

This document is subject to the provisions of the Privacy Act of 1974, and may require redaction before disclosure to third parties. No redaction has been performed by the Office of Inspector General. Recipients of this report should not disseminate or copy it without the Inspector General's approval.



REPORT OF INVESTIGATION

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION
OFFICE OF INSPECTOR GENERAL**

Case No. OIG-534

Appendix, Volume I of III

September 30, 2010

Report of Investigation OIG-534
Exhibit List

**Allegations of Improper Coordination Between the SEC
and Other Governmental Entities Concerning
the SEC's Enforcement Action Against Goldman Sachs & Co.**

1. Excerpts of Testimony Transcript of (b)(7)(C) July 6, 2010
2. Excerpts of Testimony Transcript of Cheryl Scarboro; July 7, 2010
3. Excerpts of Testimony Transcript of (b)(7)(C) July 13, 2010
4. Excerpts of Testimony Transcript of Unidentified Senior Counsel, Division of Enforcement; July 14, 2010
5. Excerpts of Testimony Transcript of (b)(7)(C) July 15, 2010
6. Excerpts of Testimony Transcript of Reid Muoio; July 20, 2010
7. Excerpts of Testimony Transcript of Pauline Calande; July 23, 2010
8. Excerpts of Testimony Transcript of Joan McKown; July 26, 2010
9. Excerpts of Testimony Transcript of (b)(7)(C) July 26, 2010
10. Excerpts of Testimony Transcript of Timothy Henseler; July 27, 2010
11. Excerpts of Testimony Transcript of Julie Davis; July 27, 2010
12. Excerpts of Testimony Transcript of Anne-Marie Kelley; July 27, 2010
13. Excerpts of Testimony Transcript of (b)(7)(C) July 29, 2010
14. Excerpts of Testimony Transcript of John Nester; July 30, 2010
15. Excerpts of Testimony Transcript of (b)(7)(C) July 30, 2010
16. Excerpts of Testimony Transcript of Eric Spitler; August 3, 2010
17. Excerpts of Testimony Transcript of (b)(7)(C) August 3, 2010
18. Excerpts of Testimony Transcript of Kayla Gillan; August 4, 2010
19. Excerpts of Testimony Transcript of Didem Nisanci; August 6, 2010
20. Excerpts of Testimony Transcript of Richard Klapper; August 6, 2010
21. Excerpts of Testimony Transcript of Kathleen Casey; August 9, 2010
22. Excerpts of Testimony Transcript of Lorin Reisner; August 10, 2010
23. Excerpts of Testimony Transcript of Mary Schapiro; August 11, 2010
24. Excerpts of Testimony Transcript of Stephen Cohen; August 11, 2010

25. Excerpts of Testimony Transcript of Myron Marlin; August 12, 2010
26. Excerpts of Testimony Transcript of (b)(7)(C) August 12, 2010
27. Excerpts of Testimony Transcript of Robert Khuzami; August 13, 2010
28. Excerpts of Testimony Transcript of Scott Friestad; August 13, 2010
29. Excerpts of Testimony Transcript of Luis Aguilar; August 17, 2010
30. Excerpts of Testimony Transcript of Kenneth Lench; August 19, 2010
31. Excerpts of Testimony Transcript of Troy Paredes; August 19, 2010
32. Excerpts of Testimony Transcript of Elisse Walter; August 27, 2010
33. Memorandum of Interviews of (b)(7)(C) and (b)(7)(C) (b)(7)(C) April 27, 2010
34. Memorandum of Interview of (b)(7)(C) June 21, 2010
35. Memorandum of Interview of (b)(7)(C) August 26, 2010
36. January 24, 2010 E-mail from Stephen Cohen to Didem Nisanci
37. August 31, 2010 Letter from David McCraw to (b)(7)(C)
38. April 30, 2010 SEC.gov Press Release webpage printout
39. April 14, 2010 E-mail from Scott Friestad to Robert Khuzami
40. August 26, 2010 Golden Telephone Call Memorandum
41. April 19, 2010 E-mail from Scott Friestad to Joan McKown
42. July 16, 2010 E-mail from Louise Story to John Nester
43. April 29, 2010 HUB Report regarding ABACUS 2007-AC1
44. April 1, 2010 Action Memorandum regarding "Goldman, Sach & Co." and "Fabrice Tourre"
45. November 24, 2009 E-mail from Reid Muoio to (b)(7)(C)
46. September 17, 2009 E-mail from Stephen Cohen to Reid Muoio
47. October 1, 2009 E-mail from (b)(7)(C) to Lou Mejia
48. September 2, 2009 E-mail from Reid Muoio to (b)(7)(C)
49. November 2, 2009 E-mail from Reid Muoio to (b)(7)(C)
50. November 13, 2009 E-mail from Elizabeth Murphy to Reid Muoio
51. November 24, 2009 E-mail from Reid Muoio to Enforcement Action Memos
52. December 7, 2009 E-mail from Reid Muoio to (b)(7)(C)

53. December 7, 2009 E-mail from (b)(7)(C) to Reid Muoio
54. December 6, 2009 E-mail from (b)(7)(C) to Stephen Cohen
55. December 8, 2009 E-mail from Joan McKown to Cheryl Scarboro
56. December 8, 2009 E-mail from Joan McKown to (b)(7)(C) and (b)(7)(C)
(b)(7)(C)
57. December 8, 2009 E-mail from Reid Muoio to (b)(7)(C)
58. December 8, 2009 E-mail from Reid Muoio to Mark Adler and (b)(7)(C)
59. December 9, 2009 E-mail from (b)(7)(C) to Stephen Cohen
60. December 22, 2009 E-mail from (b)(7)(C) to Reid Muoio and (b)(7)(C)
61. December 25, 2009 E-mail from Mary Schapiro to Robert Khuzami
62. January 4, 2010 E-mail from Reid Muoio to (b)(7)(C)
63. December 24, 2009 E-mail from Reid Muoio to Robert Khuzami
64. January 4, 2010 E-mail from Robert Khuzami to Mary Schapiro
65. January 5, 2010 E-mail from Stephen Cohen to Lorin Reisner and Robert Khuzami
66. HUB Report Excerpt for HO-10911
67. January 7, 2010 E-mail from Reid Muoio to (b)(7)(C)
68. January 9, 2010 E-mail from Reid Muoio to Robert Khuzami
69. January 15, 2010 E-mail from Reid Muoio to Robert Khuzami
70. January 15, 2010 E-mail from (b)(7)(C) to Reid Muoio and (b)(7)(C)
71. January 15, 2010 E-mail from Stephen Cohen to Reid Muoio
72. January 15, 2010 E-mail from Didem Nisanci to Stephen Cohen
73. January 15, 2010 E-mail from Stephen Cohen to Reid Muoio
74. January 19, 2010 E-mail from Reid Muoio to (b)(7)(C) and Cheryl Scarboro
75. January 22, 2010 E-mail from Reid Muoio to Cheryl Scarboro
76. January 22, 2010 E-mail from Reid Muoio to Kenneth Lench
77. January 24, 2010 E-mail from Stephen Cohen to Mary Schapiro
78. January 25, 2010 E-mail from Stephen Cohen to Reid Muoio
79. January 25, 2010 E-mail from Stephen Cohen to Reid Muoio
80. January 26, 2010 E-mail from Stephen Cohen to Lorin Reisner
81. January 26, 2010 E-mail from Stephen Cohen to Myron Marlin

82. January 26, 2010 E-mail from (b)(7)(C) to Reid Muoio
83. January 25, 2010 E-mail from Reid Muoio to Cheryl Scarboro
84. January 27, 2010 E-mail from Reid Muoio to Cheryl Scarboro and Kenneth Lench
85. January 27, 2010 E-mail from Stephen Cohen to (b)(7)(C)
86. January 27, 2010 E-mail from Reid Muoio to (b)(7)(C) and (b)(7)(C)
87. January 28, 2010 E-mail from (b)(7)(C) to (b)(7)(C)
88. February 16, 2010 E-mail from Reid Muoio to (b)(7)(C)
89. March 5, 2010 E-mail from Lorin Reisner to Reid Muoio
90. March 8, 2010 E-mail from Reid Muoio to (b)(7)(C) and (b)(7)(C)
(b)(7)(C)
91. February 25, 2010 E-mail from (b)(7)(C) to (b)(7)(C)
92. March 23, 2010 E-mail from Robert Khuzami to Reid Muoio
93. March 24, 2010 E-mail from Reid Muoio to (b)(7)(C)
94. March 26, 2010 E-mail from Reid Muoio to Enforcement Action Memos
95. April 8, 2010 E-mail from Reid Muoio to Lorin Reisner
96. February 25, 2010 E-mail from Pauline Calande to (b)(7)(C)
97. February 25, 2010 E-mail from Timothy Henseler to Pauline Calande and (b)(7)(C)
(b)(7)(C)
98. April 7, 2010 E-mail from Pauline Calande to Timothy Henseler and Reid Muoio
99. April 7, 2010 E-mail from Timothy Henseler to Robert Khuzami
100. April 7, 2010 E-mail from Lorin Reisner to Timothy Henseler
101. February 22, 2010 E-mail from Timothy Henseler to (b)(7)(C)
102. March 18, 2010 E-mail from Reid Muoio to Lorin Reisner and Kenneth Lench
103. April 16, 2010 E-mail from Timothy Henseler to Didem Nisanci
104. April 17, 2010 E-mail from Timothy Henseler to Kenneth Lench
105. April 14, 2010 Closed Commission Meeting Minutes
106. April 12, 2010 E-mail from David Rosenfeld to Robert Khuzami
107. April 12, 2010 E-mail from David Rosenfeld to Robert Khuzami
108. April 12, 2010 E-mail from Robert Khuzami to Mary Schapiro
109. April 13, 2010 E-mail from Stephen Cohen to Mary Schapiro

110. April 13, 2010 E-mail from (b)(7)(C) to (b)(7)(C)
111. April 13, 2010 E-mail from Lorin Reisner to Reid Muoio
112. April 13, 2010 E-mail from David Rosenfeld to Robert Khuzami
113. April 14, 2010 E-mail from Myron Marlin to John Nester
114. April 14, 2010 E-mail from (b)(7)(C) to Reid Muoio
115. April 11, 2010 E-mail from Stephen Cohen to Mary Schapiro
116. April 14, 2010 E-mail from Kenneth Lench to (b)(7)(C)
117. April 15, 2010 E-mail from Myron Marlin to John Nester
118. April 15, 2010 E-mail from (b)(7)(C) to (b)(7)(C)
119. April 16, 2010 E-mail from Julie Davis to (b)(7)(C)
120. April 17, 2010 E-mail from Robert Khuzami to John Nester and Lorin Reisner
121. April 16, 2010 E-Mail from SEC NEWS
122. *The SEC's Impeccable Timing*, The Wall Street Journal, April 20, 2010
123. April 16, 2010 E-mail from (b)(7)(C) to (b)(7)(C)
124. David Scheer and Joshua Gallu, *Madoff Scam Reached Family of SEC Official Whose Unit Got Tip*, Bloomberg, September 7, 2009
125. Sarah N. Lynch, *Madoff: SEC Agent was a "Blowhard,"* The Wall Street Journal, October 31, 2009
126. *SEC Faulted Over Bear Probe*, the Washington Post, October 11, 2008
127. Peter Barnes, *SEC Inspector General Slams Agency, Again*, Foxbusiness.com, May 3, 2010
128. April 16, 2010 E-mail from Kayla Gillan to Myron Marlin
129. April 1, 2010 E-mail from Kayla Gillan to Mary Schapiro
130. March 26, 2010 E-mail from Kayla Gillan to Mary Schapiro
131. April 7, 2010 E-mail from Kayla Gillan to (b)(7)(C)
132. April 9, 2010 E-mail from (b)(7)(C) to COMMISSION COUNSELS
133. April 12, 2010 E-mail from (b)(7)(C) to COMMISSION COUNSELS
134. April 14, 2010 E-mail from (b)(7)(C) to Barry Walters
135. April 15, 2010 E-mail from (b)(7)(C) to Kayla Gillan and Stephen Cohen
136. April 16, 2010 E-mail from Stephen Cohen to Myron Marlin
137. August 9, 2010 Letter from Sharon Nelles to (b)(7)(C)

138. April 17, 2010 E-mail from Joan McKown to Robert Khuzami
139. April 17, 2010 E-mail from Lorin Reisner to John Nester and Robert Khuzami
140. April 17, 2010 E-mail from Robert Khuzami to John Nester and Lorin Reisner
141. April 18, 2010 E-mail from Robert Khuzami to John Nester
142. Joshua Gallu & Christine Harper, *Goldman Shares Tumble on SEC Fraud Allegations*, Bloomberg News, April 16, 2010
143. Deborah Levine, *Goldman Sachs Bonds Suffer Again on Fraud Fears*, MarketWatch, April 19, 2010
144. Miriam Marcus, *Market Crumbles After Goldman Fraud Charges*, Forbes.com, April 16, 2010
145. April 16, 2010 E-mail from (b)(7)(C) to (b)(7)(C)
146. April 16, 2010 E-mail from (b)(7)(C) to Lorin Reisner
147. New York Stock Exchange Manual Section 2
148. April 19, 2010 E-mail from Robert Khuzami to (b)(7)(C)
149. July 1, 2010 E-mail from (b)(7)(C) to Kenneth Lench
150. Attachment to July 2, 2010 E-mail from Reid Muoio to Kenneth Lench and (b)(7)(C)
(b)(7)(C)
151. July 8, 2010 E-mail from Kenneth Lench to Lorin Reisner
152. July 12, 2010 E-mail from (b)(7)(C) to Commission Counsels
153. July 12, 2010 Reid Muoio E-mail to Robert Khuzami
154. July 12, 2010 E-mail from (b)(7)(C) to Luis Aguilar and (b)(7)(C)
155. July 14, 2010 E-mail from (b)(7)(C) to (b)(7)(C)
156. July 14, 2010 E-mail from Stephen Cohen to Myron Marlin
157. July 15, 2010 E-mail from Robert Khuzami to (b)(7)(C)
158. July 15, 2010 E-mail from John Nester to Stephen Cohen
159. July 15, 2010 E-mail from (b)(7)(C) to (b)(7)(C)
160. July 15, 2010 E-mail from (b)(7)(C) to ENF-ALL TRIAL ATTORNEYS
161. July 15, 2010 E-mail from SEC NEWS
162. July 15, 2010 E-mail from Reid Muoio to (b)(7)(C)

1

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. OIG-534
OIG-534)

ORIGINAL

WITNESS: Witness Number 11

PAGES: 1 through 55

PLACE: Securities and Exchange Commission

100 F Street, N.E., Room 5465

Washington, D.C.

DATE: Wednesday, July 7, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 2:47 p.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 (b)(7)(C), Assistant Inspector General

6 (b)(7)(C) Senior Investigator

7 Securities and Exchange Commission

8 100 F Street, N.E.

9 Washington, D.C. 20549

10 (b)(7)(C)

11

12 On behalf of the Witness:

13 (b)(7)(C) Pro Se

14

15

16

17

18

19

20

21

22

23

24

25

C O N T E N T S

WITNESS:

EXAMINATION

(b)(7)(C)

4

EXHIBITS:

DESCRIPTION

IDENTIFIED

1

E-Mail,

(b)(7)(C)

to Mejia, 10/01/09

20

2

E-Mail,

to Cohen, 11/18/09

22

3

E-Mail,

to Cohen, 12/06/09

26

4

E-Mail,

to Muoio, 01/26/10

33

5

E-Mail,

to Muoio, 02/25/10

40

1 the in's and out's are. And basically the attitude reflected
2 to me was, it was my job to take the charges as they were
3 even in July already had been decided and walk the papers to
4 court, in effect; and I was over the period of time reminded
5 of that pretty often.

6 Q Who were you reminded of that by?

7 A Reid Muoio.

8 Q But you felt it would be useful for the process for
9 you to have more of a role?

10 (b)(5)

11

12

13

14

15

16

17

18

19

20

21

22

23

24 Q All right. Let's go through them one by one. You
25 mentioned the boss. Who were you referring to?

1 A Did I mention the boss?

2 Q You said that you thought the boss of the
3 lower-level individual should have been subpoenaed and it
4 took months to happen.

5 A Oh. Egol is his name.

6 Q Is that first or last name?

7 A Jonathan Egol, I think.

8 Q What was his position?

9 A Well, I understand he's now a director or at least
10 as of the end of 2007, I guess, he became a director at
11 Goldman Sachs which was a step up from vice president; and he
12 was, I believe, also a vice president but he ran the desk.
13 It was only a three-person desk, plus some technical people.
14 So, it was Tourre; a guy named (b)(7)(C) who was the junior guy,
15 and Egol. That's it. Three guys.

16 (b)(5)
17
18
19
20
21
22
23
24

25 Q Why was that?

(b)(5)

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

Q All right. But getting back for a second, why do think there was this resistance just to further investigation? Forget about whether you would charge --

A Because I believe, and this is my belief based on experience in this case which still bothers me a lot, that there was a great deal of satisfaction in the notion that we were going to bring a fraud action against Goldman Sachs. Now, that was enough. But because in the past Commissioners who are no longer here had famously said corporations can't act except through individuals, also anticipation that needed some individual and that was Tourre.

Q Did you ever get the impression that there was a concern about bringing the case as soon as possible such that perhaps if you started to go down that road and looking at Egol and looking at others it would take time where you had a case against Goldman Sachs; you want to get it out?

A Well, I wish I could remember a specific instance where somebody said that.

(b)(5)

(b)(5)

You don't need to be a genius to know that, you

1 know, with Madoff and Stanford and all this bad publicity
2 that the agency leadership would probably like to get
3 something to show it was aggressive and with the publicity
4 about the agency subsequent to filing the Goldman case, it's
5 shown that that would in fact occur. So, I think there was a
6 desire to get it out well before where we did file it.

7 Q And so, how did you eventually convince the folks
8 to look more carefully at Ego?

9 A I failed which was why I quit the case, and (b)(7)(C)
10 (b)(7)(C) was assigned the case, and I was told by -- I don't
11 know whether Mejia had left by then. It was either Mejia or
12 Adler, that (b)(7)(C) said (b)(5)
13 (b)(5) I
14 guess since it wasn't (b)(7)(C) saying (b)(5)
15 that when -- and then, surprising to me, I got called into
16 (b)(7)(C) office and was told that the front office didn't want
17 me to drop out of the case, that they liked the fact that I
18 was aggressive and that I should stay in the case; and I
19 said, okay, I will (b)(5)
20 (b)(5) And I went (b)(5)
21 and (b)(7)(C) dropped out of the picture.

22 It always struck me as kind of weird, particularly
23 what happened later, that I was bounced from the case after
24 having been brought in and told I was so aggressive about the
25 case.

1 hoped that those would get to the Commissioners at least.
2 I was very conscious of the fact that bureaucracy can't
3 operate with junior people running over the heads of the
4 senior people all the time; and on the other hand, I wasn't
5 getting any reaction to what I thought was an important
6 issue, one that I thought inadvertently or whatever could

7 (b)(5)

8 (b)(5)

8 And I thought somebody higher
9 up should be aware of it.

10 The reference to Steve's comments, "within the
11 bounds of your request," simply meant that I didn't want the
12 front office of the Division of Enforcement to know that I'd
13 gone to Steve Cohen to bring this issue up.

14 So, I had no specific thing except I thought maybe
15 if the Commissioner -- if the Chairman knew about it, she
16 might ask that more get done.

17 (b)(5)

18

19

20

21

22

23

23 But it was backhanded the way it was, I think
24 pretty much the way it actually went to the Commission
25 finally and didn't really reflect the serious consideration I

1 thought it deserved.

2 I've strayed away from the question probably.

3 I don't remember. I don't know what the New York Times
4 article was.

5 Q And then in the end, the Goldman case was withdrawn
6 from the December 17th calendar; is that right?

7 A I saw the e-mail yesterday that reminded me about
8 that.

9 Q Okay. What was your understanding of the reason
10 given for the decision to withdraw Goldman from the December
11 17 calendar?

12 A Well, I don't believe I knew -- I don't recall
13 knowing in advance it had been withdrawn. But I saw the
14 e-mail the same as everybody else, is my recollection. Maybe
15 somebody did mention it to me.

16 I think I went down to Adler and said: This thing
17 has been withdrawn. Why is that? He said, well, (b)(7)(C)

18 (b)(5)
19 (b)(5) That was the reason I was given and that's
20 the reason it was in the e-mail.

