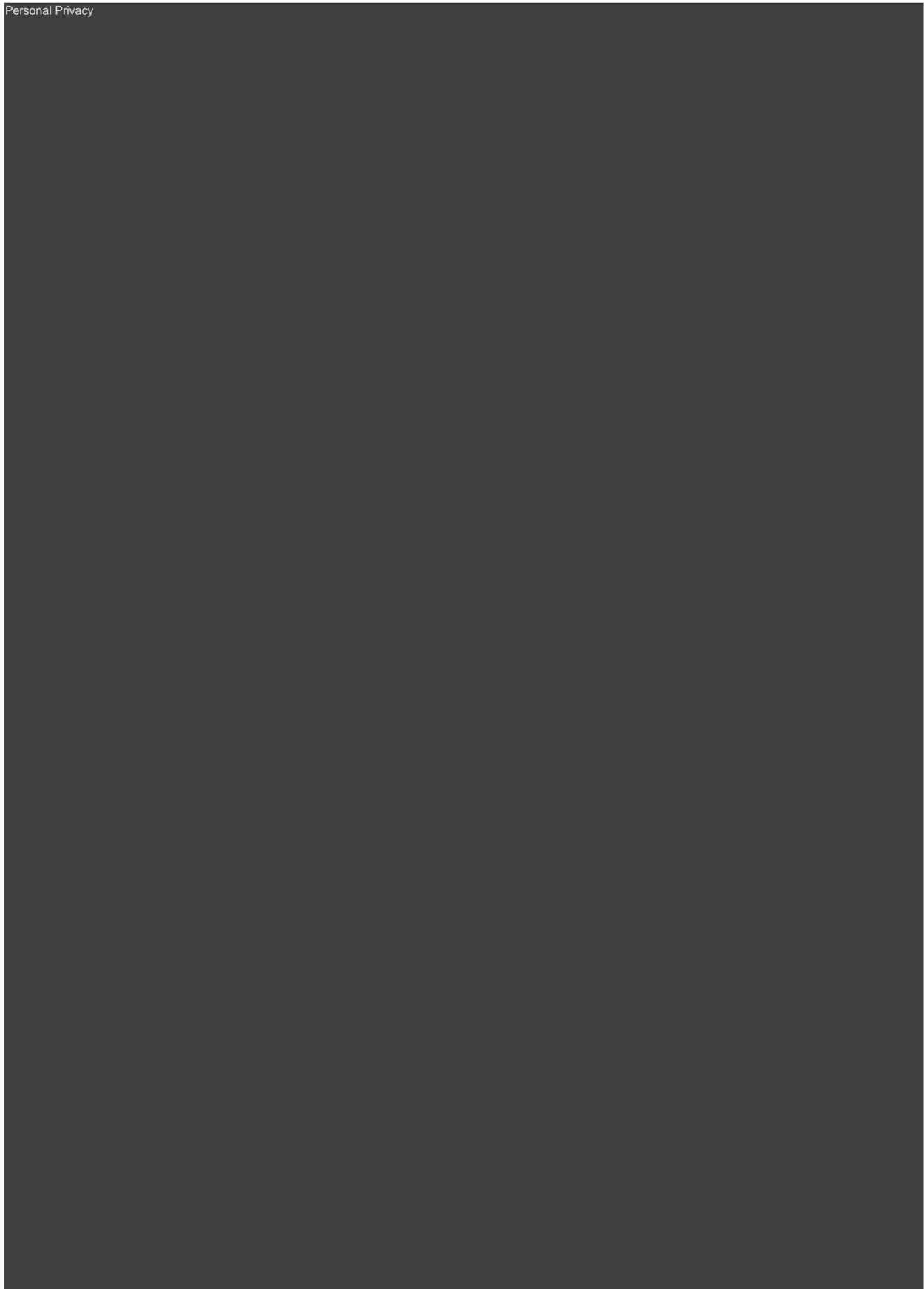
1 father and son-like, but I'll set that aside for now. He
2 didn't want me dating Shana and I was -- I got fairly upset
3 about it because, you know, I found somebody that I really
4 liked and I wanted her to be accepted by John.

5 I mean, I wanted that relationship to be accepted
6 by John, Personal Privacy

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Personal Privacy

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26



Personal Privacy

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26



1 Q Okay.

2 A So I don't know. I maybe am not privy to all the
3 communications that you have on this.

4 Q Okay. Yeah. I don't know that we need to go
5 through -- there's, you know, a whole series of e-mails with
6 John and Alex Sadowski and you and Alex Sadowski and John and
7 you back and forth.