21 I was shocked to see that the e-mail was so
22 explicit about the reason. You didn't usually see that.
23 I've seen that a little more frequently of late but it was
24 pretty unusual back then.

25 Q And you referenced in one of your e-mails to Steve

1 We will mark this as Exhibit 4. It's an e-mail
2 from you to Reid Muoio; "cc," (b)(7)(C) 1/26/2010 at
3 11:38 a.m.

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

6 THE WITNESS: Oh, by the way, by this time, the
7 reason (b)(7)(C) is on these memos is, even though I was still
8 on the case, I felt that the water had become so poisoned
9 between Reid and myself that it made sense to put somebody
10 else on the case. So, I asked that somebody be put on and it
11 was -- continues on the case today.

12 BY MR. KOTZ:

13 Q All right. So, if you see at the top of the page
14 on Exhibit 4, the e-mail, you say: "Thanks. I hear the
15 Chairman wants to file Thursday, so you will need to have
16 someone standing by at the courthouse, I guess." This is
17 January 26, 2010.

18 A Right.

19 Q Why did the Chairman want to file Thursday?

20 A I don't know. I assume -- I don't know.

21 Q You were going to say?

22 A Well, we had had a practice, which actually I think
23 this case violated eventually, of not filing major actions on
24 a Friday because the news media -- it's a little outdated now
25 with the Internet and everything. But there's not the space

1 in the paper on Saturday. So, you get more bang for the buck
2 if you sue earlier in the week.

3 Q So, the last possible day to sue would be Thursday
4 because by Friday you lose the coverage?

5 A I'm not saying that that was the Chairman's
6 reasoning. I'm saying that that was something that was often
7 a consideration in the trial unit and in the Division of
8 Enforcement. I don't know why the Chairman wanted to file
9 Thursday.

10 Q And why was it put back on the calendar just a
11 month later? Was this -- after the December 17th closed
12 Commission calendar. So, it was withdrawn from that
13 calendar. Then shortly after that, you participated in the
14 testimony of Egol?

15 A I think Egol's testimony was in December.

16 Q Okay. And so, do you recall what the thinking was
17 in terms of putting it back on the calendar in January? And
18 then eventually it was removed from that calendar.

19 (Pause.)

20 THE WITNESS: I'm sorry. I was reading the e-mail.
21 It just doesn't refresh me. I'm sorry. Your question was
22 what?

23 BY MR. KOTZ:

24 Q Do you recall why initially it was placed on the
25 calendar in January and then eventually removed from that

1 the obligations of the SEC to bring a case as it saw fit.

2 It wasn't to propagandize. It was because we
3 could not just start issuing reports about our non-public
4 investigation. (b)(5)

(b)(5)

(b)(5)

11 But that was just my thinking. I don't remember
12 anybody else --

13 Q Was there a response to that?

14 A No. I never got a response to that.

15 Q Do you recall Commissioner Parades wanting to meet
16 with the team in the January time frame to talk about the
17 case?

18 A We did meet with Parades but I don't know
19 exactly -- I thought that was -- that probably -- that may
20 have been before it was pulled off the calendar the second
21 time. We met with him at some point.

22 Q What happened in that meeting?

(b)(5)

23

24

25

(b)(5)

1

2

3

Q So, he was skeptical of the case in chief?

4

A Yeah, he had that problem and I think he had

5

another -- oh, he had -- he raised the issue of whether

(b)(5)

6

7

8

9

10

Q So, do you feel like you resolved his concerns,

11

you and others?

(b)(5)

12

13

14

Q Did the issue of bringing a case against Ego1 come

15

up in that conversation with Parades or was it more about the

16

case in chief against Goldman?

17

A I don't believe Ego1 came up; or if it did, it

18

was mentioned and dismissed.

19

Q Okay.

20

A Yeah. Right. I'll stick by that.

21

Q So, after it was taken off the calendar the second

22

time, there was continued investigative steps relating to

23

Ego1 mostly or --

24

A There are mostly a lot of e-mails and collection

25

of evidence and stuff, trying to decide whether we should

(b)(5), (b)(7)(C)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

19 Q Okay.

20 MR. KOTZ: Before we get to that, let me show you
21 another e-mail. We're going to mark this as Exhibit 5.

22 (Exhibit No. 5 was marked for
23 identification.)

24 BY MR. KOTZ:

25 Q This is an e-mail from you to Reid and Ken Lench,

1 important one to bring."

2 Q So, was it ever expressed that this was a case that
3 was important for the SEC's overall reputation?

4 A Oh, I think everybody knew that.

5 Q So, the decision was made by Rob Khuzami, Tuesday,
6 March 23, 2010, "No on Ego1." Then at that point, the case
7 was moved forward and put on the calendar for now the third
8 time. Do you know why it was put on the calendar for that
9 particular day in April?

10 A I think they tried to get it on the calendar as
11 soon as they could.

12 Q Did you have discussions with anybody or hear
13 specifically why particular days were chosen to actually
14 file the complaint in April?

15 A Well, they had a couple. It was a moving target.
16 I think they tried to -- thought about filing it sooner.

17 If you're asking whether I'm aware of any reason
18 other than just the mechanics of filing litigation, the
19 answer is an absolute no.

20 Q Now, it was eventually filed on Friday, April 16th.
21 Do you know if there was any consideration given to filing it
22 on Monday so you would have more of the coverage?

23 A I wasn't involved in any of the discussions about
24 when to file, as far as I know. I didn't hear any of that
25 discussion. I do know that everyone, including Khuzami,

1 was quite shocked at the stock market's reaction, that the
2 filing of the case had.

3 Q Really?

4 A Nobody expected that.

5 Q Were there any concerns expressed about that?

6 A Concern in what way? I think people were a little
7 surprised that the case had as much -- I mean, I think people
8 expected it to have an impact. I think they were shocked
9 that it had an impact as great as it did.

10 Q But in the past, had there been kind of an
11 unwritten rule or maybe even more than that, that the SEC
12 didn't file a complaint like that during trading hours
13 because of the possible impact on company stock and yet
14 this had this massive impact on Goldman stock? Did you hear
15 anything about that?

16 A We have to file when the courts are open usually.
17 Courts are open roughly the same time as the markets open. I
18 guess, you know, sometimes maybe in the past there may have
19 been instances where we waited until 4:00 o'clock to file
20 but --

21 Q Did you have any discussion about the fact that it
22 had such an impact on the market, the concern about the stock
23 of Goldman being so adversely affected by this news?

24 A Before we filed?

25 Q Yes.

1 A No, I didn't hear anything.

2 Q What about after you --

3 A I was not really very closely involved in it. I
4 still had my name on the complaint. I do know I was
5 surprised and I felt a little bad myself that maybe somebody
6 including me should have perhaps raised the issue of giving
7 Goldman a little notice that we were going to file.

8 Q What about that issue? Did anybody at the SEC
9 inform Goldman that they were going to file?

10 A As far as I know, no; and all I know is what I
11 read in the papers.

12 Q Was it common to inform companies?

13 A Pretty common.

14 Q And so, do you have any idea why in this case it
15 wasn't done?

16 A Maybe the inexperience of the front office, the
17 desire of people to get the case out. I don't know whether
18 it was considered and rejected or just not thought of.

19 Q Now, you say the desire of everyone to get the case
20 out. Are you aware of any specific reason for a desire to
21 get the case out other than just as soon as possible?

22 A No. I think there was a sense that we'd sat on it
23 too long already because of all these issues, that
24 essentially I'm sure somebody would have brought up but I
25 was the one who ended up doing it.

1 but it was close. Paulson, the individual. John Paulson.

2 Q Right.

3 (b)(5),(b)(7)(C)

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

19 Q Were you aware, did you hear at any point in time
20 any discussion about the SEC sharing any information
21 concerning its Goldman Sachs investigation with the White
22 House, the Executive Office of the President or any members
23 of Congress?

24 A Not only didn't I hear anything about that but I
25 was surprised to find out we weren't

(b)(5)

1 (b)(5)

2

Q What do you mean by that?

3

4 (b)(5)

5

6

7

8

9

10

11

12

13

Q Did you hear anything or aware of any information

14

indicating that the SEC coordinated with the Democratic

15

National Committee or Democratic Senate Campaign Committee or

16

any other committee?

17

A Absolutely not.

18

Q What about news media? Did you hear about anybody

19

leaking information about the Goldman case to the news media?

20

A No. I think it was great that the thing didn't

21

leak at all, as far as I know.

22

Q Our office issued an investigative report around

23

the same time and it was released the same day as the Goldman

24

case. Were you aware of that, the Stanford investigation

25

report?

A I don't think I was aware it was the same day; no.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
)
) File No. OIG-534
OIG-534)

ORIGINAL

WITNESS: Witness Number 12

PAGES: 1 through 62

PLACE: Securities and Exchange Commission
100 F Street, N.E., Room 5465
Washington, D.C.

DATE: Thursday, July 8, 2010

The above-entitled matter came on for hearing, pursuant to notice, at 10:03 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 (b)(7)(C) Senior Investigator

6 Securities and Exchange Commission

7 100 F Street, N.E.

8 Washington, D.C. 20549

9 (b)(7)(C)

10

11 On behalf of the Witness:

12 CHERYL SCARBORO, Pro Se

13

14

15

16

17

18

19

20

21

22

23

24

25

C O N T E N T S

1			
2			
3	WITNESS:		EXAMINATION
4	Cheryl Scarboro		4
5			
6	EXHIBITS:	DESCRIPTION	IDENTIFIED
7	1	E-Mail, Scarboro to Muoio, 10/20/09	12
8	2	E-Mail, Muoio to Scarboro, 10/22/09	14
9	3	E-Mail, Scarboro to Muoio, 12/04/09	16
10	4	E-Mail Chain, Cohen and Muoio, 01/04/10	19
11	5	E-Mail Chain, Scarboro and McKown	
12		12/08/09	23
13	6	E-Mail, Khuzami to Muoio et al.	27
14	7	E-Mail Chain, Scarboro and Muoio	
15		01/22/10	30
16	8	E-Mail Chain, Scarboro and Muoio	
17		01/27/10	37
18	9	E-Mail, (b)(7)(C) to Muoio, 02/25/10	44
19	10	E-Mail, Muoio to Scarboro et al. 04/07/10	46
20	11	E-Mail, Muoio to Scarboro, 04/08/10	47
21			
22			
23			
24			
25			

1 working with this particular person because he was very
2 difficult to work with and that one or two of them seemed to
3 be all right with it but most of them weren't; and then he
4 was indicating to me that none of the staff wanted to
5 continue working with that particular member of the trial
6 unit. That is what that was about.

7 Q And who was that member of the trial unit?

8 A (b)(7)(C)

9 Q So, these five folks were not members of the trial
10 unit? They were on the investigative side?

11 A These are staff attorneys. Branch chief and staff
12 attorneys. Right.

13 Q And it says, "vote changed today." So, there
14 was --

15 A There was one person who had been on the fence
16 about whether they minded working with him and then had gone
17 back to Reid and said, no, they'd really rather not either.
18 That's what that's about.

19 Q So, these differences with this particular person,
20 were they substantive about the case or were they more
21 personality driven?

22 A It was a bit of both but mostly just a difficult
23 personality clash with just personality issues, I would say,
24 primarily, differences in approach, differences of
25 personality. It just was not working very well.

1 calendar for January 14." And then Rob Khuzami says: "I
2 think the 14th is a bit aggressive and probably unnecessary."
3 And then there's this: "OK?"

4 Reid Muoio below, at the bottom of the page, sends
5 an e-mail, dated Monday, January 4, 2010, 4:15 p.m. saying:
6 "This is a high-profile enforcement case that recently became
7 time sensitive."

8 A Mm-hmm.

9 Q Do you know in what way this case recently became
10 time sensitive?

11 A No. You'd have to ask him. I don't know what he's
12 referring to.

13 Q Is there any point in time when the Abacus case
14 was time sensitive?

15 A Not to me; no.

16 Q All right. Okay. Let me show you another
17 document.

18 MR. KOTZ: It's an e-mail from Robert Khuzami. Reid
19 Muoio, Lorin Reisner and you, 1/15/2010, 10:51 p.m. We will
20 mark this as Exhibit 6.

21 (Exhibit No. 6 was marked for
22 identification.)

23 BY MR. KOTZ:

24 Q The e-mail that Robert Khuzami sent on 1/15/2010
25 at 10:51 a.m. is in response to an e-mail from Reid Muoio on

1 be?

2 A I believe -- I don't recall specifically. I think
3 there was some leak in the newspaper -- not a leak but an
4 article in the newspaper about Abacus, about other structured
5 products in the Journal that laid out a lot of the facts that
6 were going to be in our case, and I think that was the
7 concern that Reid had, and it might also be what was referred
8 to here by Rob, that a lot of the facts of our case had come
9 out in another forum, in the press, and that we wanted to be
10 able to file our actual case as opposed to reading this --
11 you know, having read this report. It would have been nice
12 to get our case done at some point, sooner rather than later.

13 Q How would the facts being out there affect
14 anything?

15 A It doesn't -- it's just a matter of, uh -- I think
16 that the staff had been investigating this matter for some
17 time and wanted, you know -- and -- and, uh, had -- had
18 figured a lot of this out on their own and had reached a
19 point where they thought they had sufficient evidence to
20 bring a case and were eager to file it.

21 The newspaper articles don't have any real impact
22 one way or the other as it relates to that except that I
23 think it's just -- I think the staff would have liked to have
24 been able to show the world that they were on top of this
25 and, look, they -- you know: They were already investigating

1 Q Okay. So, when you said, "I would prefer not to
2 file on a Friday. I suggest Monday." what was that all
3 about?

4 A For the most part, we don't typically file our
5 cases on Fridays just because those aren't the best news
6 days. Articles on Saturdays aren't necessarily -- it's just
7 not our -- it's just not something that I like to do. It's
8 less of an issue these days than usual because you've got the
9 Internet and people reporting things all around the clock.
10 But if you've got a choice, then -- for the most part, I
11 don't do it. That's all. Just a personal preference.

12 Q So, you want to get the most favorable and as much
13 press as you can from work with the SEC?

14 A Like I said, it doesn't matter as much as it used
15 to. It's just a personal preference of mine, probably from
16 having been here a long time, well before we even had the
17 Internet putting out all of this press about us
18 instantaneously. But there's a deterrent value in what we
19 do; and so, for the most part, we tend to try to be aware
20 that, you know, there are certain days of the week that
21 you're likely to get more coverage than others. So, that's
22 all.

23 Q But at the end of the day, are you aware that when
24 the Goldman case was finally filed -- and we're kind of going
25 a little bit further in our questions. But it was filed on a

1 A I did.

2 Q What was said at that meeting? Did Commissioner
3 Parades ask for the meeting?

4 A He did.

5 Q Okay. What did he ask for the meeting for; what
6 did he want to say?

7 A This was in connection with the case having been
8 put on the calendar, I believe, and he just -- he had a
9 number of questions about the recommendation and wanted to
10 talk about it in some detail.

11 Q Any particular areas that you remember he asked
12 about?

(b)(5)

13

14

15

16

17

18

(b)(5)

19

It was a

20 pretty long discussion.

21 Q Did he express any skepticism about any aspects of
22 the case?

23 A Skepticism? I think he was just expressing his --
24 I don't know if skepticism is the right word but he
25 definitely had a lot of questions.

1 improper reason, in coordination with the White House, or
2 in coordination with other entities, to ensure some political
3 gain.

4 A Mm-hmm.

5 Q And so, when we go back to look at the process, we
6 see that it was put on the calendar and then pulled; put on
7 the calendar and pulled. So, we're trying to understand why,
8 you know, in the context of figuring out why eventually it
9 was filed on the day it was.

10 A Right.

11 Q So, my question was, I mean, is it unusual? Have
12 you seen other cases where cases were put on the calendar and
13 then withdrawn twice?

14 A Yes.

15 Q Okay. So, it's not unusual or it is unusual but
16 you've seen it before?

17 A It happens. This happens; and in the instance of
18 Goldman, it happened because there were issues that came up
19 relating specifically to aspects of the investigation. This
20 matter was pulled the first time because staff was revisiting
21 its recommendations and issues. I don't remember exactly why
22 it was pulled the second time. I'm sure you could refresh my
23 recollection with something. But all along the way, this
24 matter was put before the Commissioner, put on the calendar
25 and pulled off for reasons that related directly to the

1 investigation and that's -- that's all I know.

2 Q Okay. I guess what I'm trying to understand is, if
3 there are still questions about the approach, why wouldn't
4 those be resolved before you put it on the calendar? Why
5 would you put it on the calendar?

6 A In this case, that's what happened.

7 Q Was it related to any feedback from the
8 Commissioner or was it just --

9 A This matter was pulled the first time based
10 solely on conversations that the staff members had with
11 each other about the best approach (b)(5)

12 (b)(5)

13 (b)(5)

14 That's
15 all this was.

16 I'm aware of no conversations with Commissioners
17 about whether this was a good or a bad idea or how to manage
18 that process. Although I don't remember specifically why we
19 decided to pull it the second time, it's my recollection
20 that there were, again, issues relating to aspects of the
21 recommendation having nothing to do with timing; and that's
22 all I can tell you about that.

23 BY (b)(7)(C)

24 Q Do you recall the decision to pull the Abacus
25 matter in January to have any connection to a decision to

1 **Wells Egol?**

2 A I can't remember. I know that -- again, and as I
3 told you, I -- I don't remember from January to now all of
4 the specifics. I cannot recall and I wasn't as involved
5 towards the end as I was earlier on in this investigation.

6 We did Wells Mr. Egol. I cannot recall the date
7 of that. If you have the date of that maybe --

8 Q It's January 29th. It was pulled on the 27th.

9 A Then that is probably it. But again, I do recall
10 that both decisions as to pulling it had to do with aspects
11 of the investigation and strategies that related to the
12 investigation and timing of, you know, one fell swoop with
13 everybody versus following up later; and that is all I can
14 recall about that.

15 BY MR. KOTZ:

16 Q Okay. Why was the decision made to Wells Egol?

(b)(5), (b)(7)(C)

17
18
19
20
21
22

23 Q So, that was to try to see if a case could be
24 brought against Egol?

25 A No. I think the Wells -- the Wells process is one

1 Q But generally, in these types of cases that have
2 occurred in the past, would the SEC have informed the entity?

3 A I can't speak as to everybody and what they do and,
4 you know, what their practices are. I just can't answer
5 that.

6 Q All right. But you said that many times in the
7 cases you've been involved in the SEC would tell the company
8 in advance?

9 A Right.

10 Q But there were particular types of cases where it
11 would be not a good idea to do so because of the facts of the
12 case?

13 A Mm-hmm.

14 Q And what I'm asking you is, is the Goldman case one
15 of those types of facts that you said it would be
16 particularly --

17 A I would only be speculating. I wasn't involved in
18 any decision about, you know -- about calling Goldman. I was
19 not involved in that part of this. So, I can't answer your
20 question as to whether a call was made.

21 Q I'm not asking you whether a call was made. I'm
22 saying: You said to me, in many cases advance notice is
23 provided but there were certain particular types of cases
24 where they wouldn't be provided based on the facts of those
25 particular cases.

1 What I'm asking you is: Based on your knowledge of
2 the Goldman case, is that the kind of case where in your
3 experience you wouldn't provide that notice because of the
4 facts of that case?

5 A I know nothing about the facts of the case that
6 would lead me to that conclusion, that you would not make
7 that call; but I can't speak more specifically as to what
8 happened.

9 Q Are you aware generally if there is a new policy
10 now within the Enforcement Division not to provide advance
11 notice to companies when cases are being brought?

12 A I'm unaware of that. But then again, I'm unaware
13 of a policy to call them in every case either. I'm unaware.

14 Q So, why is it in your experience in most companies
15 have been called? Whose decision is that to make, whether a
16 company should be given advance notice?

17 A Members of the staff.

18 Q Has it been your decision in the past?

19 A I -- I suppose. I just -- I suppose that's right.
20 I guess it could have just as easily been a staff attorney or
21 an assistant director who would have made that --

22 Q But is it kind of generally understood within the
23 Enforcement Division that companies are contacted? You said
24 you're not aware of a policy. But I mean, there may not be
25 a written policy.

1 A I'm unaware of a policy. I would say, in general,
2 for the most part, in most -- in most instances I'm aware of
3 that they -- they are aware ahead of time that we are
4 planning on bringing a filed action against them. But I --

5 Q And has it been brought to your attention that
6 from going forward that shouldn't be done, that something
7 should be done differently?