8 A Yeah.

9 Q You know, I guess what we were trying to understand
10 is whether there was any concern on the part of John in his
11 capacity as your boss that you were dating somebody who, you
12 know, was involved in the industry. Was that ever raised at
13 all?

14 A He didn't raise that directly with me. It's
15 entirely possible that that was part of his concern but
16 that's not -- that's not what he raised to me. It was all
17 very much of a personal nature what he raised to me.

18 BY MS. STEIBER:

19 Q And there's a certain period of time where the
20 relationship was being hidden from your supervisor?

21 A You know, hidden, you know, I made the decision
22 that, you know, the day to day around the office was tense
23 and if John -- John had this reputation. I mean, if he
24 didn't like you, it was like you didn't exist and for someone
25 like me who like it's so hard, had worked so hard to gain his
26 approval and, you know, wanted that, and knowing that I was

1 going to be leaving the SEC in a few months, I wanted to
2 continue and have a peaceful exit from the SEC.

3 I wouldn't say I made the decision exactly to hide
4 it. I just made the decision not to talk about it and there
5 were other people at the SEC who knew about it. Yeah. I
6 didn't really want John to know the details of if and when I
7 saw Shana and, frankly, he never asked me either. Had he
8 asked me, I would have told him and I wasn't going to lie to
9 him about it, and, you know, I felt like that was not in
10 appropriate because, you know, I wasn't working on anything
11 related to Madoff.

12 Had I been asked to, I mean, I would have been
13 recused anyway, you know. I mean, he -- he -- he didn't need
14 to know all the details. Personal Privacy

15 Personal Privacy

16 Q Within a few weeks before you were found out and
17 John McCarthy found out, there was an Enforcement
18 investigation of Madoff Securities for possible Ponzi scheme
19 and this is just within a couple of weeks that he has this
20 reaction, this really strong reaction to that you should not
21 be dating Shana and then you're -- for other reasons, you're
22 keeping this relationship hidden from John McCarthy or you're
23 not disclosing it to John McCarthy.

24 MR. WOLK: Well, I think he said he just wasn't
25 discussing it.

26 MS. STEIBER: He wasn't -- yeah. He wasn't

1 disclosing it or discussing it.

2 BY MS. STEIBER:

3 Q And when he finds out, he's pretty angry, but at no
4 time did he discuss with you the fact that he felt like there
5 was a conflict of interest?

6 A No, I don't recall ever having a discussion like
7 that with him and, frankly, you know, you've shown me the
8 evidence within a few weeks or days or whatever it is that I
9 was on an e-mail chain and had a conversation by e-mail with
10 John Nee, the word "Ponzi scheme" being used. I don't know
11 where my head was during that time period, but it was not on
12 Ponzi scheme at Madoff or fraud at Madoff because I don't
13 have a recollection of being concerned about that at the --
14 in the least.

15 BY MR. KOTZ:

16 Q And John McCarthy never expressed concerns about
17 Shana Madoff in terms of the fact that the company she worked
18 for had been examined, there was an investigation, or
19 anything in terms of concern about you being involved with
20 somebody who may be involved in a company that was doing
21 improper things?

22 A I don't recall any conversation like that with
23 John. Now, it's possible that he, you know, maybe it was
24 something that he was worried about or knew about that he
25 didn't divulge to me because I would have been recused by
26 that point. You know, we were in a romantic relationship at

1 or it did it have to do with the family that, you know, she
2 was with or the crowd she kept? Did you --

3 A It was predominantly personal

Personal Privacy

4
5
6
7
8
9

10 BY MR. KOTZ:

11 Q Okay. Yeah. I have no need to go through all
12 these e-mails. Do you have any sense of, you know, specific
13 timing on when you feel your -- your relationship began in a
14 romantic way with Shana? I mean, you said you had that, you
15 know, friendly evening with a bunch of people. When do you
16 think that the relationship began, just so we can have a
17 specific date?

18 A Well, I think it's April 4th because I think that's
19 when, you know, Shana knows I'm in New York and I think it's
20 April 4th, I may be wrong, but I -- I sent her -- we were
21 talking about maybe getting together and having a drink and I
22 sent her an e-mail saying -- I think I said something like
23 I'm tired, I'm just finishing dinner and she writes me
24 back -- she writes me back with just an avenue, a place and
25 an address, and it made me smile and I went and met her there
26 and I think, you know, it was that -- that was the night that

1 we spent together and that's in my opinion when it started.

2 Q Okay.

3 MR. KOTZ: So let's just for the record put this
4 e-mail into evidence. Exhibit 53. This is the incident
5 you're speaking about.

6 (SEC Exhibit No. 53 was marked for
7 identification.)

8 (The witness examined the document.)

9 THE WITNESS: Yeah. Yep. Okay. I recall.

10 BY MR. KOTZ:

11 Q All right. So just to confirm, based on Exhibit
12 53, you believe the relationship started on 4/4/2006?

13 A That's correct.

14 MR. KOTZ: Okay. I'm going to show you one more
15 document and this is again just so you can -- give you the
16 opportunity to ask -- to state your perspective on it. I'm
17 not going to editorialize it in any way.

18 THE WITNESS: Okay.

19 MR. KOTZ: But it's Exhibit 54, and it's an e-mail
20 from John McCarthy to Alex Sadowski, Thursday, April 6th,
21 2006, 2:01 p.m.

22 (SEC Exhibit No. 54 was marked for
23 identification.)

24 (The witness examined the document.)

25 THE WITNESS: I --

26 MR. WOLK: We've never seen it before.

1 THE WITNESS: I don't believe I've ever seen this
2 before, but I guess he's making note of the fact that we're
3 recused.

4 BY MR. KOTZ:

5 Q Okay. So you don't have any idea what this might
6 refer to?

7 A Well, I mean, it's two days after the night that --
8 that we were out. So, and he knows because I told him the
9 next day Personal Privacy

10 Q So because of the recusal, his group and you would
11 not be able to do an inspection of Madoff, is that, do you
12 think, the point?

13 A That may be the way he's feeling, yeah.

14 Q Okay. And -- but nobody ever said anything to you
15 about because of your involvement with her, we can't do X or
16 Y?

17 A No.

18 Q Okay. There's e-mails in there about going in
19 comunicado. I mean, there's e-mails that reflect the
20 decision not to divulge information to John about your
21 ongoing relationship with Shana, but you acknowledge that?

22 A I do, yeah.

23 Q We don't need to show you every e-mail.

24 MR. KOTZ: Yeah. I just wanted to ask. This is
25 Exhibit 55. This is an e-mail from you to Alex Sadowski.

26 (SEC Exhibit No. 55 was marked for

1 identification.)

2 (The witness examined the document.)

3 BY MR. KOTZ:

4 Q I assume you are Hip Hop?

5 A I am assuming I am Hip Hop, yes.

6 Q I guess the other point here is to understand, I
7 mean "I need to cut it off or lose my relationship with John
8 which I may have done already. He went nuts. I mean the
9 idea that because you are involved with somebody that he
10 didn't like you can lose your relationship with him?"

11 A Yeah. It was -- this refers back to -- yeah. So
12 John -- John came to my house this night. This was -- this
13 must be the night -- do you want me to continue?

14 Q Yes.

15 A I'm assuming, I believe that this would be the
16 night that John came to my house and told me that he didn't
17 want me to date Shana.

18 Q Okay.

19 A The story that I told you already.

20 Q Right.

21 A And, you know, it seemed clear for me from that
22 conversation that my choices in the matter were to cut it off
23 with Shana or lose my relationship with John.

24 Q Okay.

25 A It was quite upsetting to me.

26 Q You think he was just so protective of you that he

1 didn't want anything bad to happen to you and so he couldn't
2 stand you being with somebody that he didn't like? Just
3 seems very extreme.

4 A I -- I can't disagree with that. I don't know. It
5 seemed extreme at the time. It seemed very extreme at the
6 time.

7 Q Okay. Let's move on. I want to ask you about
8 another matter.

9 MR. KOTZ: Exhibit 56 is an e-mail, 4/27/2006, from
10 you to John McCarthy. Take a look at this for me, please.

11 (SEC Exhibit No. 56 was marked for
12 identification.)

13 (The witness examined the document.)

14 THE WITNESS: Yeah. I have a brief recollection of
15 this e-mail, and I -- I recall being confused by the red flag
16 indication from John.

17 BY MR. KOTZ:

18 Q And at one point, and I can show you this, if you
19 want, John had e-mailed Shana that you were going to have to
20 back out of the hedge fund breakfast. Do you remember at a
21 certain point where there was a decision made -- what
22 decision was made vis a vis ongoing breakfasts, given that
23 this relationship was ongoing?

24 A I don't remember. I do remember that they had to
25 reschedule the hedge fund breakfast and we did ultimately do
26 that breakfast, but I don't recall -- I don't recall

1 specifically a decision not to do them anymore because of my
2 relationship with Shana.

3 Q Okay. You're not aware of anything that changed in
4 terms of breakfasts or appearing at any of these events that
5 Shana made as a result of the relationship?

6 A I think -- no. I mean, I think John might have
7 been a little less comfortable going to do them, but we still
8 did them. I think we did two or three after -- after all
9 this.