8 A No.

9 Q Do you know if the SEC informed the New York Stock
10 Exchange that it intended to file a complaint against Goldman
11 prior to filing of a complaint? Do you know if that happened
12 in this case?

13 A I don't know.

14 Q In the cases that you've worked on, does that
15 happen, where the SEC informs the New York Stock Exchange
16 about what's going to happen before it happens?

17 A It's not standard practice.

18 Q Okay. But it does happen on some occasions?

19 A I'm unaware of an instance in which I have informed
20 the New York Stock Exchange that we were about to file an
21 action.

22 Q What about the Exchange's trading hours? Is that
23 ever a consideration in a decision when to file a complaint
24 against a publicly traded company; in other words, not to
25 file it necessarily during trading hours because it might

1 have an impact on a stock?

2 A I'm unaware of a policy like that.

3 Q Have you had any situations that you've been
4 involved in where decisions were made not to file a complaint
5 against a publicly traded company during Exchange's trading
6 hours?

7 A I'm unaware of that.

8 Q Do you think that that is an appropriate
9 consideration that the SEC should give, you know, the effect
10 on the tock of an action that the SEC brings?

11 A I don't have an opinion about that; no.

12 Q To your understanding, does the third Friday of
13 each month have a significance for the expiration of options?

14 A Yes.

15 Q What is that significance?

16 A The third Friday of the month is typically just as
17 you said, expiration date for options. I don't know what
18 you mean --

19 Q What does that mean, that it's an expiration date
20 for options?

21 A I don't understand what you --

22 Q What options expire?

23 A I'm still not following what you're trying to get
24 at.

25 Q I'm not trying to get at anything. I'm just asking

1 know.

2 Q Okay. All right. Are you aware of a potential
3 regulatory reform legislation that has been going through
4 Congress, just generally?

5 A Generally; yes.

6 Q Anybody at the SEC ever mention that legislation
7 in connection with the Goldman Sachs investigation or in
8 connection with the filing of an action against Goldman
9 Sachs?

10 A No.

11 Q Has it ever been expressed to you that it's
12 important for the SEC that that legislation go through?

13 A I don't know.

14 Q What do you mean?

15 A Has anyone ever said to me that it was important
16 for the SEC?

17 Q Yes. It's important. It's important for the SEC
18 that this legislation be passed.

19 A I don't recall a specific conversation like that.

20 Q Okay. But you had general conversations with
21 people about the legislation?

22 A Right.

23 Q Are you aware of any information indicating that
24 the SEC coordinated its action against Goldman Sachs with the
25 Executive Office of the President or any of its employees at

1 the White House?

2 A Am I aware of?

3 Q Any information indicating that the SEC coordinated
4 its action against Goldman Sachs with the Executive Office of
5 the President or the White House?

6 A No.

7 Q Are you aware of any information indicating that
8 anyone at the SEC shared any information concerning its
9 Goldman Sachs investigation with the Executive Office of the
10 President or the White House before it was filed?

11 A No.

12 Q Have you ever had a case where information was
13 shared with the White House about what the SEC is doing?

14 A Not that I'm aware of; no.

15 Q Are you aware of any information indicating that
16 the SEC coordinated its action against Goldman Sachs with
17 any members of Congress or any Congressional employee?

18 A No.

19 Q Are you aware of any information indicating that
20 anyone at the SEC shared any information concerning its
21 Goldman Sachs investigation with any member of Congress or
22 any Congressional employee prior to the complaint being filed
23 on April 16th?

24 A No.

25 Q Are you aware of any information indicating the

1 SEC coordinated its action against Goldman Sachs with the
2 Democratic National Committee, the Democratic Senate Campaign
3 Committee, the Democratic Congressional Campaign Committee or
4 any of its employees?

5 A No.

6 Q Are you aware of any information indicating that
7 anyone at the SEC shared any information concerning its
8 Goldman Sachs investigation with the Democratic National
9 Committee, the Democratic Senate Campaign Committee, the
10 Democratic Congressional Campaign Committee or any employees
11 before it was filed on April 16th?

12 A No.

13 Q Do you know if any information about the Goldman
14 Sachs case was shared with or leaked to the news media or
15 any journalist before the complaint was filed on April 16th?

16 A No.

17 Q And you didn't do that?

18 A No, I did not.

19 Q All right. Were you aware that my office, the
20 Office of Inspector General, had issued an investigative
21 report concerning the Stanford Group around the same time
22 that the SEC filed its complaint against Goldman Sachs?

23 A I was aware there was a report related to the
24 Stanford Group but I can't remember the date; but I was
25 aware there was such a report.

3

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. OIG-534
OIG-534)

COPY

WITNESS: Witness Number 13

PAGES: 1 through 76

PLACE: Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C.

DATE: Tuesday, July 13, 2010

The above-entitled matter came on for hearing, pursuant to notice, at 9:32 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 (b)(7)(C) ESQ.

6 Securities and Exchange Commission

7 Office of Inspector General

8 100 F Street, N.E.

9 Washington, D.C. 20002

10 (b)(7)(C)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C O N T E N T S

WITNESS

EXAMINATION

(b)(7)(C)

4

EXHIBITS:

DESCRIPTION

IDENTIFIED

1	1	E-mail, 12/08/09, Muoio to (b)(7)(C)	18
2	2	E-mail, 12/22/09	26
3	3	E-mail, 01/07/10	30
4	4	E-mail, 01/15/10	36
5	5	E-mail, 01/22/10	41
6	6	E-mail, 01/25/10	42
7	7	E-mail, 01/28/10	47
8	8	E-mail, 02/25/10	49
9	9	E-mail, 04/13/10	54
10	10	E-mail, 04/14/10	56
11	11	E-mail, 04/14/10	57
12	12	E-mail, 04/15/10, 3:29 p.m.	59
13	13	E-mail, 04/15/10, 6:33 p.m.	59
14	14	E-mail, 04/16/10, 9:23 a.m.	60
15	15	E-mail, 04/16/10, 9:50 a.m.	62
16	16	E-mail, 04/20/10	64
17	17	SEC administrative regulation 7/31/2005	70

1 Structuring Marketing and Sales Practices.

(b)(7)(A)

2 (b)(7)(A)

3

4

5

6 Q Right. I'm interested in the one that is referred
7 to as Abacus.

8 A Okay.

9 Q So did you have involvement with that one?

10 A I did.

11 Q Okay. What was your involvement?

12 A I was the branch chief that was really supervising
13 the day-to-day activities in that matter pretty much
14 throughout the life of the case.

15 Q Okay. How did you first learn of it? How did you
16 first become involved in it?

17 A Well, let me get back and tell you how the case
18 started.

19 Q Okay.

20 (b)(5)

21

22

23

24

25

(b)(5)

- 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

(b)(5)

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15 Q So you were the one who found the information that
16 started this whole thing?

17 A Yeah. I think that one of us, one of my great team
18 would have found it. It just was a matter of we broke up the
19 various databases and document collections that we had, and
20 we each took responsibility for going through part of it.
21 And the e-mail that came up was pretty -- it was hard to
22 miss.

23 Q Did you understand that this investigation was ever
24 considered a national priority for the SEC?

25 A I think at some point in time, and this is -- I

1 A I'm not sure that better press coverage is the
2 right way to put it. I think maybe that more people might
3 read it. I think the coverage, you know, would be the same
4 coverage, but more people are reading the paper on a Monday,
5 perhaps, than they are on a Saturday morning.

6 Q Do you remember conversations at that time, you
7 know, so it was first placed on the calendar in December, and
8 then it was taken off, then it was put back on.

9 A Mm-hmm.

10 Q Do you remember conversations about filing it at
11 that time, before it was pulled the second time?

12 A You know, I don't. I just remember the same
13 discussion that I'm going to refer to as the parallel track
14 discussion and then the we really need some written evidence
15 from IKB discussion. And that's --

16 MR. KOTZ: Let me show you another document. I'll
17 mark it as Exhibit No. 6. This is an e-mail exchange between
18 Reid Muoio and Cheryl Scarborough, 1/25/2010, 2:37 p.m. And
19 this e-mail references a meeting that Commissioner Paredes
20 asked for in a January 25 e-mail.

21 (Exhibit No. 6 was marked for
22 identification.)

23 THE WITNESS: Mm-hmm.

24 BY MR. KOTZ:

25 Q Do you remember, did you attend that meeting?

1 A I believe I did. I think there may have been a
2 couple of meetings with him, but I believe I was at one, and
3 the timing on this looks to be right.

4 Q And what was that meeting all about?

5 A You know, there are often meetings sort of in every
6 case where if a commissioner has a question, wants to speak
7 to the staff directly, ask about a case, probe the merits of
8 the case, they'll ask for such a meeting. And my
9 recollection, it was such a meeting.

10 Q And so what were his concerns about the case? Do
11 you remember?

(b)(5)

12
13
14
15
16
17 I remember being -- probably a half hour, 40 minute
18 meeting. (b)(7)(C) Ken Lench, Reid, me, (b)(7)(C)
19 was probably there, Commissioner Paredes, and I believe at
20 least one, maybe two of his staff members I can still kind of
21 picture sitting in the room.

22 More specifically than that, I think that, you
23 know, we sort of explained the case to him and he asked a
24 number of questions, but those are the two that I remember.

25 Q Is it fair to say that Commissioner Paredes was

1 skeptical about some of the claims or about the case?

(b)(5)

2

3

4

5

6

7

8 Q Did you get the impression that you had kind of
9 answered his concerns by the end of the meeting or that they
10 were still kind of outstanding?

11 A I mean I think we all did our best to answer his
12 questions in the best way we can, whether or not we were
13 successful in taking any reservations that he may have had
14 away, I think is probably best evidenced by his vote at the
15 table, right?

16 But I mean yeah, our goal up there was just to be
17 forthright with him and answer the questions to the best of
18 our abilities.

19 Q Were there concerns among the team that perhaps the
20 Commission would not accept, would not vote in favor of this
21 case?

22 A Well, I think being sort of staff and everything
23 that we have to do, you know, our commission delegates us the
24 authority to do things, so you always want to -- you can't
25 take something to your client and not be somewhat concerned

1 to make the Commission look good if and when that's brought.
2 I like to think that of every case I brought when it goes
3 out.

4 I did the Dow Jones David Lee investigation. You
5 know, it's a case we worked very hard on, and I was happy
6 when it went out, and hopefully the Commission looked good
7 there.

8 Q Right, but I mean when this case came out it
9 created a bigger splash than other cases.

10 A It did.

11 Q So it did provide, it did make the Commission look
12 good during that timeframe. Do you get the sense, because it
13 was Goldman Sachs, that there was an expectation that that
14 might happen and therefore that was a reason to let's already
15 get it out and get people, you know, making the SEC look
16 good, particularly after, you know, some bad press in the
17 past?

18 A I think that there was some expectation that this
19 would get some press coverage. I think the level of press
20 coverage that it got, I know it shocked me. Reid said it
21 shocked him. And I don't think that anyone sort of at my
22 level that I talked to ever expected anywhere near the
23 reaction to this case that it was. And as far as I'm
24 concerned, it's a good case, but it's a single CDO. There
25 were hundreds of these things out there.

1 A You know, exactly. I was sort of just given a
2 schedule. I know that there was a schedule. The logic
3 behind that schedule or what that schedule was, frankly, at
4 this point in time were the least of my concerns. My only
5 concern at this point in time was trying to get this filed at
6 9:30 a.m.

7 MR. KOTZ: And then the next e-mail we'll mark as
8 Exhibit No. 14. It's an e-mail exchange between you and Reid
9 Muio the next day at 9:23 a.m. where he says, "Can you call
10 me?"

11 (Exhibit No. 14 was marked for
12 identification.)

13 THE WITNESS: Yep.

14 BY MR. KOTZ:

15 Q Do you know what that was about?

16 A I think what happened was, if you remember, if you
17 look a little bit earlier it says on -- I guess it's Exhibit
18 No. 10, "The plan is to e-mail you a complaint cover sheet
19 and summons late tonight or early tomorrow morning with the
20 expectation you would sign on my behalf and then file the
21 action as soon as the clerk's office opens."

22 At some point in time, I remember talking to Reid
23 or perhaps it was one of our litigators saying, 'Are you sure
24 this is okay? Are you sure it's okay if I sign the complaint
25 with your name and my initials next to it?' And the

1 assurance that I got was, 'Sure, no problem.'

2 So my recollection of the chain of events was that
3 I did get the papers -- it's all coming back to me. I was
4 definitely ill and in court and obviously couldn't recover
5 from that, so that was why I said, "If you can get it to me
6 tonight," if it's possible because I want to try to sleep in
7 a little bit tomorrow.

8 So I did get the papers at some point in time, I
9 don't remember what time that night, and printed them up.
10 There was one change that had to be made. I think Lorin
11 wanted one word changed, so I printed those up, signed them.
12 I think it was (b)(7)(C) not Reid. I signed them for
13 (b)(7)(C) put my initials next to them, and put them on my desk
14 at the office and was planning on coming in at 9:30 the next
15 morning and filing those papers.

16 I got in the next morning, grabbed the papers, went
17 down to the clerk's office at 9:30, was in line. She said,
18 'Are you (b)(7)(C) And I was like, 'No.'
19 'Who are you?' (b)(7)(C) She said, 'You
20 didn't sign this. You're not (b)(7)(C) This can't be
21 filed this way.'

22 So I said, 'Okay.' So I went back upstairs and I
23 called Reid, and I said -- I think I left him a voicemail or
24 maybe I sent him an e-mail from my DOJ account, I don't know.
25 I just said, 'We've got a problem, I can't file the case,'

1 and explained what it was -- or maybe that's not exactly what
2 I said, but the gist of the conversation and -- although this
3 is before 9:30, so exactly what this referring to I don't
4 know.

5 I may have gone down a little early. In fact,
6 frankly I think I did go down a little early to make sure
7 that it was filed around 9:30 and I could actually make it to
8 court by 10:00. But I couldn't file it and then they said,
9 'Don't worry about it; we'll find someone else to do it.'
10 And my recollection is that they went to New York and the New
11 York office, and then someone sent it.

12 MR. KOTZ: Let me show you the next e-mail, which
13 we're going to mark as Exhibit No. 15, from Reid Muoio to
14 Lorin Reisner and Andrew Calamare 4/16/2010 at 9:50 a.m. And
15 then Lorin Reisner sends an e-mail below at 9:43 a.m. to
16 Andrew Calamare, "Thanks for your help. (b)(7)(C) is waiting at
17 the clerk's office in the Southern District of New York for a
18 new version of the complaint with your name added and signed
19 by you." And then Reid responds that you'll be in court and
20 unavailable, so we ask that you have someone do the filing
21 for us and then e-mail the PDF version.

22 And so by that time you couldn't file anymore
23 because you had your court appearance?

24 (Exhibit No. 15 was marked for
25 identification.)

1 THE WITNESS: I was in court.

2 BY MR. KOTZ:

3 Q And so they were planning to get a new version of
4 the complaint that, I guess, (b)(7)(C) had signed or --

5 A I think someone in the New York office. I don't
6 even know who signed the actual complaint, but it may have
7 been Andy Calamare, actually signed the original version of
8 the complaint.

9 Q And do you know when the complaint was actually
10 filed?

11 A I don't. I think it was very close to 10:00, a
12 little bit after 10:00 in the morning. I don't exactly know.

13 Q And was there a concern with the schedule that it
14 was now 10:00 instead of 9:30? Do you know if that had
15 anything --

16 A I don't know. I want to say that it didn't seem
17 like anyone was really freaking out when I came back upstairs
18 and said they didn't let me file it. So but that's all I
19 could base it off of.

20 MR. KOTZ: Let me show you the next document. This
21 is 4/20/2010, marked as Exhibit No. 16, e-mail exchange
22 between you and Reid Muoio and (b)(7)(C) where you say,
23 "I see Congress has asked for docs on the Abacus case. Maybe
24 I am better off here." Do you know what you were referring
25 to there?

1 (Exhibit No. 16 was marked for
2 identification.)

3 THE WITNESS: Sure. I have seen congressional
4 hearings and I think I was joking about the fact that, if
5 they have asked for questions about the Abacus case, I just
6 had visions of myself or Jeff or Reid sort of in front of
7 some committee in Congress being asked questions.

8 BY MR. KOTZ:

9 Q Okay.

10 A So I was just referring to --

11 Q So after the case was filed, Congress had asked for
12 documents? Is that what your recollection is?

13 A I think I must have seen that in the paper, and
14 that's all that I can -- in fact, yeah, that's all I can
15 think of. I mean looking at the time, it was 8:53 at night,
16 and typically I think what I would do -- and frankly, I did
17 go back to the office, and I would read the Wall Street
18 Journal and other things every night as sort of a little bit
19 of a break.

20 This would be -- actually, this a Tuesday or
21 Wednesday, so that's what I'm guessing.

22 Q Okay. And in the end, the case was filed on a
23 Friday. Do you remember any discussions about that, given
24 that in the past the SEC hadn't filed cases on Friday?

25 A I don't.

1 Q All right. Let me ask you some additional
2 questions. Were you aware of the financial regulatory reform
3 legislation that has been going through Congress and I guess
4 is still going through Congress?

5 A Generally, yes; specifically, no. In general, I
6 was aware that there was talk of passing financial
7 legislation reform, but beyond that I really wasn't aware
8 of --

9 Q Okay. Has anybody in the SEC ever mentioned this
10 legislation in connection with the Abacus investigation or in
11 connection with filing a case against Goldman Sachs?

12 A No.

13 Q Are you aware of any information indicating that
14 the SEC's actions against Goldman Sachs or the timing of that
15 action was related to or to advance financial regulatory
16 reform legislation?

17 A I am not.

18 Q Are you aware of any information indicating that
19 the SEC coordinated its action against Goldman Sachs with the
20 Executive Office of the President or the White House or any
21 of its employees?

22 A I am not.

23 Q Are you aware of any information indicating that
24 anyone at the SEC shared any information concerning its
25 Goldman Sachs investigation with the office of the President,

1 the White House or any of its employees prior to the
2 complaint being filed?

3 A I am not.

4 Q Are you aware of any information indicating that
5 the SEC coordinated its action against Goldman Sachs with any
6 members of Congress or other congressional employees?

7 A I am not.

8 Q Are you aware of any information indicating that
9 anyone at the SEC shared any information concerning its
10 Goldman Sachs investigation with any members of Congress or
11 congressional employees prior to the complaint being filed?

12 A I am not.

13 Q Are you aware of any information indicating the SEC
14 coordinated its actions against Goldman Sachs with any
15 Democratic National Committee, the Democratic Senate Campaign
16 Committee, the Democratic Congressional Campaign Committee or
17 any of its employees?

18 A I am not.

19 Q Are you aware of any information indicating that
20 anyone at the SEC shared any information concerning its
21 Goldman Sachs investigation with the Democratic National
22 Committee, the Democratic Senate Campaign Committee, the
23 Democratic Congressional Campaign Committee or any of its
24 employees prior to the complaint being filed?

25 A I am not.

1 "Notification of Defendants. Every effort should be made to
2 avoid the possibility that defendants in an SEC enforcement
3 action first learn of the action when they read about it in
4 the newspapers or when they are called by a reporter for
5 comment about the SEC's complaint. The division, regional or
6 district office primarily responsible for the filing of a
7 particular complaint shall take all necessary steps to see
8 that the defendants and/or their counsel are given timely
9 advice concerning the action."

10 Were you aware of this particular provision?

11 (Exhibit No. 17 was marked for
12 identification.)

13 THE WITNESS: At that time I was not, I don't
14 think, unless -- I mean I guess I'd have to sort of read
15 specifically, see if this relates to the concept of sort of
16 the wells process, as well, which -- I don't know if that's
17 what this is referring to in some way.

18 BY MR. KOTZ:

19 Q Is there a distinction between the wells process
20 where you're giving notice that you're planning to make a
21 recommendation to the Commission and giving notice that
22 you're filing a complaint?

23 A It does seem like there -- yeah, there should be a
24 distinction.

25 Q So then isn't it pretty clear that this is talking

1 about defendants in an SEC enforcement action first learn of
2 the action, not a wells situation where there is the
3 possibility of an action?

4 A Fair enough.

5 Q Okay

6 A Fair enough.

7 Q So you weren't aware, specially, of this SEC
8 administrative regulation or generally that there was a
9 provision that stated that every effort should be made to
10 avoid the possibility that defendants in an SEC enforcement
11 action first learn of the action when they read about it in
12 the newspapers. Is that right?