10 Q Okay. And then your relationship with John did
11 recover, as you said?

12 A Absolutely.

13 Q Okay. And then you and Shana became engaged, is
14 that right?

15 A That's right.

16 Q Okay. That was in December?

17 A December 8th, on her birthday.

18 Q Okay. And then when did you and Shana get married?

19 A September 29th, 2007.

20 Q Okay. Now, you mentioned before that you were at
21 that point thinking about leaving the SEC. When did you
22 first consider leaving the SEC?

23 A Late 2005.

24 Q Okay.

25 MR. KOTZ: Okay. We're going to mark this as
26 Exhibit 56. This is just an e-mail from Shana to you, dated

1 6/29/2006. I'm sorry. 57.

2 (SEC Exhibit No. 57 was marked for
3 identification.)

4 BY MR. KOTZ:

5 Q It seems that she's referring to you as her fiance
6 there.

7 A Yeah, yeah. We got -- I called it engaged to be
8 engaged earlier in that month.

Personal Privacy

9
10
11
12

13 So, yes,
14 she did refer to me as her fiance but we did not officially
15 get engaged until December 8th. That's when I presented her
16 the ring.

17 Q Okay. So did Shana help you with employment
18 outside the SEC?

19 A She put me in contact with a -- what do you call --

20 Q Head hunter?

21 A Head hunter, yeah.

22 Q Okay. And then you got some kind of opportunity
23 with Bridgewater?

24 A I did, yeah. They made me a job offer.

25 Q But you didn't accept it?

26 A I did not.

1 Q How come?

2 A The job was interesting, but two reasons, really.
3 I was going to be moving to New York and the job was up in
4 Westport. It was quite a commute from New York, although
5 they went to great lengths to make it easy. But the job was
6 as chief compliance officer for an advisor and as I spent
7 some time meeting the people and they were all great, the job
8 seemed a little boring to me and I like more fast-paced
9 active sort of jobs and I still wanted to be involved in the
10 industry, and oddly right -- right around the time when I was
11 considering the offer from Bridgewater, I had another head
12 hunter reach out to me from and was representing Ameriprise
13 Financial and very quickly, in the course of about a week,
14 worked out a position, a deal.

15 It was -- you know, it wasn't as much money as the
16 job with Bridgewater, but it was -- to me, it was much more
17 interesting.

18 Q Okay. Is Bridgewater a Madoff feeder fund?

19 A I don't think so, but I don't know. I'd be shocked
20 if they were.

21 Q Okay.

22 A Don't shock me.

23 Q I'm not going to put this into evidence, but I'll
24 just show it to you.

25 A Are they really? Oh, my goodness. I -- I am
26 stunned, I am literally stunned. Honestly, to this day, I --

1 I really wonder. I -- I find it hard to believe, but --

2 Q Just for the record, you're stunned that
3 Bridgewater appears on this document to be a Madoff feeder
4 fund?

5 A Yeah. I mean, I'll be honest, when -- when this
6 thing broke, I kind of wondered. I wondered if Bridgewater
7 is, you know, one of the funds and I've never seen their name
8 listed anywhere in the public press. Wow!

9 Q Okay.

10 A I think -- I think what's their name from NERO
11 ultimately ended up taking that job, too.

12 Q Oh, really? Who's that?

13 A Who was the head of -- one of the deputy --

14 MS. STEIBER: Brockenheimer.

15 THE WITNESS: Who?

16 MS. STEIBER: Gloria Brockenheimer.

17 THE WITNESS: No. It's a woman, though.

18 MR. KOTZ: Is she in OC?

19 THE WITNESS: No, no. I don't think so. She was
20 in Enforcement. Was there a Personal Privacy ?

21 MR. WILSON: Personal Privacy ?

22 THE WITNESS: Yeah. I'm pretty sure that's who it
23 is, yeah.

24 MR. KOTZ: Oh, so she took the job. Okay.

25 BY MR. KOTZ:

26 Q So you're not accepting the job with Bridgewater

1 had nothing to do with Madoff?

2 A No. It just -- it just didn't seem like the right
3 job.

4 Q Okay. And the job you got with Ameriprise, was
5 that -- that you got with Shana's help?

6 A No.

7 Q And what was the reason that you decided to leave
8 the SEC?

9 A It's varied. I mean, you know, in coming out of
10 2005 and my failed relationship with ^{Jane Doe} I was starting --
11 I was very frustrated and restless and I was looking
12 forward -- I was looking back at the last 10 years of my
13 career and I realized it was giving me an opportunity to do
14 kind of -- I'll give you a lot here.