13 A Yeah, I mean that's right. This is not an issue
14 that I have ever dealt with before where I have actually sort
15 of been the one responsible for making such decisions, filing
16 complaints or frankly dealing with companies on this level,
17 so it's just not something I would have ever had the
18 opportunity to look into.

19 Q But are you surprised to see that there is actually
20 a particular policy on this issue?

21 A Am I surprised to see there is a policy?

22 Q Yes.

23 A There is a policy on everything, so am I surprised
24 to see it? No.

25 Q That this is the policy, that the policy is that

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

ORIGINAL

In the Matter of:)
) File No. OIG-534
OIG-534)

WITNESS: Number 14

PAGES: 1 through 44

PLACE: Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C.

DATE: Wednesday, July 14, 2010

The above-entitled matter came on for hearing; pursuant
to notice, at 9:13 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, Inspector General

5

(b)(7)(C)

6

Office of Inspector General

7

Securities and Exchange Commission

8

100 F Street, N.E.

9

Washington, D.C. 20549

10

11 On behalf of the Witness:

12

(b)(7)(C)

13

14

National Treasury Employees Union

15

1750 H Street, N.W.

16

Washington, D.C. 20006

17

18

19

20

21

22

23

24

25

1 again. So.

2 Q Okay. All right. I'm going to ask you now a
3 series of questions.

4 Were you aware generally of the financial
5 regulatory reform legislation that has been advancing through
6 Congress and I guess is still moving through Congress?

7 A Yes.

8 Q Okay.

9 A Generally.

10 Q Has anybody at the SEC ever mentioned this
11 legislation in connection with the Goldman Sachs
12 investigation?

13 A No.

14 Q Okay. Has anybody at the SEC ever mentioned this
15 legislation in connection with the filing of the action
16 against Goldman Sachs?

17 A No.

18 Q Okay. Do you have any reason to believe the SEC's
19 action against Goldman Sachs and the timing of the action was
20 related to or was to advance financial regulatory reform
21 legislation?

22 A No.

23 Q Are you aware of any information indicating that
24 the SEC coordinated its action against Goldman Sachs with The
25 Executive Office of The President or The White House or any

1 of its employees?

2 A No.

3 Q Are you aware of any information indicating that
4 anyone at the SEC shared any information concerning its
5 Goldman Sachs investigation with the executive office of the
6 President, The White House, or any of its employees prior to
7 the complaint being filed?

8 A No.

9 Q Are you aware of any information indicating that
10 the SEC coordinated its action against Goldman Sachs with any
11 members of Congress or any congressional employees?

12 A No.

13 Q Are you aware of any information indicating that
14 anyone at the SEC shared any information concerning its
15 Goldman Sachs investigation with any members of Congress or
16 any congressional employees prior to the complaint being
17 filed?

18 A No.

19 Q Are you aware of any information indicating the SEC
20 coordinated its action against Goldman Sachs with the
21 Democratic National Committee, Democratic Senate Campaign
22 Committee, the Democratic Congressional Campaign Committee,
23 or any of its employees?

24 A No.

25 Q Are you aware of any information indicating that

1 anyone at the SEC shared any information concerning its
2 Goldman Sachs investigation with the Democratic National
3 Committee, the Democratic Senate Campaign Committee, the
4 Democratic Congressional Campaign Committee, or any of the
5 employees prior to the complaint being filed?

6 A No.

7 Q Are you aware of any information indicating anyone
8 at the SEC shared any information concerning the Goldman
9 Sachs investigation with the news media or any journalists
10 prior to the complaint being filed?

11 A No.

12 Q Were you aware that the Senate Permanent
13 Subcommittee on Investigations was also investigating Goldman
14 Sachs at that time?

15 A I -- I don't think so, but, I mean, I'm sort of
16 trying to remember. I knew after we filed the case there's
17 been a lot of interest from other regulators and other -- you
18 know, the Congress and the committees and so forth, but I
19 don't -- I don't remember that before we filed the case.

20 Q Okay. Do you know if anyone at the SEC informed
21 Goldman Sachs in April that the Commission had approved the
22 staff's recommendation to file an action, that they were
23 about to file it?

24 A Can you say that again? I'm sorry.

25 Q Was Goldman Sachs informed that the SEC was going

5

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

ORIGINAL

In the Matter of:)
) File No. OIG-534
OIG-534)

WITNESS: Number 15

PAGES: 1 through 88

PLACE: Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C.

DATE: Thursday, July 15, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 9:38 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, Inspector General

5 (b)(7)(C)

6 Office of Inspector General

7 Securities and Exchange Commission

8 100 F Street, N.E.

9 Washington, D.C. 20549

10

11 On behalf of the Witness:

12 (b)(7)(C)

13 National Treasury Employees Union

14 1750 H Street, N.W.

15 Washington, D.C. 20006

16

17

18

19

20

21

22

23

24

25

C O N T E N T S

1			
2			
3	WITNESS		EXAMINATION
4	(b)(7)(C)		5
5			
6	EXHIBITS:	DESCRIPTION	IDENTIFIED
7	1	November 24, 2009, E-mail	
8		(b)(7)(C) to (b)(7)(C)	16
9	2	December 8, 2009, E-mail	
10		Muoio to Adler and (b)(7)(C)	20
11	3	January 4, 2010, E-mail	
12		Cohen to Muoio	20
13	4	December 7, 2009, E-mail	
14		(b)(7)(C) Muoio, Scarborough and (b)(7)(C)	23
15	5	December 22, 2010, E-mail	
16		(b)(7)(C) Muoio and (b)(7)(C)	30
17	6	January 15, 2010, E-mail	
18		Khuzami, Muoio, Reisner, Scarborough	42
19	7	January 15, 2010, E-mail	
20		(b)(7)(C) to Muoio and (b)(7)(C)	42
21	8	January 22, 2010, E-mail	
22		Scarborough and Muoio	45
23	9	January 28, 2010, E-mail	
24		(b)(7)(C) and (b)(7)(C)	50
25			

1 Right?

2 A In this e-mail?

3 Q In the e-mail and from your recollection.

4 A Yes, I remember -- yes, I think this timeline is
5 roughly accurate, so, yes.

6 Q So at some point in time it was decided to go
7 forward with the case without having worked through the
8 difficulties in taking Egol's testimony and placing it on the
9 calendar in December.

10 A Yes. I mean -- yes, we -- the e-mails refresh my
11 recollection that we -- that the -- the matter was put on the
12 calendar prior to taking Egol's testimony and then was
13 withdrawn when it was decided that, no, we need to take
14 Egol's testimony first.

15 Q Who made that decision, do you know, to withdraw
16 the case from the calendar and decide to take Egol's
17 testimony before you brought it up?

18 A I don't remember. I don't know. Certainly it
19 wasn't me.

20 Q Was it from feedback from the Commission or was it
21 an internal decision made by the Enforcement staff that was
22 working on the case?

23 A I don't remember. I'm not -- I don't remember and
24 it's very possible that I may have not even known that.

25 Q Were there any folks who thought there's no point

1 right enforcement team might be, if I'm reading this right.

2 BY MR. KOTZ:

3 Q Was your enforcement team the right enforcement
4 team?

5 A Well, it's hard to say. The part that would
6 suggest it is if you look on the second page, Louise Story, I
7 think is the New York Times reporter. I think it's her and
8 Gretchen something. She writes: We've spoken with a number
9 of people who have been contacted by the SEC in its
10 investigation of CDOs and they've been asked extensive
11 questions on synthetics and other CDO protection within those
12 deals. That makes me think they found the right people. (b)(5)

13 (b)(5)

14

15 (b)(5)

16 So -- so, yes, I think it
17 came from the right people.

18 Q Was there any concern when the story came out that
19 it would adversely impact the investigation? Did it
20 adversely impact the investigation?

21 A I don't remember -- well, let me answer that a
22 couple ways. I don't remember talking about that with the
23 team. Really it's (b)(7)(C) and Reid and me. I had that concern
24 personally and -- and for the reasons I described, once
25 something becomes more high profile, the front-page story in
the New York Times, witnesses become more cagy, you don't

1 tend to have cooperating witnesses as easily. (b)(5)

2 (b)(5)

3

4 (b)(5)

And so that's my

5 interpretation of when Reid Muoio writes to us, FYI and
6 please be careful, you know. We're dealing with witnesses
7 all the time and, you know, you just have to have heightened
8 attention to saying something to a witness about anything
9 that could become a part of a New York Times article.

10 Q Did you think that in the end the story had an
11 adverse impact on the investigation?

12 A Not on the Abacus Investigation. Frankly, the
13 Abacus Investigation, you can see, we later took Egol's
14 testimony for example, but we'd already talk to a number of
15 witnesses in Abacus so it didn't hurt that. It -- it had an
16 impact on our other CDO matters that I referenced, but that's
17 not adverse.

18 Q Then when the story came out, we have an e-mail and
19 I don't know whether I need to show you this, (b)(7)(C)
20 says page 1 above the fold, I wonder how they got the story?
21 But in the end you never determined how they did get the
22 story?

23 A No, and my guess is multiple sources. Again, I
24 mean I have no evidence that it came from within the building
25 -- I mean, the SEC.

1 A I'm just reading the e-mail. I remember a
2 discussion but I don't even think it reached Reid Muoio's
3 level. I think me and (b)(7)(C) for lack of a better
4 word sort of talking the breeze and talking about it and
5 saying there's a reason you don't file on Friday because
6 people -- people don't pay attention to the news on Friday
7 and then you're in this weekend schedule. But I'm not even
8 -- I know that -- that -- he and I informally talked about
9 that but going to Reid, no, I don't remember that.

10 Q Did you understand that generally the Commission's
11 approach was not to file cases that could get media attention
12 on Friday?

13 A No, I -- honestly I don't even know what the
14 Commission approach is. I'm sorry. I'm sure there might be
15 one. I just -- I don't know it.

16 Q Subsequently, in late January 2005, there was a
17 meeting with Commissioner Paredes. Do you remember that?

18 (b)(7)(C) Do you mean 2010?

19 BY MR. KOTZ:

20 Q I'm sorry. Yes, late January 2010, there was a
21 meeting with Commissioner Paredes.

22 A I -- I remember meeting with Commissioner Paredes.
23 Maybe there were multiple meetings because I remember one --
24 I remember meeting with Commissioner Paredes. I don't know
25 when it was.

1 Q What do you remember about that meeting?

2 A I remember a meeting, again not sure when it was,
3 but someone, I don't know who, I think I briefed one of his
4 staff members whose name is escaping me, forgive me, about
5 the case. Commissioner Paredes wanted a meeting. We met in
6 his office with (b)(7)(C) me, Reid Muoio and maybe Cheryl
7 Scarborough was there and Lorin I think was there as well --
8 Lorin Reisner, and Commissioner Paredes and his staff member
9 again whose name escapes me. We reviewed the draft action
10 memo and certainly there was -- what I really remember was a
11 long discussion about the merits of the case. Commissioner
12 Paredes asked a lot of -- Commissioner Paredes and his staff
13 member asked a lot of questions about the merits of the case.
14 Frankly, I thought they had a good understanding of how the
15 CDO worked and he asked the right -- I mean again this is a
16 staff attorney's perspective on Commissioner Paredes's
17 questions so it's not worth much, but I certainly remember
18 him asking the right questions and challenging, you know,
19 aspects of the case.

20 Q Was he skeptical of certain aspects of the case?

21 A Yes.

22 Q Any particular aspects that you can recall?

23 A Yes. The one that I remember most -- there may
24 have been more than this, right, but the one that I remember
25 particularly was he felt that the representation ACA selected

1 the portfolio which is really our main misrepresentation as
2 to investors -- he felt that that may have -- that that could
3 have been accurate, that -- you know, that what -- and he --

4 (b)(5)

5
6
7
8 Q Did you feel that by the end of the meeting you had
9 allayed his concerns or addressed his concerns?

10 A No, not at all. I mean, as I said, a robust
11 discussion. I feel -- particularly Lorin was talking. It
12 wasn't -- I think I may have said a word or two, but Lorin
13 certainly, you know, while acknowledging his point laid out
14 why we felt that it was misleading, why in the market it
15 would be misleading (b)(5)

16 (b)(5) In our view it wasn't that way.
17 But I certainly didn't leave the meeting feeling that
18 Commissioner Paredes was persuaded.

19 Q Was there concern within the Enforcement staff that
20 the case that would be brought to the Commission would not be
21 approved?

22 A I think -- I think there's always that concern.
23 And one other thing if I could about that meeting.
24 Commissioner Paredes wasn't not persuaded. In other words, I
25 remember Commissioner Paredes asking us to provide additional

1 evidence that would help him get comfortable with the idea

2

(b)(5)

3

(b)(5)

3 So I remember we were tasked for example
4 with preparing a chart showing why that was false and showing
5 how investors were told that. And so this is a roundabout
6 way of answering your question. So we worked on that
7 diligently largely because, you know, we wanted to if at all
8 possible get Commissioner Paredes the facts to get
9 comfortable with what we thought was, you know, a good
10 charge.

11 Q Was there concern specifically? You had met with
12 the Commission and he expressed skepticism. Was there
13 concern specifically in the Abacus case that it might go up
14 to the Commission and get rejected?

15 A That was my impression from talking to Commissioner
16 Paredes, that he -- that he was -- after that meeting I
17 didn't know either way. He didn't indicate I'm not going to
18 recommend this, but ht certainly indicated I have -- it's a
19 hard case and I have specific concerns, but he was very open
20 what those were and we felt that the evidence -- we could
21 marshal evidence that could alleviate those concerns.

22 Q Were there any changes made in the investigation of
23 the case or how the case was brought as a result of feedback
24 from Commissioner Paredes or any other Commission?

25 A I -- not that I can recall. I think it was more of

1 the troubling news was. I am -- I -- I do not remember at
2 all raising concerns with (b)(7)(C) about things happening
3 outside the Commission. I do remember we were constantly
4 talking about Goldman and the investigation with (b)(7)(C)
5 because he just needs to know how CDO theories are being
6 perceived in the building so I am speculating that that's
7 what we were talking about. Thanks.

8 Q What do you remember about the ultimate decision
9 not to charge Egol?

10 A It may not surprise you to hear that there were
11 further meetings in Rob and Lorin's office, and that was
12 great. I mean, again, this was to me -- I'm a young staff --
13 I'm not age-wise young but I'm a new staff attorney who had
14 never really -- I didn't have any frame of reference for how
15 decisions we being made. There was a phenomenal amount of
16 thought and care put into the decision. After he Wells
17 meeting there were further meetings in Rob and Lorin's office
18 where this issue was debated. (b)(7)(C) had a fully airing
19 in which he still argued that Egol should be charged. By
20 that point Reid Muoio was asserting that Egol should not be
21 charged. I'm -- I'm far from a decision-maker but I agreed
22 with Reid and began to, you know, present why the evidence
23 supported Reid's point of view.

24 Ultimately what I remember, again, there's a lot of
25 meetings. I can't remember any specific or what was said.

1 Reid Muoio.

2 A Could I interrupt? Maybe 15. I think this one is
3 15.

4 Q I'm sorry.

5 A No problem.

6 MR. KOTZ: The 4/13/10, 9:12 p.m. e-mail from you
7 to (b)(7)(C) (b)(7)(C) and Reid Muoio is Exhibit 15.

8 (Exhibit No. 15 was marked for
9 identification.)

10 BY MR. KOTZ:

11 Q (b)(7)(C) sends an e-mail on the 13th, which was
12 a Tuesday. Just curious, did we hear back to file tomorrow
13 after the meeting or Thursday morning? You respond: No word
14 either way today. I think staff's preference, i.e., Reid,
15 (b)(7)(C) and me still Thursday morning but will let you know if
16 we are instructed otherwise. What was going on there?

17 A Yeah, I think you can see my sort of class
18 consciousness coming out. This -- I remember feeling that we
19 needed to file quickly and not for any sort of fancy reason
20 prosaically. Once you start circulating action memos, once
21 you start getting a lot more people involved in a complaint,
22 you run the risk of someone leaking and you run the risk of
23 someone, God forbid, trading on that information. I mean,
24 that's -- that's unacceptable. Right? And so I remember
25 feeling that way and saying that, and saying this -- we

1 didn't have a real sense of whether the complaint would be
2 material to Goldman Sachs for example, but I sensed that it
3 would be somewhat information and that you don't go through
4 the process of getting an action memo approved and then wait
5 while you're doing other things.

6 Q Would there also be a concern that if it got out in
7 the press before you made the announcement, the press effect
8 of the announcement would be undercut?

9 A I never had that concern. I mean, it makes senses
10 when you say it, but I don't -- I never had that concern and
11 no one said that to me. I was -- I know it sounds corny. I
12 was much less fixated personally -- and again I'm not a
13 decision-maker, I was much less fixated on, you know, how the
14 press announcement would go and how much attention it got
15 versus the idea of a leak would be catastrophic to me, you
16 know, that -- that we -- it had to be professionally done.
17 And, I mean, the real catastrophe is if there's any trading
18 in Goldman Sachs' stock. That can't happen with the SEC.
19 Right? And so I remember generally expressing that concern
20 in one of those meetings and being -- and saying the timing
21 is not mine -- you know, the timing is not at all a function
22 of my decision making but surely there is an interest in
23 filing as soon as we can.

24 Q Were you instructed otherwise or how come it wasn't
25 filed on Thursday?

1 A I'm piecing together the chronology of events. I
2 think on Wednesday we got Commission approval or
3 authorization and it wasn't filed on Thursday, it was filed
4 on Friday. And so the question then is why? I don't know.
5 What I do remember is as I think this e-mail reflects, we
6 weren't completely in the loop. (b)(7)(C) is the litigator,
7 for example, and he didn't know. At that time the
8 decision-makers for when to file were more senior to me if I
9 remember. Obviously they're more senior to me. I remember
10 that we were waiting for word from Rob and Lorin, frankly.
11 At the same time I -- we were drafting and redrafting that
12 complaint like madmen that week.

13 We'd already had a draft, but, for example, I -- I
14 became very paranoid in the middle of the week that had we
15 done enough fact-checking, that every fact in that complaint
16 could be confirmed? So I remember Thursday when I guess in
17 theory we were authorized to file the complaint still doing
18 what might be sort of obsessive fact-checking. In other
19 words, this sentence in paragraph 33, how do you know that
20 and why? And so from my perspective while I -- as I said I
21 wanted it to happen soon because I was scared of leaks, there
22 was work to be done on the complaint and so Thursday we -- I
23 think probably there's an e-mail on this. I think on
24 Thursday there were still edits to the complaint being made.
25 So those were necessary edits. And I don't know why it

1 A I don't remember any discussion about that. Again
2 personally -- personally, I think you -- you know, you file a
3 complaint when the time -- time is ready -- when the
4 complaint is ready, but I don't remember a discussion.

5 Q Were you surprised at the extent of the media
6 attention about the complaint?

7 A I was, yes.

8 Q You said you were. Were there others not
9 surprised?

10 A It's hard to remember. I think -- I think Reid
11 Muoio may have been but I can't specifically recall. And
12 beyond that, I mean, the -- the press guys were really kind
13 of I think -- I don't remember talking with them about that,
14 but those would have been the people I would assume who would
15 be more in tune to how the press would react. I --

16 Q Do you know if they were surprised?

17 A I don't know. I -- I was trying to remember if I
18 talked with them about it. I don't.

19 Q Were you aware generally that the national
20 regulatory reform legislation that has been advancing through
21 Congress and I think it's about to be passed?

22 A Can you repeat that? I'm sorry.

23 Q Were you aware generally of the financial
24 regulatory reform legislation that has been advancing through
25 Congress this year and is about to be passed?

1 A I -- I have been generally aware of it, yes.

2 Q Has anybody at the SEC ever mentioned this
3 legislation in connection with the Goldman Sachs
4 investigation or in connection with a filing of an action
5 against Goldman Sachs?

6 A Not prior to filing the complaint, no. The reason
7 I'm pausing is after the complaint was filed, for example, we
8 got a document preservation notice and I think I was
9 forwarded a letter from a congressman, whose name is escaping
10 me, indicating that there is some investigation into whether
11 the complaint was filed with an eye towards the politics of
12 that.

13 Q That's the investigation we're doing.

14 A Right. And so, yes, of course, after the complaint
15 was filed I'd heard of that. Prior to the complaint being
16 filed, no. Nothing, in other words, that would connect the
17 legislation and the fate of that legislation to the Abacus
18 case.

19 Q Do you have any reason to believe that the SEC's
20 action against Goldman Sachs or the timing of that action
21 related to or was to advance financial regulatory reform
22 legislation?

23 A No.

24 Q Are you aware of any information indicating that
25 the SEC's action against Goldman Sachs or the timing of that

1 action was related to or to advance financial regulatory
2 reform legislation?

3 A No.

4 Q Are you aware of any information indicating that
5 the SEC coordinated its action against Goldman Sachs with the
6 Executive Office of the President, the White House or any of
7 its employees?

8 A No.

9 Q Are you aware of any information indicating that
10 anyone at the SEC shared any information concerning its
11 Goldman Sachs investigation with the Executive Office of the
12 President, the White House or any of its employees prior to
13 the complaint being filed?

14 A No.

15 Q Are you aware of any information that the SEC
16 coordinated its action against Goldman Sachs with any members
17 of Congress or any congressional employees?

18 A No, not that I can recall. No.

19 Q You paused there. Is there something more to it?

20 A Well, what I'm thinking of it is I mean certainly
21 the timing of the complaint was never discussed. I've talked
22 with someone on the PSI at some point, a staff attorney there
23 and I just don't remember when it was, but the --

24 Q Who is that?

(b)(7)(C)

25 A No,

(b)(7)(C)

1 Q What was that discussion about?

2 A Documents. They held a hearing about Goldman and
3 they brought in a bunch of Goldman people. The reason I'm
4 pausing, I think it was after the complaint was filed.

5 Q Right.

6 A But I remember talking with him about like
7 documents. I think, in fact -- this was after the complaint
8 was filed. I'm sorry.

9 Q So you don't remember any conversations with any
10 member of the PSI before the complaint was filed?

11 A I don't.

12 Q Are you aware of any information indicating that
13 anyone at the SEC shared any information concerning its
14 Goldman Sachs investigation with any members of Congress or
15 any congressional employees prior to the complaint being
16 filed?

17 A I'm not aware of that.

18 Q Are you aware of any information that the SEC
19 coordinated its action against Goldman Sachs with the
20 Democratic National Committee, the Democratic Senate Campaign
21 Committee, the Democratic Congressional Campaign Committee or
22 any of its employees?

23 A No.

24 Q Are you aware of any information indicating that
25 anyone at the SEC shared any information concerning its

1 Goldman Sachs investigation with the Democratic National
2 Committee, the Democratic Senate Campaign Committee, the
3 Democratic Congressional Campaign Committee or any of their
4 employees prior to the complaint being filed?

5 A No.

6 Q Are you aware of any information indicating that
7 anyone at the SEC shared any information concerning its
8 Goldman Sachs investigation with the news media or any
9 journalists prior to the complaint being filed?

10 A I'm not aware of that. There were -- there were a
11 bunch of inquiries from a Wall Street Journal reporter named
12 Kara Scannell. Right? That essentially we tried like mad to
13 fend off in compliance with our media policy. I think all
14 those happened after the complaint was filed. You know, I'm
15 just trying to be careful. I certainly never called anyone
16 in the media prior to the complaint being filed.

17 Q Do you know if anybody called anyone in the media
18 even just very briefly before the complaint was filed just to
19 have them ready for the press conference?

20 A I -- I don't know specifically but I think that
21 happens when you have to set up a press conference. I don't
22 think you set up -- I don't know, but I think the press
23 conference was set up with they're not saying coming to the
24 press conference because we're charging Goldman Sachs,
25 they're saying come to the press conference. I think that

6

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

ORIGINAL

In the Matter of:)
) File No. OIG-534
OIG-534)

WITNESS: Number 16

PAGES: 1 through 158

PLACE: Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C.

DATE: Tuesday, July 20, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 1:05 p.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, Inspector General

5 (b)(7)(C)

6 Office of Inspector General

7 Securities and Exchange Commission

8 100 F Street, N.E.

9 Washington, D.C. 20549

10

11 On behalf of the Witness:

12 (b)(7)(C)

13 K&L Gates

14 1601 K Street, N.W.

15 Washington, D.C. 20006-1600

16 (202) 778-9440

17

18

19

20

21

22

23

24

25

C O N T E N T S

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

WITNESS

EXAMINATION

Reid A. Muoio

8

EXHIBITS:

DESCRIPTION

IDENTIFIED

1

Confidentiality and Nondisclosure

Agreement of (b)(7)(C)

12

2

November 24, 2009, E-mail,

(b)(7)(C)

and (b)(7)(C)

18

3

September 2, 2009, E-mail,

(b)(7)(C)

Muoio, and (b)(7)(C)

22

4

September 17, 2009, E-mail,

Muoio and Cohen

26

5

October 8, 2009, E-mail,

Muoio and Cohen

31

6

October 8, 2009, E-mail,

Muoio and Scarborough

33

7

November 24, 2009, E-mail,

(b)(7)(C)

and Muoio

36

8

December 20, 2009, E-mail,

Muoio and (b)(7)(C)

37

9

December 4, 2009, E-mail,

Muoio and Scarborough

38

1 And it was five no's.

2 Q And what was the effect of that?

3 A I conveyed this information to (b)(7)(C)
4 immediate supervisor and my immediate supervisor,
5 and my understanding is he quit temporarily.

6 Q As a result of the information that was
7 conveyed?

8 A I don't know.

9 Q Let me ask you about (b)(7)(C) a little
10 bit. And I'm interested really in the substantive
11 issues. And there has been some testimony that
12 we've gotten in this case about a disagreement, a
13 substantive disagreement, about primarily Mr.
14 Egol, whether to Wells and/or charge Mr. Egol. So
15 could you just give me what you recall about that
16 kind of substantive disagreement?

17 A Well, I had two disagreements with Mr.
18 (b)(7)(C) relating to how to charge the case. The
19 first related to whether or not to charge the
20 Paulson Hedge Fund, and we worked through that.
21 And then he suggested we should charge Jonathan
22 Egol, and we worked through that.

23 Q What was the nature of the disagreement
24 on Egol?

25 A From my perspective?

1 your recollection -- is that the decision was made
2 to withdraw the matter from the calendar for the
3 specific purpose of taking the testimony. And it
4 looks like you took the testimony, and then as
5 soon as you took the testimony, you want to put it
6 back on the calendar. Is that consistent?

7 A I mean my recollection was that the case
8 that we Wellsed in the summer and fall of 2009 was
9 the right case to bring. I just kept throwing
10 that thing up on the calendar trying to get it out
11 the door. My view is the case had been ready for
12 months.

13 Q And you say in this e-mail on January 4,
14 2010, at the bottom of the page at 4:15 p.m.,
15 "This is a high profile Enforcement case that has
16 recently became -- that recently became -- time
17 sensitive." What did you mean that it recently
18 became time sensitive?

19 A You know, I really don't remember. Hold
20 on, let me think. I don't remember. I mean,
21 again, my recollection was the case that we
22 essentially finished investigating in the spring
23 of '09, that we Wellsed in the summer and fall of
24 '09, was the right case to bring, and quite
25 frankly that was the case. We brought it six

1 months later, but in the meantime we had to go
2 through everything that you see represented in
3 this e-mail traffic.

4 Q But you state in this e-mail at least
5 recently became time sensitive. Was there
6 something that happened around the January
7 timeframe that made the case more time sensitive?

8 A I really don't remember. Okay, I'm not
9 supposed to speculate. It might -- I may have had
10 some concerns that the New York Times article --
11 let me think about that.

12 (b)(7)(C) Well, the Front Office
13 here is asking you something. Read the entire
14 e-mail. Does it have anything to do with it
15 becoming time sensitive?

16 A I mean I can tell you from my
17 perspective, I thought the case had been ready for
18 about six months at this point, and I was just
19 trying to get the thing out the door.

20 BY MR. KOTZ:

21 Q But the fact that there recently was a
22 New York Times article about it, would that
23 increase the urgency? Now the information's
24 starting to get out already. This case has been
25 sitting. Let's do it already. Is that you think

1 recollection was I was trying to file the case
2 against Goldman and Fabrice Tourre. And from my
3 perspective, discussions about whether or not to
4 charge Egol and related ones -- and similar ones
5 -- about Paulson were -- although, you know, these
6 were important charging decisions and needed to be
7 thought about and considered -- to me we were
8 never going to get there with Egol and I was ready
9 -- my frame of mind was let's file the case we
10 have because that's all the case we're going to
11 have. And I wound up being right about that.

12 Q But do you remember that others had the
13 concern about this Permanent Subcommittee on
14 Investigations? There was some talk of a hearing
15 and that they wanted to make sure to at least get
16 the case in chief against Goldman and Tourre out
17 before the hearing.

18 A No, I mean, my interest was just in
19 filing the case that we had as soon as we could.

20 Q So do you know what Robert Khuzami's
21 referring to when he says, "The inquiry may be one
22 additional reason to proceed with the case and
23 Wells Egol on parallel tracks?"

24 A You'd have to talk to Rob about that.

25 Q Let me show you the next document and

1 we'll mark it as Exhibit 20. An e-mail exchange
2 between you and (b)(7)(C) and (b)(7)(C)
3 1-15-2010, 5:38 p.m.

4 (Exhibit No. 20 was marked for
5 identification.)

6 This is an e-mail exchange about this
7 Permanent Subcommittee on Investigations. It
8 seems there's a fair bit of e-mail traffic about
9 this issue. What was the concern about the
10 Permanent Subcommittee going forward?

11 A My concern? I was curious as to what
12 they were doing. Again, all I believe we knew at
13 the time was they were looking at the CDO market
14 with a focus on the same time period we were
15 looking at. And I think I may have also known
16 there were hearings coming up, and I was just
17 trying to figure out what they were up to.

18 Q Would there be a concern if the
19 Permanent Subcommittee did a hearing on a matter
20 and you were involved in an investigation of the
21 same matter?

22 A No, I was just curious as to what they
23 were up to. I just wanted to know.

24 Q But in terms of your investigation per
25 se, what the Permanent Subcommittee on

1 Investigations did wouldn't have adversely
2 impacted your investigation?

3 A Look, I mean, they were looking at --
4 apparently looking at some of the same issues we
5 were on the CDO market and I wanted to know more.
6 It's that simple.

7 Q But would it have an adverse effect
8 potentially on your investigation if they had a
9 hearing or what actions they were taking?

10 A Well, they did have a hearing which had
11 really no impact on our investigation, so I guess
12 that's my answer.

13 Q So you didn't think at the time that you
14 were concerned that a hearing by the Permanent
15 Subcommittee on Investigations would have an
16 impact on your investigation?

17 A In my view our investigation had
18 concluded in really the summer of '09. We were
19 done.

20 Q So if you're done, it wouldn't have an
21 impact? Is that right?

22 A Not with the investigation. In my view
23 we were done.

24 BY (b)(7)(C)

25 Q And so when you wrote back in I think it

1 A No, but I can tell you that, you know,
2 my view was this case should have been filed, it
3 could have been filed, in December. I think we
4 had already pulled it from the calendar once. My
5 view was the case had been ready for a while. If
6 he's saying file on the 28th, I'm like great,
7 let's file on the 28th.

8 Q But do you recall that the particular
9 need to bring the case was related to -- as you
10 can see in the e-mail below -- the information
11 you were providing about the Senate?

12 A Not at all. In my view the case had
13 been ready for months. I mean if you're trying to
14 suggest in your questioning that the timing of the
15 case in my view related to the Senate inquiry,
16 it's ridiculous. My view was the case had been
17 ready for a while. We'd had substantial delays in
18 getting it out the door because of some disputes
19 with (b)(7)(C) and the Trial Unit. And so my
20 whole frame of mind as far as this case went is
21 let's get it out the door. And that had been my
22 frame of mind for -- January, February -- about
23 two or three months.

24 Q But what I'm suggesting is that perhaps
25 in Stephen Cohen's e-mail on Friday, January 15,

1 2010, 11:24 a.m., in response to you forwarding
2 him information about the Senate, when he says,
3 "We really need to bring this case on the 28th,"
4 he is saying that because of the Senate Permanent
5 Subcommittee hearing.

6 A I had been trying to file the case since
7 back in December. If he wants to file it January
8 28, I'm like great, let's file it January 28th.
9 Let's just file it. That's my frame of mind.
10 That's my frame of mind. As far as what Mr. Cohen
11 meant here, you just talk to him about it.

12 Q You said it was ridiculous to suggest
13 that the timing of the case was related to the
14 Permanent Subcommittee on Investigations. But is
15 it ridiculous to suggest that Stephen Cohen in
16 this e-mail is saying, "We really need to bring
17 this case on the 28th," because of the timing of
18 Senate Permanent Subcommittee?

19 A Talk to Steve about that. My view was
20 the case had been ready for a while. It should
21 have been brought back in December.

22 Q But do you recall that in your efforts
23 to move the case forward, you were helped by the
24 fact that there was this Senate Permanent
25 Subcommittee and that was a reason that others

1 things you're trying to get at in your questions
2 were irrelevant to me because it was just so
3 unlikely we were going to ever charge Egol. It
4 was just something we had to work through. But I
5 always felt like the decision quite frankly to a
6 large extent that I made in the fall of '09 was
7 the right one, which was to charge Mr. Tourre who
8 admitted that he was principally responsible for
9 the transaction and the marketing materials and
10 not to charge Egol. It was the right one back
11 then and it was the right one now and would be the
12 right one forevermore.

13 Q So why did they, in some sense,
14 potentially waste -- I mean, it's not a waste
15 obviously because it's an investigation -- but why
16 did they continue to pull the case back with more
17 efforts to potentially bring a case against Egol
18 given the evidence? Do you know?

19 A Well, I know that ultimately what
20 happened was the Front Office personally reviewed
21 the evidence --

22 (b)(7)(C) What do you mean, "the
23 Front Office?" You probably ought to give a name
24 if you can.

25 A Ultimately, I know -- I mean --

1 ultimately at the end of the day there was a
2 meeting in Khuzami's office. And it was clear to
3 me during that meeting that both Rob Khuzami and
4 Lorin Reisner had spent quality time with the
5 record and there was discussion about whether or
6 not to charge Egol. This was I think in March of
7 2010. And I think the next day Rob sent an e-mail
8 out saying he was a "no" on Egol which is, you
9 know, where I knew we were going to come out.

10 BY MR. KOTZ:

11 Q But why did they allow so much time and
12 effort to be spent on Egol?

13 A So you want me to speculate as to what
14 was in my bosses' minds?

15 Q Yeah.

16 A They wanted to get it right.

17 Q But why didn't they realize that they
18 had already gotten it right?

19 A You can talk to them about that.

20 Q And so you never, throughout this
21 process? I mean, it must have been somewhat
22 frustrating since you're about to get it
23 calendared, you're talking about filing it, and
24 then it's pulled back. You realized that it was a
25 somewhat fruitless exercise. Did you ever think,

1 connection with the, I guess, post -- the period
2 of time after it was pulled back the second time,
3 that there was some change in timing?

4 A No. What I remember from the chart is I
5 guess when we had this thing on the calendar in
6 late January, Paradese asked for a chart and we're
7 now getting around to doing it. Maybe I -- I
8 don't remember. The chart seemed kind of silly to
9 me since we essentially were just alleging one
10 misrepresentation. (b)(5)

11 (b)(5)
12 (b)(5) I guess what the chart wound up showing
13 was the different places in the offering material
14 where that stuff was located. And hopefully it
15 was helpful to him, but it wasn't like there were
16 ten different affirmative misrepresentations.

17 There was one. So I, you know, (b)(7)(C) did the
18 chart. That was great. I hope it was helpful.

19 Q But you don't remember anything about a
20 change in timing at that time period in the case?

21 A No.

22 Q Let me show you the next document.

23 We're going to mark it as Exhibit 32. An e-mail
24 from (b)(7)(C) to you and Ken Lench, 2-25-2010,
25 2:05 p.m.

1 Q What is a special closed Commission
2 meeting?

3 A My understanding was that, given travel
4 schedules of certain Commissioners, there was
5 going to be a two- or three-month period of time
6 where all five were not in town on a Thursday when
7 we usually have our meetings. And so the
8 Secretary's office had scheduled a "special closed
9 Commission meeting" on this Wednesday, April 14.
10 And we were shooting to get ABACUS on for that
11 meeting so that there'd be all five Commissioners
12 there.

13 Q Did you need all five Commissioners in
14 order to have a vote on going forward with the
15 case?

16 A My understanding is that for routine
17 matters, as long as you have a quorum, that's
18 fine. But for national priority-type cases, it's
19 preferable to have a full five Commissioners, four
20 Commissioners and Chairman. It's not required by
21 law, but it's my understanding that that's the
22 practice, currently the practice. To give
23 everyone a chance to participate.

24 Q Do you want to keep going? Do you want
25 to take a break?

1 talking about filing it in January this debate
2 between whether you should file something on
3 Friday or not because of the press issue, and you
4 expressed the view about the 24 hour news cycle
5 and that was not the view of others. But in the
6 end it was filed on Friday. Do you remember any
7 discussion about that topic later on in the April
8 timeframe?

9 A No. I do remember there was a lot of
10 work and the complaint wasn't ready. I remember
11 we weren't -- the complaint -- I do not believe
12 the complaint was ready for filing on Thursday,
13 which meant we weren't filing Thursday. And I
14 just suppose I kicked it to Friday.

15 Q You don't remember any discussion about
16 potentially kicking it to Monday?

17 A There may have been. I don't remember.
18 I mean, to tell you my view was let's file Friday
19 -- 24/7 news cycle -- it doesn't matter.

20 Q But it did get some coverage, so maybe
21 you were vindicated on that. Let's go through
22 some of these just so we can make sure you have
23 all the information in front of you. We'll mark
24 as Exhibit 40 an e-mail exchange between you and

1 (Exhibit No. 40 was marked for
2 identification.)

3 So Lorin Reisner was providing comments
4 it looks like to the report on Tuesday.

5 A You mean the complaint?

6 Q I'm sorry, yes, to the complaint. And
7 you say, "Let's discuss filing mechanics
8 tomorrow." So that would be discussing it on I
9 guess Wednesday. I just want to put these in
10 front of you so you have them so you can -- they
11 can help you refresh your recollection and know
12 that I have specific questions on them. Okay?
13 So, the next document we're going to mark as
14 Exhibit 41, from (b)(7)(C) to (b)(7)(C)
15 (b)(7)(C) and you, 4-13-2010, 9:21 -- I'm sorry,
16 9:12 p.m.

17 (Exhibit No. 41 was marked for
18 identification.)

19 And in this e-mail there's an e-mail
20 from (b)(7)(C) -- who is (b)(7)(C)

21 A He's in the Trial Unit, and he was
22 assigned to the case relatively late in the game.

23 Q He says, "Just curious, did we ever hear
24 back whether we intend to file tomorrow after the
25 meeting or Thursday morning?" And (b)(7)(C)

1 says, "No word either way today. I think staff's
2 preference, Reid, (b)(7)(C) and me is still Thursday
3 morning, but we'll let you know if we are
4 instructed otherwise." Do you remember why there
5 was that preference from you and two others to
6 file on Thursday?

7 A Well, we'd been approved or we were
8 expecting to be approved on Wednesday. But,
9 again, my recollection was that we continued to
10 work on the complaint into late Wednesday night
11 and into Thursday and so couldn't file on
12 Thursday. So we filed Friday.

13 Q So was there any other reason that you
14 remember other than continuing to work on the
15 complaint?

16 A I had the talking points to work on,
17 too, which I don't think I got to until Thursday.

18 Q Do you remember any issue relating to
19 Quadrangle?

20 A No, it's not ringing a bell. Who were
21 they?

22 BY (b)(7)(C)

23 Q Are you familiar with the SEC bringing a
24 complaint against Quadrangle in coordination with
25 the New York Attorney General the same week as the

1 ABACUS, the Goldman complaint?

2 A The name Quadrangle's not ringing a bell
3 and --

4 BY MR. KOTZ:

5 Q Do you remember anything about another
6 complaint being filed around the same time? A
7 concern about them being filed together, and so
8 that may have been a reason why it was pushed off?

9 A No. During this time period I was
10 working late in the night, finalizing the
11 complaint, and then working on the talking points
12 and getting the thing filed.