15 Q Please, please, please.

16 A I have looked back at my 10 years at the SEC and in
17 opinion, I had never found balance between my career and --
18 and my personal life and I had really, in my opinion,
19 hard-core devoted 10 years of my life to this agency and I
20 was at this stage in my life in 2005 where I thought I had
21 found balance with the right woman and I turned out to be
22 wrong and I was disillusioned and I realized that I needed to
23 do something dramatically different to shake up my life and,
24 you know, I had let 10 years go by and then for a great long
25 period of time doing something that I absolutely loved but my
26 love for it had decreased dramatically and I -- I almost felt

1 bitter that, I don't know why exactly, that I devoted so much
2 to the agency and my personal life had been a complete
3 disaster and -- and I just wanted to change.

4 I wanted to change. I wanted to, you know, sell my
5 house, leave D.C., do something completely different. So
6 this is my mindset as of probably late 2005, and then I
7 thought 10 years, that's a nice number to stop on. I started
8 in August of '96 and got finished in August of 2006.

9 BY MS. STEIBER:

10 Q So this is before you met Shana -- sorry. Not
11 before you met Shana but before --

12 A Yeah.

13 Q -- you started your romantic relationship with
14 Shana, you had already started thinking of leaving the SEC
15 before --

16 A Yeah.

17 Q -- the tension with John?

18 A No question.

19 BY MR. KOTZ:

20 Q So it wasn't related to -- to tension with John per
21 se?

22 A No, no. No, although, I mean, there were times
23 where I thought my relationship with John maybe wasn't real
24 healthy for my long-term career because I was so much -- so
25 much tied to him --

26 Q Right.

1 A -- and I thought I really need to get out on my own
2 and -- and so there was an aspect to my relationship with
3 John that factored into the equation.

4 Q Okay. And in the course of your relationship with
5 Shana, did you ever talk about, hey, remember, you know, we
6 did an examination of you back in the day? Did you ever have
7 communications with her about that?

8 A Not while we were dating and at the SEC. I think
9 after I -- after I left the SEC, you know, there was one
10 time maybe where I can remember talking about, you know,
11 yeah, I remember doing an exam because she didn't know.
12 She's like -- I think she had made a comment but you've never
13 done an exam of us and I said, "No, I did. I sent the letter
14 on the front-running thing."

15 Q But you never shared any information that you
16 learned at the SEC about Madoff and the exam with Shana?

17 A No, never.

18 Q Okay. And then when you heard in December 2008
19 that Bernie Madoff had admitted to a Ponzi scheme, what was
20 your reaction in terms of the SEC involvement? That's
21 primarily all I'm interested in. I'm interested in your
22 reaction in terms of the fact that, you know, there were
23 exams done.

24 A Well, my -- my initial reaction and really
25 reaction that has stuck with me is that, you know, I knew
26 that we had looked at some aspect of this in terms of

1 front-running but not at whether or not it was a Ponzi scheme
2 and then it was only after I, you know, started getting
3 access to documents that had been leaked to the Wall Street
4 Journal in the days and weeks after Bernie was arrested that
5 I saw the full scope of what NERO had done and I thought it's
6 a major problem here.

7 Q Were you surprised that NERO seemed to have done so
8 much and never found this out?

9 A I was, yeah.

10 Q Is there -- do you have any explanation as to how
11 that could happen?

12 A You know, up until the other week when Galvin filed
13 the action against the feeder fund Fairfield, I was perplexed
14 by it. That helped clarify things a little bit for me
15 because that contained that transcript of Bernie sort of
16 coaching them on how to respond to the SEC which, I think in
17 the absence of that kind of coaching, my guess is that the
18 SEC would have -- would have gotten to the issue.

19 I don't know for sure, but --

20 Q Did you ever talk to anybody at the SEC about what
21 happened subsequent to December 2008, other than my office?

22 A About what happened?

23 Q You know, did you ever talk to anybody at the SEC
24 about, you know, we had done an exam, this investigation was
25 done?

26 A No, no. I mean, I've had numerous conversations

1 with people from the SEC in the normal course of my business
2 where I get a lot of people saying I'm really sorry about
3 what's happening to you, et. cetera. Maybe there was a time
4 where I said, well, yeah, I, you know, did participate in a
5 couple of exams, but no -- no detail about it.

6 Q Okay. So you never found out any information about
7 how possibly the SEC could have missed it or what was going
8 on?

9 A No. Certainly as it relates to NERO, I've had no
10 contact with anybody who was involved in any of that
11 investigation.