13 Q And so were you not directly involved in
14 the decisions about when exactly to file?

15 A When -- I mean, my recollection was we
16 weren't ready to file on Thursday because we were
17 working on the complaint. I hadn't -- I don't
18 think I'd be done with the talking points until
19 Thursday. Maybe I'd started them. I don't think
20 I finished them until late Thursday. So, I don't
21 know. I guess in my view we filed when we were
22 ready to file, which was Friday morning.

23 Q Let me show you another document, marked
24 as Exhibit 42, an e-mail exchange between you and

25 (b)(7)(C)

4-14-2010, 2:19 p.m.

1 (Exhibit No. 42 was marked for
2 identification.)

3 And this is 4-14 so this would be
4 Wednesday, (b)(7)(C) the plan is to e-mail you a
5 complaint cover sheet and summons late tonight or
6 early tomorrow morning with the expectation you
7 would sign on my behalf and then file the action
8 as soon as the Clerk's Office opens. Any problems
9 with that?" And below you sent on Tuesday, April
10 13, "A revised complaint attaching Lorin's
11 thoughtful comments and (b)(7)(C) careful fact
12 check." So at least according to this e-mail, it
13 seems as though it was done and ready to go to be
14 filed on Thursday. Or even to send up to (b)(7)(C)
15 (b)(7)(C) in New York late Wednesday.

16 A Right, so, amongst the things that I was
17 engaged in during this time period was continuing
18 to revise the complaint, which we were still doing
19 at this period of time. I had to get the talking
20 point done, which I don't think I'd started at
21 this point. And then arrange to file the
22 complaint, and for that the plan since we had --
23 since (b)(7)(C) happened to be in New York --
24 basically he was trying -- he was participating --
25 well, he was trying a criminal case up there at

1 the courthouse and he's very reliable. So I
2 thought that we would just have (b)(7)(C) file the
3 case. So I was working with (b)(7)(C) up in New York
4 on the filing. I was down in New York working
5 with Lorin -- in D.C. -- working with Lorin and
6 (b)(7)(C) on the complaint. And I was working -- all
7 that didn't come together until Friday morning.

8 Q Let me show you this e-mail. This is an
9 e-mail dated 4-14-2010, 10:11 p.m., from you to
10 Ken Lench. We'll mark it as Exhibit 43.

11 (Exhibit No. 43 was marked for
12 identification.)

13 So in this e-mail exchange, (b)(7)(C)

14 (b)(7)(C) sends an e-mail Wednesday, April 14,
15 "Please find attached a new draft complaint
16 incorporating Lorin's most recent comments and
17 (b)(7)(C) and my nit edits." And then he says, "As an
18 FYI I understand the current plan is to file the
19 complaint on Friday morning." Ken Lench asks you,
20 "How did we land on Friday?" You say, "No idea."

21 A And so we filed Friday.

22 Q Right, but how --

23 A That's what happened.

24 Q Did you ever find out how you ended up
25 landing on Friday?

1 A From my point of view, that's when we
2 were ready to file. That's when it all congealed,
3 when it all came together, when the complaint got
4 finalized, when the materials for the press
5 conference got done, and that's when we did it.

6 Q Let me show you the next e-mail, Exhibit
7 44, from you to Ken Lench and (b)(7)(C)
8 4-14-2010, 11:06 p.m.

9 (Exhibit No. 44 was marked for
10 identification.)

11 Ken Lench asks, "Whose idea was it to
12 file Friday? Thanks, Ken." You say, "Front
13 Office, just don't know their thinking." So
14 doesn't it look like that it was actually a Front
15 Office decision to file it on Friday rather than
16 when the --

17 A That's what's suggested here. I mean,
18 again, and I'm sure the e-mail traffic will bear
19 it out, I believe that Lorin and I and (b)(7)(C) worked
20 on the complaint through Thursday. I think we
21 were working on it Thursday night. I'm pretty
22 sure. So we weren't ready as far as I was
23 concerned. If the complaint's not done, you can't
24 file a case.

25 Q But it seems here that it was the Front

1 that was happening at night mostly.

2 BY MR. KOTZ:

3 Q So is it possible that you didn't
4 realize that they were continuing to edit it until
5 they came back to you and gave you edits? Is that
6 how -- I mean, I'm just trying to understand how
7 it could be if you were working with them in the
8 editing process, that you wouldn't know what they
9 were thinking -- if you working with them in the
10 editing process, you would know that that's why
11 it's going to be filed on Friday because there was
12 continuing to be editings.

13 A Right. I knew that Lorin had an
14 interest in getting the complaint right, and I was
15 working with him on that as was (b)(7)(C) And
16 I thought it wound up actually, quite frankly,
17 every time Lorin touched that document, it got
18 stronger. So I was happy to have him involved.

19 Q So you don't remember why you wouldn't
20 have known what their thinking was on the timing
21 of the complaint on Wednesday night?

22 A I don't recall.

23 Q So this is an e-mail from Thursday,
24 4-15-2010, 6:33 p.m., from you to (b)(7)(C)
25 marked as Exhibit 45.

1 for Enforcement and so whatever we put out in
2 connection with the complaint he would be involved
3 in, you know, the press release and maybe also
4 preparing materials for the press conference. So
5 I sent it to him. Oh, also, it involves the press
6 so I think they thought it was something he should
7 know about.

8 BY MR. KOTZ:

9 Q Are you and were you aware of the
10 financial regulatory reform legislation that was
11 advancing through Congress and just recently
12 passed?

13 A Just what I read in the newspapers.

14 Q Has anybody at the SEC ever mentioned
15 this legislation in connection with the Goldman
16 Sachs ABACUS investigation?

17 A No.

18 Q Has anybody at the SEC ever mentioned
19 this legislation in connection with the filing of
20 an action against Goldman Sachs?

21 A No.

22 Q Do you have any reason to believe that
23 the SEC's action against Goldman Sachs or the
24 timing of that action was to advance financial
25 regulatory reform legislation?

1 A What's the question?

2 Q Do you have any reason to believe that
3 the SEC's action against Goldman Sachs or the
4 timing of that action was to advance financial
5 regulatory reform legislation?

6 A Oh, right. My view is we brought a case
7 based upon the facts and the evidence and the
8 merits of that case. I had tried to get the case
9 filed in December of '09 or earlier, quite
10 frankly. We had a six month delay to work
11 through, revisit some charging decisions.
12 Throughout that process, financial regulation did
13 not, quite honestly, once occupy one second of
14 thought in my mind or did I have any conversations
15 with anybody on that subject in relation to the
16 filing of the ABACUS case. And your suggestion to
17 the contrary is a little ridiculous, quite
18 frankly.

19 Q What was the question?

20 (b)(7)(C) It was a question, not a
21 suggestion.

22 A Okay.

23 BY MR. KOTZ:

24 Q And there are going to be a series of
25 additional questions, so bear with me. Are you

1 aware of any information indicating that the SEC
2 coordinated its action against Goldman Sachs with
3 the Executive Office of the President, the White
4 House, or any of its employees?

5 A No.

6 Q Are you aware of any information
7 indicating that anyone at the SEC shared any
8 information concerning its Goldman Sachs
9 investigation with the Executive Office of the
10 President, the White House, or any of its
11 employees prior to the complaint being filed?

12 A No.

13 Q Are you aware of any information
14 indicating that the SEC coordinated its action
15 against Goldman Sachs with any members of Congress
16 or any Congressional employees?

17 A No.

18 Q Are you aware of any information
19 indicating that anyone at the SEC shared any
20 information concerning its Goldman Sachs
21 investigation with any members of Congress or any
22 Congressional employees prior to the complaint
23 being filed?

24 A No.

25 Q Are you aware of any information

1 indicating that the SEC coordinated its action
2 against Goldman Sachs with the Democratic National
3 Committee, the Democratic Senate Campaign
4 Committee, the Democratic Congressional Campaign
5 Committee, or any of their employees?

6 A No.

7 Q Are you aware of any information
8 indicating that anyone at the SEC shared any
9 information concerning its Goldman Sachs
10 investigation with the Democratic National
11 Committee, the Democratic Senate Campaign
12 Committee, the Democratic Congressional Campaign
13 Committee, or any of its employees prior to the
14 complaint being filed?

15 A No.

16 Q Are you aware of any information
17 indicating that anyone at the SEC shared any
18 information concerning its Goldman Sachs
19 investigation with the news media or any
20 journalist prior to the complaint being filed?

21 A No.

22 (b)(7)(C) Scott Friestad that we saw earlier.

23 THE WITNESS: Well, if the ethic question was, "Am
24 I aware of anyone from the SEC sharing information
25 with basically the press," that's not the way I

1 interpret the e-mail from Friestad.

2 BY MR. KOTZ:

3 Q How would the reporter know that the
4 recommendation is on the calendar without hearing
5 it from somebody at the SEC?

6 A Well, I don't know what's going on
7 there, but I don't have any independent
8 information on that.

9 Q Do you know if anyone at the SEC
10 informed Goldman Sachs in April that the
11 Commission had approved the staff's recommendation
12 to file an action against it?

13 A I did.

14 Q You did?

15 A Yeah.

16 Q When was that?

17 A Around the time we filed, on the morning
18 of Friday, April 16.

19 Q How long before filing did you make
20 that?

21 A It was around the time we filed, and
22 quite frankly, there was a lot going on that
23 morning so I can't recall as I sit here whether or
24 not it was a little before or a little after.

25

(b)(7)(C)

But you're saying the

1 same day. The same day that it was filed?

2 A It was Friday morning, yeah.

3 BY MR. KOTZ:

4 Q Wait, so you don't know whether you
5 informed them before or after the complaint was
6 filed?

7 A Pretty sure it was before. What I do
8 remember is it was around the time we filed.

9 (b)(7)(C) But on the day?

10 A On the day, yeah. There was that filing
11 snafu, but in the midst of all that, I called Rich
12 Klapper at Sullivan & Cromwell, left a message
13 with his secretary.

14 BY MR. KOTZ:

15 Q And what did you say in the message that
16 you left with his secretary?

17 A That we had brought charges against
18 Goldman Sachs, Fabrice Tourre, and declined to
19 charge Jonathan Egol.

20 Q Was there any conversation about letting
21 Goldman Sachs know earlier, prior to, either just
22 immediately before you filed or after you filed
23 that the Commission had approved the
24 recommendation to file an action?

25 A No.

1 Q In your experience in other cases where
2 there are situations where the SEC informed an
3 entity that the Commission had approved a
4 recommendation to bring a case in advance more
5 than just that same morning?

6 A What's your question?

7 Q We've been given testimony that it was
8 general practice for the SEC, that when the
9 Commission approved a recommendation to go forward
10 that the Commission would notify the entity more
11 in advance than just that morning about the case,
12 potentially to give them an opportunity to settle
13 it. Did that ever happen with any of your other
14 cases?

15 A My practice has always been to -- in an
16 unsettled case, okay, which, like this one and
17 we'd had no settlement negotiations -- to notify
18 counsel around the time we file the case. And
19 I've been doing it for 12 years.

20 Q So when you say around the time you
21 filed the case, meaning that morning or the same
22 day that you filed the case?

23 A Usually that morning. That's always
24 been my practice. No one's ever complained. A
25 settled case, a little different. A settled case

1 I generally -- it's a little different. But a
2 litigated case, you get the Wells process,
3 Commission approves, you file, you call counsel
4 around the time you file. That's always been my
5 practice.

6 Q And so what is the practice for the
7 settled case?

8 A Sometimes with a settled case, because
9 there's more communication quite frankly with
10 counsel, it's just natural that there's more of a
11 heads-up given. It just happens naturally.

12 Q And now you said there were no
13 settlement negotiations with Goldman?

14 A Zero.

15 Q Prior to the complaint being filed?
16 Prior to the action being filed?

17 A That's right.

18 Q And was there any internal discussion
19 among the team about broaching settlement with
20 Goldman prior to the case being filed?

21 A Internally amongst the staff I know we
22 had a view as to what we'd take in settlement, but
23 given the way the Wells process went, it was clear
24 that Goldman had no interest in settling the case.

25 Q Why do you say that? What do you mean

1 by the way the Wells process went?

2 A Basically in the meetings we had, and I
3 guess there were a handful of them, they had their
4 view, we had ours. We agreed to disagree and then
5 we filed our case.

6 Q So at no point in time prior to the
7 complaint being filed did Goldman ever express any
8 interest in discussing settlement?

9 A Not in my presence.

10 Q Did you ever get any feedback from the
11 Commissioners or Commissioners' staff prior to the
12 complaint being filed about the possibility of
13 settlement of this case?

14 A Not to my recollection, but -- not to my
15 recollection.

16 Q How soon after the complaint was filed
17 did settlement discussions begin?

18 A So far as I was aware?

19 Q Yeah.

20 A Maybe about a month.

21 Q And who initiated those discussions?

22 A I don't know.

23 Q But do you know if it was the SEC or
24 Goldman?

25 A I don't know.

1 A On the terms that were agreed upon? On
2 those we thought -- I'll tell you this, the team
3 thought that the term that Rob -- the settlement
4 that Rob and Lorin and Ken Lench negotiated was a
5 good settlement for Enforcement.

6 Q Was there anybody who thought they just
7 shouldn't settle at all with Goldman?

8 A On those terms, everyone was supportive
9 of the settlement.

10 Q Did anyone express concern there was no
11 injunction in the settlement from violating 10B?

12 A Anyone in the world?

13 Q Like on the Enforcement Team.

14 A Not to my recollection. I think
15 everyone viewed the package as being a strong one
16 and it included the 17A-1 charge which is nearly
17 identical to 10B, so who cares?

18 Q Do you know how the approval process of
19 the Goldman settlement offer went through the
20 Commission? Were you involved in that?

21 A You mean what the vote was?

22 Q No, but I'm looking at timing, when the
23 action memo was circulated, how that worked.

24 A The only timing issues there related to
25 -- that I recall -- related -- or the significant

1 one that I recall -- related to a Goldman earnings
2 release that was scheduled for Tuesday of next
3 week. And Goldman was of the view that they would
4 have to maybe disclose the settlement in the
5 context of that earnings release. And so there
6 was some effort to get the thing before the
7 Commission before that, and that's what we did.

8 Q Were you aware that the Commission
9 announced a settlement of the Goldman case on the
10 same day that the financial regulatory legislation
11 was approved?

12 A Yeah. I know there was something going
13 on with the legislation around then from the
14 press, but quite honestly I couldn't tell you on
15 what level it was approved. Was it Senate or Hill
16 or a conference or did the President sign it that
17 day? I literally don't know. I don't really
18 care, I mean, really.

19 Q But was there any discussion about
20 whether the SEC should announce the settlement on
21 the same day that this -- that there was this
22 action in the financial regulatory reform case?

23 A Not that I participated in.

24 Q Are you aware of any information
25 indicating that the financial regulatory reform

1 **Sachs prior to filing the complaint on April 16?**

2 A My understanding is that we neglected to
3 do that when we filed our complaint, and then when
4 we announced the settlement I think we did give
5 them a heads-up. I think in hindsight we probably
6 should have given them a heads-up first time
7 around.

8 Q **How come?**

9 A Well, this is with the benefit of
10 hindsight. I will say that nobody on the staff
11 level predicted the impact the filing of the
12 ABACUS complaint would have on the market or the
13 sort of what turned out to be intense scrutiny of
14 the complaint. It was a shock I think to us all;
15 however, with the benefit of hindsight, okay,
16 given the market move that the filing of the
17 complaint triggered, even though we couldn't
18 expect at the time, maybe in hindsight if we'd
19 thought that it would have had the impact that it
20 had, I think we would have given the New York
21 Stock Exchange a heads-up, which is in fact what
22 we did. It's my understanding it's what we did
23 before announcing our settlement.

24 Q **Do you know if there's any consideration**
25 **to not file a complaint against a publicly traded**

1 company during the trading hours because of the
2 potential effect on the stock?

3 A You know, I had never thought of it
4 before. I think probably because I'd never
5 encountered a situation where an Enforcement
6 action had this sort of impact or really any
7 impact on the market for publicly traded
8 companies. So it's not something I had personally
9 given any thought to in the past, but I will in
10 the future.

11 Q And did you have an understanding that
12 the third Friday of each month has a significance
13 for the expiration of options?

14 A Somebody told me that after we filed the
15 case that I had not given -- that thought was not
16 in my mind pre-filing.

17 BY (b)(7)(C)

18 Q What's your basis for understanding that
19 the SEC did give the New York Stock Exchange a
20 heads-up at the settlement?

21 A We had a series of meetings leading up,
22 you know, in conjunction with the settlement and
23 there was discussion of who should be notified
24 when, of what, and the New York Stock Exchange was
25 on that list. I mean, I had my own list of people

1 to call, you know, so. And I think it's the right
2 thing to do. In this case it was the right thing
3 to do.

4 Q Who else needed to be informed ahead of
5 time?

6 A Ahead of time? I mean, my list was
7 people to call after. I called the Investors
8 Council, IKB, and RBS's counsel I know.

9 Q Was there anyone else that needed --
10 that I guess the SEC staff planned to call ahead
11 of time, apart from the New York Stock Exchange?

12 A Maybe, but I don't remember. But I
13 didn't, personally, call anyone until after. And
14 then it was just -- actually I just called counsel
15 for IKB and counsel for RBS, telling them we're
16 getting them some money.

17 MR. KOTZ: We're going to take off the
18 record for a minute and just see if we have
19 anything else.

20 (A brief recess was taken.)

21 MR. KOTZ: Let's go back on the record.
22 I wanted to ask you about another document. This
23 is an SEC Administrative Regulation, July 31,
24 2005, Exhibit 49.

25 (Exhibit No. 49 was marked for

1 identification.)

2 BY MR. KOTZ:

3 Q And I wanted to just ask you if you are
4 aware of a particular provision in it. So I'm
5 going to show it to you, Exhibit 49, page 6 of 12,
6 Notification of Defendants. If you look -- it's
7 at the bottom -- the one I'm particularly -- I
8 mean, you can read the whole thing. Whenever you
9 are ready, if you want to look at page 6 of 12 on
10 the bottom, but feel free to take your time.

11 A Okay.

12 Q So were you aware of this provision,
13 whether this specific provision in this regulation
14 or just generally, that "Every effort should be
15 made to avoid the possibility that defendants in
16 an SEC Enforcement action first learn of the
17 action when they read about it in the newspapers
18 or when they are called by a reporter for comment
19 about the SEC's complaint. The division,
20 regional, or district office primarily responsible
21 for the filing of the particular complaint shall
22 take all necessary steps to see that the
23 defendants and/or their counsel are given timely
24 advice concerning the action."

25 A I mean, I've never seen this -- well,

1 I'll say I've never read this press relation
2 policy and procedures document so I'm looking at
3 it for the first time. The policy or whatever you
4 want to call it that's laid out here or the
5 practice has been my practice for years.

6 Q And that's when you say essentially you
7 call them almost simultaneous with the filing of
8 the complaint?

9 A Around the time, generally a little
10 before, but around the time we file the complaint,
11 yeah. So, yeah, this has been my practice for
12 years.

13 Q Just going back to the settled action
14 for a second. I just want to clarify a couple of
15 matters. Was there some kind of special session
16 that was used to have the Commission approve the
17 settled action against Goldman?

18 A We were on Executive -- what I think
19 they call -- Executive Session, which -- that was
20 my first time I'd participated in one of those.

21 Q And do you know why the Executive
22 Session was used?

23 A I don't, but my understanding is that --
24 well, I think I might -- I mean, my understanding
25 is because of the leaks in this case, in

1 negotiation was completed and the settlement was
2 reached, was it a very, very short time between
3 then and when the Commission approved it and it
4 was announced, or was it more than normal time to
5 take?

6 A It was a couple of weeks. I was
7 actually at the beach for one of those weeks. But
8 when I got back -- I think before I left, I
9 drafted the settlement memo before I went to the
10 beach -- when I got back, there'd been some
11 revisions to it and revisions continued. We threw
12 it up on the calendar. We got approved.

13 Q Did you get the sense that there was any
14 particular urgency of moving the process along for
15 the Commission to approve the settlement as
16 quickly as possible?

17 A Well, there was the Goldman earnings
18 release.

19 Q And so that Goldman earnings release was
20 the following Tuesday, so I guess tomorrow --
21 today.

22 A That's my recollection. I think they're
23 announcing earnings today, and under the
24 accounting rules they would have had -- I think --
25 they would have had to take a reserve for -- in

7

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)

) File No. OIG-534

OIG-534)

cc COPY

WITNESS: Number 27

PAGES: 1 through 56

PLACE: Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C.