12 BY MS. STEIBER:

13 Q You had said that earlier Sollazzo was very
14 protective of his exams, his programs. Do you know anything
15 about Sollazzo's technical expertise or --

16 A Not really.

17 Q -- his reputation?

18 A Not really. I think -- I mean, he's been there for
19 a long time. I assume he's still there. I --

20 BY MR. KOTZ:

21 Q What is your feeling generally about the overall
22 expertise of the folks at the SEC, you know? You've been now
23 in industry.

24 A Well, I think -- I think it's probably like a lot
25 of other places, you know. You have pockets of really
26 talented people who have, you know, good expertise and you

1 have a lot of people who probably don't. You know, I've
2 listened to Markopolos testify about the, you know, no hair,
3 gray hair, and that kind of thing, and I don't know that I
4 necessarily agree with it, but I suppose there's room for
5 better training by people who are qualified to do the
6 training, but I don't know what all the answers are.

7 Q Do you think that perhaps, you know, in OC there
8 are some folks who are doing work where they're too junior to
9 and they're just not -- they're kind of over-matched by, say,
10 somebody like Bernie Madoff?

11 A It's possible. It shouldn't happen that way
12 because that junior person should be well supervised.

13 Q But, I mean, given the number of matters that you
14 all were working on at that time, given the fact that junior
15 people are involved and, you know, there's so many people
16 being pulled in different directions, do you think that maybe
17 the folks at the SEC and the OC Unit are just not able to
18 keep up and, you know, when you have a situation where
19 somebody's trying to mislead them, they just -- they're
20 unable to figure it out?

21 A I -- I do think that -- I do think that's true and
22 one of the things, as painful as this was for me during my
23 stint at Ameriprise, we were regulated by the Office of the
24 Comptroller of the Currency, is that right? The OCC guys.
25 And they were there and they were a pain in the ass, you
26 know, five days a week, every single day, and they would

1 constantly be, you know, getting documents and getting a
2 wholesale, you know, a real holistic view of the firm and the
3 activities within the company, and as much as, you know,
4 individually, I guess, they were liked okay, but they were on
5 some level despised by, you know, senior people at the
6 company, I think that having that type of presence in a firm,
7 there's sort of no substitute for it.

8 I mean, when you're -- when you're working from
9 your, you know, office here in D.C. or New York or Atlanta or
10 wherever and you're just getting, you know, documents and
11 then you go in for a week or a few days, the culture is not
12 to spend, you know, months onsite or essentially establish a
13 permanent office onsite.

14 I think you're going to have a hard time ultimately
15 developing the sort of depth of expertise. I'm not
16 suggesting necessarily that that's the only way to get it,
17 but it has occurred to me that, you know, the OCC has had its
18 share of problems, as well, but it does -- it does strike me
19 as, you know, that may be a better way than the way it is.

20 Q And so that OCC exam was in contrast to the way OC
21 did their exam?

22 A Yeah. Because they were there -- they were there
23 -- they actually had an office with their own separate lock
24 on it that we couldn't get into and they had their own
25 dedicated lines for them to have secure telecommunications
26 out of the building and they -- they were constantly there

1 and they would schedule out months in advance interviews with
2 people and document productions and this was -- it's an
3 ongoing process yearlong.

4 Q So looking back, do you think there's some
5 deficiencies in the way OC conducts their exams?

6 A Yeah. I mean, I think -- I think that it could
7 be -- I think it could be handled better. I think that maybe
8 a different -- a completely -- a complete rethinking of the
9 way examinations are done would be appropriate because right
10 now -- I don't know how much it's changed since I've left,
11 but right now you've got dedicated people who do
12 broker-dealer almost always routine examinations. You've got
13 a group of people who are doing investment advisor,
14 investment company exams, and then you have kind of the SRO
15 Group and this sort of special whatever we were doing, sort
16 of dipping into different areas where trading issues were
17 involved, and these groups were not communicating all that
18 well, and I definitely -- and they're spread out
19 geographically.

20 I -- I -- there's gotta be a better way of doing
21 it, you know. There just has to be a better way where we are
22 pulling in expertise from different disciplines, the
23 investment advisor and the broker-dealer together, the
24 trading and the sales practices somehow together and putting
25 it all on under one roof and having it work more cohesively.
26 I don't think it has necessarily in the past.

1 I don't want to say it was all bad because I think
2 we did some really good work and I think OC has done some
3 really good work over the years, but there's obviously room
4 for some improvement and, you know, maybe some of that --
5 maybe there's room for dramatic improvement.

6 Q Okay. What about this allegation about special
7 treatment? What do you think about the allegation that
8 Madoff may have been treated differently because he was well
9 known and they maybe didn't push as hard?