DATE: Friday, July 23, 2010

The above-entitled matter came on for hearing, pursuant to notice, at 12:36 p.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, Inspector General

5 (b)(7)(C) ESQ.

6 Office of Inspector General

7 Securities and Exchange Commission

8 100 F Street, N.E.

9 Washington, D.C. 20549

10

11 On behalf of the Witness:

12 PAULINE E. CALANDE, ESQ.

13

14

15

16

17

18

19

20

21

22

23

24

25

1 C O N T E N T S

2

3 WITNESS EXAMINATION

4 Pauline E. Calande 8

5

6 EXHIBITS: DESCRIPTION IDENTIFIED

7 1 E-mail chain dated 2/25/2010 21

8

9 2 E-mail chain dated 2/26/2010 23

10

11 3 E-mail chain dated 3/4/2010 32

12

13 4 E-mail chain dated 4/7/2010 34

14

15 5 SEC Administrative regulation 42

16

17

18

19

20

21

22

23

24

25

1 I started the detail -- my first day in the Senate was March 15,
2 2010.

3 Q Okay. And so what officially is your position in,
4 the detail, as of March 15, 2010?

5 A You know, I have never been given a title. I
6 believe they call me detailee from the SEC. And I work for the
7 permanent subcommittee on investigations, which is a
8 subcommittee of the Homeland Security and Governmental Affairs
9 committee of the United States Senate. And my boss is Senator
10 Carl Levin, who is the chair of the subcommittee. He's the
11 senator from Michigan.

12 Q Okay. And without going into any details at all,
13 just generally describe your duties?

14 A It's quite similar to investigations conducted by
15 the SEC's enforcement department. The subcommittee of course
16 has different interests and goals. But the subcommittee
17 investigates matters of interest to the Senate.

18 Q Okay. How long is your detail duration?

19 A My detail is for six months, with an option to renew
20 for another six months, and whatever is arranged thereafter.

21 Q All right. So you're still within the first
22 six-month period at the moment?

23 A I am. Yes.

24 Q Okay. But nevertheless, you're still an SEC
25 employee.

1 relevant in that respect. Okay? So let's first start off with
2 at one point in time did you become aware of the Abacus, Goldman
3 Sachs investigation that the SEC was conducting?

4 A Well, I want to be clear that I became aware of the
5 existence of such an investigation, which I would call just
6 generally familiar with the name Abacus, probably sometime in
7 2007.

8 Q Okay.

9 A Shortly after the investigation was started, because
10 at that time, as part of my duties as counsel to the director,
11 one of the things that I prepared and circulated regularly was
12 something called the sub-prime spreadsheet. And that was a
13 listing, generally, of all of the sub-prime matters that were
14 open involving the financial crisis and the meltdown of the
15 housing market and so forth. We just generally referred to that
16 as sub-prime matters. And a number of those cases were open,
17 and I tracked them over time.

18 Q Okay.

19 A In the sense that I would know -- I would prepare a
20 spreadsheet with information provided to me by the investigating
21 teams that had the name of the case, who was working on it,
22 their phone numbers, when the case was opened, and a very tiny,
23 maybe one inch by two inch box, description of the matter, which
24 was basically a one-sentence description of what they were
25 investigating, and another similar box for the status of the

1 A Well, what I was trying to explain a moment ago -- I
2 believe that it was, to answer your question. But there was
3 another Goldman matter to which -- because it was listed under
4 the name Goldman Sachs, I might haven noticed, because it was in
5 the list of all the major investment banks. Abacus, when I
6 first saw the name I thought it was a strange name. But I
7 didn't realize it was related to Goldman Sachs. I mean it may
8 have said in the text box, but, you know, as I look down the
9 list I was basically keeping a count of how many of those cases
10 we had.

11 So, you know, it didn't really strike me as Goldman
12 being among the major investment banks. It would have struck me
13 if they weren't on that list. And the name Abacus just stuck
14 out because it was an unusual name, and I really didn't know
15 what it meant. There were -- there may have been some other,
16 what I know now to be Goldman-related cases. But at that time I
17 didn't really associate them with Goldman. And that would be
18 Timberwolf and possibly -- although I don't think it was on the
19 list -- Greywolf.

20 BY (b)(7)(C)

21 Q So when did you realize that Abacus related to
22 Goldman Sachs?

23 A Well, it was just shortly before I left for my
24 detail. I was told, when I was going over there, that the
25 Committee would be investigating the major investment banks.

1 There was a little bit of emphasis on Goldman. Maybe they
2 talked about Citibank and Deutsche Bank as possible targets as
3 well. And I knew nothing about the structured products that the
4 banks had been selling. So I looked through the -- in fact, I
5 printed out the action memos that were in the action memo
6 database about those matters.

7 But, you know, that's -- my reading the Goldman
8 action memo on Abacus I finally figured out that there was this
9 connection between Abacus and Goldman. Because actually the
10 other Goldman matter was not going to be pursued. The main one
11 that I had been looking at, as in the major financial
12 institutions group, was not pursued. They were going to close
13 that down. And so I was surprised in a way that we still had a
14 Goldman matter and that it was Abacus. So that's how I came to
15 know that the name Abacus, the name Timberwolf, and possibly
16 Greywolf, were all related to Goldman Sachs. Because up to that
17 point I didn't.

18 And this would have been about March 1st probably,
19 because I interviewed and went to the Senate within a week,
20 let's say. And so between the time I heard I might go and the
21 time I went I tried to learn about the subcommittee on
22 investigation. I tried to learn about structured products as
23 best I could, and I tried to learn the legal theories behind the
24 SEC investigations, because that was one thing they had said
25 they had felt they were weak on was legal theories.

1 (b)(7)(C) Okay.

2 MR. KOTZ: And we'll show you some e-mails that I
3 think will clarify the timeline.

4 BY (b)(7)(C)

5 Q When you said you reviewed an action memo do you
6 know what kind of action memo? That is, was it seeking a formal
7 order for Abacus, or was it actually seeking some sort of
8 Commission action?

9 A It was not finalized. It was a draft. And I think
10 at that time it described the action that was proposed to be
11 taken, which was not in fact the one that they ultimately -- it
12 wasn't the charges and the individuals that they ultimately
13 pursued. So it was a draft of some kind, but it gave me a basic
14 factual outline enough to associate the word Abacus with Goldman
15 Sachs.

16 BY MR. KOTZ:

17 Q In addition to the sub-prime spreadsheet, did you
18 ever learn of certain investigations being considered priority
19 investigations for the SEC?

20 A Yes. That was part of my job for each of the
21 directors was -- under Steve Cutler and Linda Thompson we
22 maintained for some time a priority case list. And the cases
23 that we were pursuing under sub-prime ordinarily would have been
24 tracked on that list.

25 But there came to be so many of them so quickly that

1 Henseler responds about kind of the parameters, like you were
2 discussing. And then (b)(7)(C) provides some information about the
3 standards of ethical conduct. And so, you know, take a minute
4 to read this, and then tell me what you remember about that
5 information wall.

6 A Right. Basically what I understood from this was
7 that I was not going to be sharing. But that if I did want to
8 have the SEC provide some information that I knew the SEC had to
9 the committee, I couldn't provide it. But I could talk to Tim
10 Henseler, and Tim would set up a formal interview or -- I
11 shouldn't even say formal, because the PSI interviews, as it
12 says here, are typically informal.

13 But I would go through Tim Henseler, and he would
14 ask the people with the appropriate information to come with
15 him, and whoever else they felt was appropriate to the Senate to
16 have a briefing. So it was possible to share information, but
17 you need to go through formal channels. And in my case my
18 formal channel is Tim in legislative affairs.

19 Q So pursuant to some kind of request from the
20 committee you would, as working on the committee, like anybody
21 else who worked on the committee, could seek information from
22 the SEC. And you would do that through Mr. Henseler.

23 A Right.

24 Q Okay. But was it made clear that information that
25 you knew about the Abacus case at the SEC you could not convey

1 with the PSI committee or not?

2 A You know, yes. Yes. That was clear. I believe
3 that I had certain information from working at the SEC in my
4 head, not necessarily about Abacus, but about the sub-prime
5 investigations. I had read the Abacus action memo, so the facts
6 stated there are in my head. But if the committee hadn't
7 independently discovered those, I didn't disclose matters to
8 them that they didn't already know, essentially.

9 And at that time I believe they were not -- you
10 know, I'm surprised that I was -- in here, because I say that
11 they probably already had all of the SEC documents about the
12 SEC's investigation on Abacus. And they did, in fact. But at
13 that time I didn't -- I didn't know that to be the case, so I
14 didn't volunteer any information.

15 Q And what about information that the committee had
16 through its investigation? Was it clear that you were not to
17 disclose that to the SEC?

18 A Yes.

19 Q And was it clear that you were not to the SEC
20 information about the ongoing investigations by the permanent
21 subcommittee, in other words what was having with the
22 investigation?

23 A Yes. I would say that there was some communication.

24 I mean obviously the whole reason that I went over there was
25 that the permanent subcommittee was doing an investigation of

1 the role of the investment banks in the financial crisis. And I
2 knew that one of the banks that we might look into on the Senate
3 side was Goldman.

4 So, you know, there were things that I knew as kind
5 of an administrative. It's kind of like there's a lobby in the
6 middle between the two, where Tim Henseler talked to me about
7 the job at PSI, because he had previously worked there. We
8 didn't talk about the investigation per say, or I don't -- I
9 don't know that he even knew the extent to which the committee
10 was looking at Goldman. But he did mention the name Goldman
11 Sachs to me.

12 So it was more like you're standing in the foyer of
13 someone's house, or there's some kind of neutral zone between
14 the two where you can talk about scheduling details of, you
15 know, you're going to take this job and do this kind of work,
16 more general matters. But I -- you know, I think that when it
17 came down to specific things about each investigation I wouldn't
18 be disclosing those back and forth.

19 Q Okay. So just to be clear, you did not reveal any
20 of the information in those -- in the action memo of Abacus that
21 you read while you were at the SEC to the permanent
22 subcommittee?

23 A No. I didn't.

24 Q Okay. And you didn't reveal information about the
25 permanent subcommittee's substantive investigation of Goldman

1 back to the SEC?

2 A No.

3 Q No you didn't?

4 A No. I did not.

5 Q Okay.

6 A And I believe that any communications that we had
7 were mediated through Tim Henseler.

8 Q And what about communicating simply when the
9 permanent subcommittee were to have hearings? I mean is that
10 something that is -- I mean that would not be necessarily maybe
11 even improper to say. I mean that's --

12 A Well, what I was -- I was actually told by the SEC
13 some general parameters about the work I was going to do. And
14 at that time our understanding was that I would be working very
15 hard for the first few months I was there in anticipation of a
16 hearing on this matter. But I believe they told me that it
17 would be -- it's not the Senate told me.

18 I think the SEC told me here's the deal; you're
19 going to be really, really busy for a few months, and then you
20 will be less busy, which has -- that's the case. But I think we
21 were looking at that time before I went toward a hearing that
22 would be sometime June, July of 2010. So I anticipated that
23 there would be months of a lot of hard work.

24 BY (b)(7)(C)

25 Q And I'm sorry. And who at the SEC told you that

1 Q Okay.

2 A So that's what I can tell you about that. In
3 general on the SEC side, and in the enforcement division, we do
4 want to manage the press attention to our cases, because that is
5 part of deterring securities law violations. We want -- if we
6 bring a good case we certainly want to get good publicity for
7 it, and we're careful about how we announce them, and where and
8 when, and so forth. So I think that in general it's a
9 legitimate concern, but in this case from the SEC side I heard
10 nothing.

11 MR. KOTZ: All right. Let me show you another
12 document. I'm going to mark it as Exhibit 3.

13 (Exhibit No. 3 was marked for
14 identification.)

15 BY MR. KOTZ:

16 Q This is an e-mail exchange between you, Ken Lench
17 and Reid Muoio, 3/4/2010, 4:37 p.m. And in this you're, I guess,
18 just requesting some primers or training materials from Reid
19 Muoio and Ken Lench.

20 A That's right. They had just been named as the head
21 of this new structured products subject matter area, and so I
22 thought they might know more than I did about structured
23 products, and Reid I think certainly would have. Ken, I think,
24 was not as involved prior to being named head of this area.

25 Q Okay. And so you weren't seeking any information

1 there was an investigation, and that there would be transcripts
2 from the PSI's side. Goldman's lawyers were denying that there
3 were in fact any transcripts, and this to me would be
4 obstruction of justice if it were intentional. And so I was
5 thinking, well look, if they're going to pretend they don't
6 exist, and we need to get them, we'll have to go to the SEC.

7 But Tim called me. And the essence of our
8 communication was he said, look, you know you can't tell them
9 about the investigation. And I said, well, this witness is
10 coming in who was disposed by the SEC, and she's going to tell
11 them about the investigation very shortly. So, you know, we're
12 talking about two days here. And he said, but we don't want you
13 to tell them. And I said, look, I didn't tell them. And he
14 said, ask them again; ask Goldman again; the SEC doesn't want to
15 provide the information. And I can see from what Reid is saying
16 here in his in resistance, that would be from the typical, I've
17 got a case in litigation; I don't want to tell other people
18 about what I'm doing.

19 And so based on what it said here, that would be
20 Reid's resisting telling me anything about it, because that
21 would be a typical reaction of a litigator. And so I did not
22 tell them. And I went back to Ross Kirchner at PSI, and I said
23 to him, ask Goldman again if there are any transcripts from any
24 other law enforcement agency. And so he did go back and asked a
25 different lawyer for Goldman, and that lawyer, who had worked on

1 the SEC investigation, said, yes, there are transcripts, and we
2 will get them to you. And that's how the matter was resolved.
3 But my concern in writing this was that we -- that Congress was
4 being deceived.

5 Q But at the end of the day, based on the advice you
6 got from the SEC in this e-mail string, you didn't disclose
7 anything about the Abacus?

8 A No. I didn't. I didn't. I just asked Ross
9 Kirchner are there any other transcripts from anywhere, and he
10 said, we have been told there are not. And I said, based on
11 what Tim had said to me, ask them again.

12 Q Okay. And this is as of April 7th. Were you aware
13 at that point of when the SEC would file its case against
14 Goldman? I mean you were aware of the investigation, but were
15 you aware that, you know, the SEC was about to file? I mean the
16 SEC then filed I think nine days later.

17 A No. I was not aware. I had no idea when they were
18 going to file their action.

19 Q And to your knowledge, the PSI folks didn't know
20 when the SEC was going to file their action?

21 A No.

22 BY (b)(7)(C)

23 Q Just to be clear, to make sure I understand what you
24 were saying just a minute ago, at the time that you wrote the
25 e-mail -- and this is about on April 7th -- you were not aware

1 lawyers, who were reading their Blackberries, and they're seeing
2 the external press. And one elbowed the other. They both
3 nearly fell off the chair, and they called for a break. And
4 that's how we found out.

5 Q All right. I'm going to ask you a series of
6 questions now. While you were at the SEC, were you aware of the
7 financial regulatory reform legislation that was advancing
8 through Congress and just recently passed?

9 A Yes. I believe that was a matter of common
10 knowledge in the press.

11 Q Okay. Did anybody at the SEC ever mention this
12 legislation in connection with the Goldman Sachs Abacus
13 investigation, or in connection with the filing of an action
14 against Goldman Sachs?

15 A No. Not to me.

16 Q Okay. Do you have any reason to believe that the
17 SEC's action against Goldman Sachs or the timing of that action
18 was to advance or related to financial regulatory reform
19 legislation?

20 A I don't know.

21 Q Are you aware of any information indicating that the
22 SEC coordinated its action against Goldman Sachs with the
23 executive office of the President, the White House, or any of
24 its employees?

25 A No.

1 Q Are you aware of any information indicating that
2 anyone at the SEC shared any information concerning its Goldman
3 Sachs investigation with the executive office of the President,
4 the White House, or any of its employees prior to the complaint
5 being filed?

6 A No.

7 Q Are you aware of any information indicating that the
8 SEC coordinated its action against Goldman Sachs with any
9 members of Congress or congressional employees?

10 A No.

11 Q Are you aware of any information indicating that
12 anyone at the SEC shared any information concerning its Goldman
13 Sachs investigation with any members of Congress or
14 congressional employees prior to the complaint being filed?

15 A Only to the extent we've discussed, about how I went
16 on detail there, and learning about the job there and so forth
17 what they were generally looking at, and knowing in my head what
18 the SEC had generally looked at. So other than the extent to
19 which we've discussed, I don't know any other information.

20 Q Okay. Are you aware of any information indicating
21 the SEC coordinated its action against Goldman Sachs with The
22 Democratic National Committee, The Democratic Senate Campaign
23 Committee, The Democratic Congressional Campaign Committee, or
24 any of their employees?

25 A No.

1 Q Are you aware of any information indicating that
2 anyone at the SEC shared any information concerning its Goldman
3 Sachs investigation with The Democratic National Committee, The
4 Democratic Senate Campaign Committee, The Democratic
5 Congressional Campaign Committee, or any of their employees,
6 prior to the complaint being filed?

7 A No.

8 Q Okay. Let me ask you just generally, from your many
9 years at the SEC in a very senior position, do you understand
10 that there was a policy in the SEC about informing companies
11 after the Commission had approved a recommendation to file an
12 action but prior to the case being filed, kind of giving them a
13 heads-up?

14 A No. I was not aware of that.

15 MR. KOTZ: All right. I want to show you a
16 document. We're going to mark it as Exhibit 5.

17 (Exhibit No. 5 was marked for
18 identification.)

19 BY MR. KOTZ:

20 Q And this is an SEC administrative regulation, dated
21 July 31, 2005. And I will turn your attention -- you can
22 certainly, you know, read over it as much as you want, but when
23 you get to a point that you've read it you can turn your
24 attention to page 6.

25 A So 6 up top?

1 A No. And in fact I think that whole -- it was a very
2 strange day. The first that I heard of the SEC settling with
3 Goldman -- there had been an article in the newspaper that day
4 or the day before saying Goldman might settle globally. So we
5 all read that. And then who knows what was going to happen
6 after that. But at 4:15 one of our Congressional interns said
7 to me, Goldman is settling; there's going to be a press
8 conference in half an hour at the SEC. And I said, well, that's
9 news to me, but would you like to go. And the intern said they
10 would like to go, so we all came over and watched the press
11 conference, and that's how we learned of it.

12 Q Okay. And are you aware of any information
13 indicating that the financial regulatory reform legislation,
14 which was passed officially, the last stage of which before it
15 went to the President, on the same day that the SEC announced
16 its settlement, that that legislation was a factor in the
17 settlement of Goldman with the SEC?

18 A I have no information to that effect. My experience
19 in Congress has been that when acts go to the floor is really
20 very fluid. When a vote's going to taken is not something that
21 you necessarily have a lot of information about. As I was
22 saying earlier, just to complete the information that I had on
23 it, I thought our original hearing for Congress would be in June
24 or July, and it turned out that that was moved up, and we did it
25 at the end of April. But that was a big surprise to me as well,

1 information was released?

2 A The possibility of a leak is always something that
3 you're concerned about, so it's a matter of timing, getting
4 things out quickly before there can be a leak of something very
5 important. So when you get to the point of certainly a
6 settlement like this one, which I had no involvement in, but it
7 would be at a very high level in the Commission, you wouldn't
8 want, for example, the Commission to approve it one week and
9 file it a week later, because that's just -- you know, you're
10 inviting a leak basically. So you want to file very quickly
11 after significant action is taken, so that there cannot be leaks
12 and uneven information distribution.

13 Q So the SEC would want the SEC to be the entity that
14 reveals the information about the settlement, rather than it
15 being a leak in the newspaper prior to the SEC's official
16 announcement?

17 A Certainly.

18 Q Okay. And why would that be?

19 A Why would that be? Well, A, we want the information
20 to be accurate. I think that it's our practice when we settle a
21 case with an individual, or with any party, that the SEC will
22 agree with the other party about the general parameters of the
23 press release. And sometimes the respondent negotiates quite
24 extensively about the language of the press release.

25 But the understanding is that the SEC will be the

8

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

 **COPY**

In the Matter of:)
) File No. OIG-534
OIG-534)

WITNESS: Number 17

PAGES: 1 through 54

PLACE: Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C.

DATE: Monday, July 26, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 10:00 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, Inspector General

5 (b)(7)(C) ESQ.

6 Office of Inspector General

7 Securities and Exchange Commission

8 100 F Street, N.E.