10 A I think that's nonsense. Just -- it doesn't -- you
11 know, in my experience, in my experience, if you thought you
12 were on to a big fish, I mean, you know, you -- you pushed,
13 you know. It would be -- you know, the way -- the way your
14 career -- the way your career develops at the SEC for better
15 or worse is to, you know, fry big fish. So I don't -- I
16 don't -- I don't put much stock in that.

17 Q Did you ever see people getting special treatment
18 at the SEC while you there?

19 A I -- off the top of my head, not that I'm aware,
20 no.

21 Q Was Madoff considered a big fish at that time?

22 A Not to my knowledge. I don't -- I actually -- I
23 don't really believe so. I think, you know, I think people
24 respected and recognized Madoff for what the firm had done
25 over the years but certainly by -- in the 2000s, I think that
26 was -- you know, that was -- that was back in the '90s, '80s

1 and '90s, when they were probably even more well known on
2 some level than they were in the 2000s.

3 Q And did you learn anything by virtue of marrying
4 into the family that would provide any information about how
5 the SEC missed this Ponzi scheme?

6 A Not really, beyond sort of what I've read in the
7 paper. I mean, I kind of have a better understanding of who
8 Bernie is and the way he kind of manipulates people and
9 information, but I didn't learn that by virtue of being
10 married into the family.

11 Q Okay, okay. Did you talk to anybody about the fact
12 that you were testifying today?

13 A I did.

14 Q Okay. Any former SEC people?

15 A Yes, John McCarthy knows I'm testifying today.

16 Q Okay.

17 A Alex knows I'm testifying but he probably doesn't
18 know it's today.

19 Q Did Alex tell you that he has testified?

20 A He did.

21 Q Did he tell you what he said in his testimony?

22 A No. In fact, he specifically told me he could not,
23 although he did say there was a lot of e-mail. He did say
24 that.

25 Q Okay. And did John McCarthy indicate whether he
26 was testifying?

1 A He did, yeah. He said he was testifying at some
2 point.

3 Q Okay. All right. Well, I'll tell you what I told
4 Alex Sadowski, which is it is very important that you not
5 share -- I mean you signed a Confidentiality Agreement, but
6 even beyond that that you not share any specific information
7 about what we talked about with John or anybody else.

8 A Okay. I will not.

9 Q Okay.

10 A Absolutely.

11 Q Now, one other thing. I don't know whether you can
12 help us with this. There's this series of events,
13 Securities Industries Association events. I just wanted to
14 see if you could confirm that these were events that you were
15 at.

16 A Do these relate to the breakfasts or these are
17 other things?

18 Q Yeah. I think they're the breakfasts.

19 MR. KOTZ: Right?

20 THE WITNESS: I may need -- without having some
21 other -- I'd have to reference --

22 MR. KOTZ: All right. Well, let me just go through
23 them and whichever ones you remember --

24 THE WITNESS: Okay.

25 BY MR. KOTZ:

26 Q So there was this October 2nd, 2003, in St. Louis.

1 That one you do remember?

2 A I was there.

3 Q And Shana was there?

4 A Yes.

5 MR. WILSON: Can we go off the record a minute?

6 MR. KOTZ: Sure.

7 (Off the record.)

8 BY MR. KOTZ:

9 Q Okay. There was one November 12th, 2003, in
10 Minneapolis.

11 A Well, there was at least two in Minneapolis and one
12 I did not attend. I don't recall if that was the one. I
13 think that may be the one I did not attend.

14 Q Okay. There was one June 15th, 2005, in
15 Minneapolis, and one July 21st, 2006, in Minneapolis.

16 A So the July '06 I did attend and then between the
17 November one and the -- I'm sorry -- the second one.

18 Q November 12th, 2003, and there's June 15th, 2005.

19 A Yeah. One of those two I did not attend but I
20 don't know which one.

21 Q Atlanta 4/29/2004.

22 A Yes.

23 Q And Shana was at all these?

24 A I have a recollection that there may have been one
25 or two that Shana didn't go to that I attended but I'm not
26 positive.

1 Q Seattle June 10th, 2004.

2 A Is there any other Seattle on there?

3 Q No.

4 A Yes, I went and Shana was there.

5 Q Okay. Boston 3/9/2005.

6 A There was at least two Bostons and one of them I
7 missed because we had a terrible snowstorm trying to fly out
8 into Boston. That's probably the one I missed.

9 Q Okay. Another St. Louis 3/16/2005.

10 A Yes.

11 Q And Shana was there, too?

12 A Yes.

13 Q Okay. Los Angeles 5/23/2005.

14 A No.

15 Q Charlotte 9/29/2005.

16 A Yes.

17 Q And Shana was there, too?

18 A I believe so, yes.

19 Q Richmond 11/2/2005.

20 A Yes, in which case I think we also paid our own way
21 down there, yes.

22 Q And that one Shana was at, too?

23 A Yes.

24 Q And then Miami 1/30/2006?

25 A Yes.

26 Q And Shana was at that one, too?

1 A Yes.

2 Q Another St. Louis 3/10/2006?

3 A Probably, yes. I don't remember for certain, but I
4 probably was there. I assume there's records elsewhere
5 that --

6 Q They're a little bit incomplete.

7 A Okay.

8 Q And you think Shana was at that one, too, in St.
9 Louis?

10 A I just don't remember specifically that breakfast.
11 I do know there was one or two that for whatever reason she
12 didn't make.

13 Q Okay. What about New Orleans 5/18/2006?

14 A Yes.

15 Q And Shana was there, too?

16 A Yes.

17 Q Phoenix 9/26/2006?

18 A I don't think I went to that one.

19 Q What about Memphis 11 --

20 MR. WOLK: Wait a minute. What was it again?

21 MR. KOTZ: Phoenix 9/26/2006.

22 THE WITNESS: Oh, I did go, actually, and I went as
23 an employee of Ameriprise Financial.

24 MR. KOTZ: Oh, okay.

25 THE WITNESS: Thank you.

26 BY MR. KOTZ:

1 Q And then 11/1/2006 Memphis.

2 A No.

3 Q Okay.

4 BY MS. STEIBER:

5 Q I want to go back and ask you just a couple of
6 questions about what records the SEC has access to.

7 We had talked before about Madoff producing some
8 sort of data in hard copy that you had looked at and then
9 later some floppy disks.

10 How could the SEC have verified the trading
11 activity that -- that was in -- that he had produced in those
12 records to verify that the trades had actually taken place?

13 A How could the SEC have verified it? I guess the --
14 one of the ways would be to go to the counter parties on the
15 transactions and see if they had data that matched up, but I
16 think in that case, my recollection is the counter parties
17 were in Europe. I don't remember for sure.

18 Q Okay. And so we're talking about equity trades to
19 the counter parties. Would there be any other way that you'd
20 be able to verify claimed equity trades?

21 A Sure. Equity trades were easy, you know, because
22 you could -- you could go -- you could go to the NASD and get
23 trade data. You could go to the NSCC and get records of
24 cleared trades.

25 Q The what?

26 A NSCC and get records of cleared trades. You could

1 go to the brokers who routed orders to Madoff for execution
2 and look at the bills that their records would have of
3 trading. So there were multiple ways you could do it.

4 Q What about DTC?

5 A NSCC, same thing.

6 Q Okay. And what about the options trading, do you
7 know what CBOE is?

8 A Sure.

9 Q And have you ever requested records from CBOE?

10 A I have in the context of doing oversight
11 inspections of the CBOE but not -- not in this context.

12 Q And what types of records would you expect CBOE to
13 have kept if, you know, Madoff said that he was trading
14 options on CBOE?

15 A Sure. Well, they would have had -- they would have
16 had records of the CBOE member firm that traded on each side
17 of the trade and the time, price and all of that. They might
18 not have the information about the broker that had sent that
19 order to the CBOE member firm for execution. You'd have to
20 get that information from either the CBOE member directly or
21 possibly from the OCC, but I'm not sure the OCC would have
22 that information either. I think you'd have to go the CBOE
23 member.

24 Q Okay. And the prior -- in earlier testimony, you
25 had talked about looking at the tape. Could you clarify what
26 you were talking about?

1 A I don't remember my exact comment, but the tape --
2 I was probably talking about quotes on the tape. The tape is
3 the National Quote and Last Sale that make up the -- make up
4 the inside market put out the CTA. They're put out by the
5 CTA, CQS Association, but these are -- these are SEC
6 securities information processors and they -- all the
7 exchanges have to feed their quotation information into the
8 system.

9 If you watch, you know, CNBC, which I don't watch
10 anymore because of Charles -- because if you were to watch
11 CNBC, you'd see the ticker running across the bottom. That
12 information is typically coming off of the tape about the
13 price of stocks trading.

14 Q Okay.

15 MR. KOTZ: Okay. We don't have anything further.
16 Do you have any questions?

17 MR. WOLK: Nothing.

18 MR. KOTZ: Okay. All right. Thank you.

19 THE WITNESS: Thank you very much.

20 (Whereupon, at 1:34 p.m., the examination was
21 concluded.)

22 * * * * *

23

24

25

26