9 Washington, D.C. 20549

10

11 On behalf of the Witness:

12 JOAN McKOWN, Pro Se

13

14

15

16

17

18

19

20

21

22

23

24

25

C O N T E N T S

1			
2			
3	WITNESS		EXAMINATION
4	Joan McKown		8
5			
6	EXHIBITS:	DESCRIPTION	IDENTIFIED
7	1	December 4, 2009, E-mail,	
8		Scarborough to McKown	13
9	2	December 8, 2009, E-mail,	
10		McKown to (b)(7)(C)	14
11	3	December 8, 2009, E-mail,	
12		McKown to Scarborough	14
13	4	April 16, 2010, E-mail,	
14		Nester to Staff	20
15	5	April 19, 2010, E-mail,	
16		Friestad to McKown	22
17	6	April 18, 2010, E-mail,	
18		Friestad to McKown	27
19	7	SEC Press Relations, Policies, and	
20		Procedures	31
21	8	May 19, 2010, E-mail String	36
22	9	July 13, 2010, E-mail String	46
23			
24			
25			

1 Q Did you remember at that time hearing
2 concerns in the press about the Goldman settlement
3 happening before it was officially announced?

4 A I believe that there was some leakage
5 but I don't have a specific recollection of it.

6 Q Do you recollect concerns that there was
7 some leakage at that time?

8 A Sure.

9 Q And do you recollect that the SEC wanted
10 to make sure that the facts of the settlement did
11 not go out until they announced it?

12 A Well, until the Commission approved it?

13 Q Right.

14 A Right.

15 Q And until the SEC announced it, right?

16 A Yes.

17 Q I mean, isn't it to the benefit of the
18 SEC for the SEC to be the first entity that
19 announces a settlement?

20 A Yes.

21 Q What are those benefits?

22 A Well, the benefits are that you can --
23 you can control the message that comes out with
24 the case. If a case is -- or settlement is,
25 pre-announced, basically through a leak of some

1 sort, either from defense counsel or some other
2 source, the press is not as interested in the
3 story because it's not as newsworthy, and so you
4 can't control how the message of the case is
5 portrayed.

6 Q Did you hear any particular concern
7 about the fact that the message of the Goldman
8 case would be spun in some way to show that
9 Goldman got a good deal in some kind of leak
10 before the SEC came forward with officially
11 announcing the case?

12 A Well, typically if defense counsel gets
13 the story out, they obviously try to minimize the
14 impact of the case so there's always that general
15 concern.

16 Q Right. But do you remember that being a
17 specific concern in connection with the Goldman
18 settlement?

19 A I remember people thinking about all the
20 potential questions that could be raised regarding
21 the settlement and obviously whether Goldman got a
22 good deal would be one of them.

23 Q Right, but do you remember a particular
24 concern about Goldman leaking information about
25 the settlement in which they spun the story to

1 the process that was used to arrive at the number?

2 A No.

3 Q All right. Were you aware generally of
4 the financial regulatory reform legislation that
5 has been advancing through Congress and was
6 recently signed by the President?

7 A Yes.

8 Q Has anybody at the SEC ever mentioned
9 that legislation in connection with the Goldman
10 Sachs investigation or in connection with the
11 filing of an action against Goldman Sachs?

12 A No.

13 Q Do you have any reason to believe that
14 the SEC's action against Goldman Sachs or the
15 timing of that action was related to or to advance
16 financial regulatory reform legislation?

17 A No, I don't, and I know for a fact that
18 we've been working on the legislation, we've been
19 working on the Goldman case, and both were moving,
20 as far as I could tell, on separate tracks.

21 Q Were you aware that the Goldman
22 settlement was announced the same day that the
23 financial regulatory legislation was formally
24 approved by the Senate?

25 A Right.

1 Q Do you know if that was a coincidence or
2 if there was any reason behind that?

3 A I believe they were coincidences.

4 Q Are you aware of any information
5 indicating the SEC coordinated its action against
6 Goldman Sachs with the Executive Office of the
7 President, the White House, or any of its
8 employees?

9 A I have absolutely no knowledge of that.

10 Q Are you aware of any information
11 indicating that anyone at the SEC shared any
12 information concerning its Goldman Sachs
13 investigation with the Executive Office of the
14 President, the White House, or any of its
15 employees prior to the complaint being filed?

16 A I have absolutely no knowledge of that.

17 Q Are you aware of any information
18 indicating the SEC coordinated its action against
19 Goldman Sachs with any members of Congress or any
20 congressional employees?

21 A No.

22 Q Are you aware of any information
23 indicating that anyone at the SEC shared any
24 information concerning its Goldman Sachs
25 investigation with any members of Congress or any

1 congressional employees prior to the complaint
2 being filed?

3 A No.

4 Q Are you aware of any information
5 indicating the SEC coordinated its action against
6 Goldman Sachs with the Democratic National
7 Committee, the Democratic State Senate Campaign
8 Committee, the Democratic Congressional Campaign
9 Committee, or any of their employees?

10 A I am not aware of anything like that.

11 Q Are you aware of any information
12 indicating that anyone with the SEC shared any
13 information concerning its Goldman Sachs
14 investigation with the Democratic National
15 Committee, the Democratic Senate Campaign
16 Committee, the Democratic Congressional Campaign
17 Committee or any of their employees prior to the
18 complaint being filed?

19 A No.

20 Q Are you aware of any information
21 indicating that anyone at the SEC shared any
22 information concerning the Goldman Sachs
23 investigation or the settlement with the news
24 media or any journalists prior to the complaint
25 being filed?

1 A No.

2 Q What about prior to the settlement being
3 announced?

4 A No. In fact, as far as I was aware,
5 they were very careful about any conversations
6 with the press during the window when we knew the
7 settlement would probably be coming out.

8 Q But then in the end the 3-2 vote on the
9 settlement also came out in the press, didn't it?

10 A It did. It was extremely disappointing.

11 Q Do you know if there was any effort
12 within the Commission with respect to the fact
13 that there seems to be a relatively large number
14 of leaks?

15 A Well, virtually anything of any interest
16 or significance whatsoever is now being done in
17 Executive Session to limit the number of people
18 that are aware of what is said at the meetings and
19 there is much more limited discussion of what was
20 discussed at Commission meetings and the chairman
21 reads off a statement at the beginning of every
22 meeting.

23 Q Of course, limiting the people who
24 either are at the Executive Session or know what
25 happened at the Executive Session does not seem to

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

 **COPY**

In the Matter of:)
) File No. OIG-534
OIG-534)

WITNESS: Number 19

PAGES: 1 through 52

PLACE: Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C.

DATE: Monday, July 26, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 2:02 p.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, Inspector General

5 (b)(7)(C) ESQ.

6 Office of Inspector General

7 Securities and Exchange Commission

8 100 F Street, N.E.

9 Washington, D.C. 20549

10

11 On behalf of the Witness:

12 (b)(7)(C)

13 Jones Day

14 51 Louisiana Avenue, N.W.

15 Washington, D.C. 20001-2113

16 (b)(7)(C)

17

18

19

20

21

22

23

24

25

C O N T E N T S

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

WITNESS

(b)(7)(C)

EXAMINATION

8

EXHIBITS:

DESCRIPTION

IDENTIFIED

1

Confidentiality and Nondisclosure
Agreement

6

2

April 7, 2010, E-mail Chain,

(b)(7)(C)

to Reisner

11

3

April 16, 2010, E-mail,

(b)(7)(C)

to

(b)(7)(C)

31

1 decks before the Chairman's testimony.

2 Q And when was the Chairman's testimony?

3 A I believe it was coming up in the
4 following week. I don't know the precise day.

5 MR. KOTZ: All right. Let me show you
6 another document. Mark this as Exhibit 3. E-mail
7 exchanged between you and (b)(7)(C) dated
8 4/16/10, 4:16 p.m.

9 (Exhibit No. 3 was marked for
10 identification.)

11 THE WITNESS: Yes.

12 BY MR. KOTZ:

13 Q Who is (b)(7)(C)

14 A He is a friend of mine. A very close
15 friend of mine.

16 Q Does he work for the SEC?

17 A No.

18 Q And what information -- what were you
19 discussing with (b)(7)(C) that's referenced in
20 this e-mail string? You made a bet or something?

21 A I had told (b)(7)(C) that there was
22 something that I was working on that would --
23 (b)(7)(C) was aware because he had been over for
24 dinner a few nights before that I was very
25 stressed and that I was working on something that

1 I had said would, unfortunately, make the cover of
2 the New York Times.

3 Q Something that you had said?

4 A I did not describe the substance of
5 anything. He just knew I was working on something
6 that would not be good news for the Commission.

7 Q Oh, I see.

8 A I was referencing, however, in a very
9 general way the Stanford OIG Report which we were
10 completing the redaction on.

11 Q So this is a conversation you had with
12 him before the Stanford Report was issued?

13 A Yes. He was over for dinner at my house
14 a night or two before. Two nights before, I
15 believe.

16 Q And did you in that discussion also
17 discuss with (b)(7)(C) the fact that the
18 Goldman case was about to be announced? It seems
19 to refer to the Goldman case as well.

20 A I did not discuss the substance of
21 anything with anyone outside of the Commission.

22 Q So what was the best about with (b)(7)(C)

23 (b)(7)(C)

24 A That there would be two stories that
25 would make the New York Times on Friday.

1 Q Did you indicate to him what the story
2 -- what the stories were?

3 A No. And it was not a serious bet. It
4 was just we were -- he knows that I get stressed
5 at work sometimes and as you're aware, there were
6 two stories that came out that day and one story
7 was not good and I had said to him I hoped that
8 one story would drown out the other story.

9 Q So you didn't let (b)(7)(C) know
10 prior to the SEC filing of the Goldman case that
11 there was a potential case against Goldman?

12 A I was only aware of Goldman the night
13 before and I certainly, I believe (b)(7)(C) and I
14 chatted for a few minutes that evening, but I
15 would certainly never mention either the Stanford
16 Report or the Goldman or the specifics of anything
17 about them.

18 Q To (b)(7)(C)

19 A That is correct.

20 Q And just to be clear you didn't reveal
21 to (b)(7)(C) that the SEC was bringing a case
22 before Goldman before the SEC brought its case?

23 A I absolutely would not do that. That
24 would be a violation of my ethical
25 responsibilities, as well as a violation of my --

1 Q I just want to -- you keep saying I
2 would not do that.

3 A I did not do that.

4 MR. KOTZ: Thank you.

5 BY (b)(7)(C)

6 Q Just to be clear, you had said that you
7 had this conversation with (b)(7)(C) a few
8 nights prior to April 16th. Is that right?

9 A I believe it actually was the night
10 before. I'm sorry.

11 Q Okay.

12 A I said a night or so before the suit was
13 filed, I believe.

14 Q And so how -- even if it was a mock bet,
15 but with no stakes, how could you have ever had a
16 mock bet with (b)(7)(C) if he had no idea what
17 either story was about as to which one would drown
18 out the other one?

19 A Very simple to say that one of the
20 matters I've been working on will be -- I don't
21 remember the full context of the conversation, but
22 one of the matters that I've be working on will
23 come out and hopefully another matter will drown
24 it out. We shall see if they both make any bets
25 on whether they both make the New York Times.

1 Q But what did you mean by coincidence?

2 A I was probably thinking that there may
3 have been -- I think what I was thinking -- I'm
4 not sure it's really particular relevant. It was
5 -- the reference to a coincidence would be purely
6 my own speculation about the timing of the two
7 releases.

8 Q What would that speculation be?

9 A I'm not really sure that my spec -- I
10 mean, I will answer the question if you tell me,
11 but it would be purely my speculation and not
12 based on anything that I learned from anyone else.

13 Q I'm interested in your speculation.

14 A I would think it would be positive
15 damage control for the Commission. I have --

16 Q So I still don't understand. What is
17 the coincidence?

18 A Well, if Stanford came out the day
19 before, hypothetically, and Goldman came out the
20 day after there would have obviously been 24 hours
21 of press release. Or if Goldman was filed on
22 Monday and the Stanford Report came on a Friday
23 there would be a weekend of further damaging press
24 to an agency that already seems to have low
25 morale.

1 Q So you were insinuating in this comment
2 that perhaps the two stories were put out the same
3 day in order for the Goldman story to drown out
4 the Stanford story? Is that the gist of what the
5 coincidence was?

6 A Essentially, yes.

7 Q Okay.

8 A I do not know that anyone did that. It
9 seems to me that these were things largely moving
10 on parallel tracks and I was --

11 Q We're not investigating that, but I was
12 just curious what you meant by coincidence.

13 Are you aware or were you
14 aware of the financial regulatory reform
15 legislation that had been advancing through
16 Congress and was recently signed by the President?

17 A Yes.

18 Q Has anybody at the SEC ever mentioned
19 that legislation in connection with the Goldman
20 Sachs investigation, the ABACUS case, or in
21 connection with the filing of an action against
22 Goldman Sachs?

23 A Not that I'm aware of.

24 Q Do you have any reason to believe that
25 the SEC's action against Goldman Sachs or the

1 timing of that action was to advance financial
2 regulatory reform legislation?

3 A Certainly not.

4 Q Are you aware of any information
5 indicating the SEC's action against Goldman Sachs
6 or the timing of that action as to advance
7 financial regulatory reform legislation?

8 A Certainly not.

9 Q Were you aware that the SEC settlement
10 with Goldman Sachs was announced on the same day
11 that the financial reform legislation was finally
12 approved by the Senate?

13 A Yes.

14 Q Are you aware or do you have any reason
15 to believe that that timing was not coincidental?

16 A Can you please repeat the question?

17 Q Do you have any reason to believe that
18 the timing was not coincidental, that the
19 settlement in the Goldman Sachs case was issued on
20 the same day that the financial regulatory reform
21 advanced to a final stage?

22 (b)(7)(C) I think because we've
23 been using the word coincidence a lot, maybe just
24 say what you mean by the word coincidence there.

25 BY MR. KOTZ:

1 the SEC coordinated its actions against Goldman Sachs with
2 the Executive Office of the President, the White House, or
3 any of its employees?

4 A Certainly not.

5 Q Are you aware of any information
6 indicating that anyone with the SEC shared any
7 information concerning its Goldman Sachs
8 investigation with the Executive Office of the
9 President, the White House, or any of its
10 employees prior to the complaint being filed?

11 A Certainly not.

12 Q Are you aware of any information
13 indicating the SEC coordinated its action against
14 Goldman Sachs with any members of Congress or any
15 congressional ploys?

16 A Certainly not.

17 Q Are you aware of any information
18 indicating that anyone at the SEC shared any
19 information concerning its Goldman Sachs
20 investigation with any members of Congress or any
21 congressional employees prior to the complaint
22 being filed?

23 A Certainly not.

24 Q Are you aware of any information
25 indicating the SEC coordinated its action against

1 Goldman Sachs with the Democratic National
2 Committee, the Democratic Senate Campaign
3 Committee, the Democratic Congressional Campaign
4 Committee, or any of its employees?

5 A Certainly not.

6 Q Are you aware of any information
7 indicating that anyone at the SEC shared any
8 information concerning its Goldman Sachs
9 investigation with the Democratic National
10 Committee, the Democratic Senate Campaign
11 Committee, the Democratic Congressional Campaign
12 Committee, or any of their employees prior to the
13 complaint being filed?

14 A Certainly not.

15 Q Were you aware of the fact that shortly
16 after the SEC filed its complaint against Goldman
17 there were articles or an article in the newspaper
18 with nonpublic information about the vote that the
19 Commission had?

20 A Can you please repeat the question?

21 Q Were you aware that shortly after the
22 SEC brought an action against Goldman there was an
23 article in the newspaper which contained nonpublic
24 information about the vote that the Commission had
25 to approve the Goldman case?

1 A Yes.

2 Q Do you know who leaked that information?

3 A No.

4 Q Did you have any conversations with
5 anybody that would lead you to suspect someone of
6 leaking that information?

7 A No.

8 Q Are you aware of anybody leaking or
9 providing any nonpublic information about Goldman
10 Sachs to the press?

11 A No.

12 Q Were you -- did you have any involvement
13 in the settlement discussions after the filing of
14 the Goldman Sachs ABACUS complaint?

15 A No.

16 Q Were you -- did you have any involvement
17 in the Executive Session or the procedure in which
18 the Commission approved the Goldman settlement?

19 A No.

20 Q Were you aware of -- when was the first
21 time you became aware that there was a settlement
22 in the Goldman case?

23 A When I read it on the New York Times
24 that afternoon.

25 Q Okay.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. OIG-534
OIG-534)

WITNESS: Number 20

PAGES: 1 through 85

PLACE: Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C.

DATE: Tuesday, July 27, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 9:41 a.m.

 **COPY**

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, Inspector General

5

(b)(7)(C)

6 Office of Inspector General

7 Securities and Exchange Commission

8 100 F Street, N.E.

9 Washington, D.C. 20549

10

11 On behalf of the Witness:

12 TIMOTHY B. HANNAPEL, ESQ.

13 National Treasury Employees Union

14 1750 H Street, N.W.

15 Washington, D.C. 20006

16 (202) 572-5620

17

18

19

20

21

22

23

24

25

C O N T E N T S

1			
2			
3	WITNESS		EXAMINATION
4	Timothy B. Henseler		4
5			
6	EXHIBITS:	DESCRIPTION	IDENTIFIED
7	1	January 5, 2010, E-mail,	
8		Khuzami, Spitler, Cohen, Davis,	
9		Reisner and Henseler	14
10	2	January 15, 2010, E-mail,	
11		Henseler, Cohen, Spitler, Davis	
12		and Nisanci	19
13	3	January 15, 2010, E-mail, Henseler/Cohen	19
14	4	January 15, 2010, E-mail,	
15		Henseler, Davis, Cohen, Nisanci and	
16		Spitler	20
17	5	February 22, 2010, E-mail, Henseler, (b)(7)(C)	24
18	6	February 2, 2010, E-mail, Henseler/Calande	35
19	7	April 7, 2010, E-mail, Henseler/Muoio	37
20	8	April 11, 2010, E-mail, Henseler/Spitler	40
21	9	April 14, 2010, E-mail, Henseler/Spitler	40
22	10	April 16, 2010, E-mail, Henseler/Cohen	43

23

24

25

1 Levin had asked to speak with Rick Bookstaber
2 because he had somehow read his blog. I think he
3 had read his prior testimony he had given to
4 Congressional committees. He wasn't asking to
5 speak to him because he was an SEC person, but
6 rather this was a guy he wanted to try to -- he
7 thought had a sort of an expertise that he could
8 tap into and/or learn from. It just so happened
9 he worked at the SEC. So, somehow that request
10 either was made of me or came to me. So we set up
11 the meeting. Senator Levin met with -- with Rick
12 Bookstaber and in the course of the discussion,
13 the -- PSI's investigation of Goldman was -- was
14 mentioned. So I -- I know at that point in time
15 obviously the issue was -- I do have a memory of
16 discussing it.

17 Q Now did Rick Bookstaber know that the
18 SEC was investigating Goldman as well?

19 A As of -- I believe he did. I don't know
20 when he first learned of it. Whether, you know,
21 in advance of the meeting, I told him that there
22 is an investigation, so we need to be careful or
23 -- or whether it was subsequent to the meeting.
24 It probably was before, because I probably had
25 some idea that one of the things that they wanted

1 to talk about related to Goldman. So I don't know
2 if he -- I don't have a memory as to whether he
3 knew before, but I -- I feel fairly confident just
4 based on my practice that I probably would have
5 told him in advance of the meeting.

6 Q And did you participate in that meeting?

7 A Yes.

8 Q Okay. Did in that meeting Rick
9 Bookstaber or anyone else from the SEC say
10 anything about the existence of an investigation
11 by the SEC against Goldman?

12 A No. But I -- I should say that at the
13 end of the meeting, Senator Levin requested Rick's
14 assistance going forward, which I think is part of
15 what -- what is referenced in the e-mail in Exhibit
16 5. And I got the sense that -- from -- from the
17 questions they were asking that they were aware
18 that we were investigating Goldman. Because they
19 indicated to the extent that there isn't any sort
20 of issue or conflict or -- or ethical reason why
21 Rick couldn't help, I think they wanted his
22 assistance to review some Goldman-specific
23 documents. So this -- this issue of whether or
24 not he would be permitted to further assist them,
25 my memory was raised at this meeting with Senator

1 A -- in their investigation. At no point
2 in time was he free to discuss whatever we were
3 doing, although my knowledge -- my understanding
4 is he didn't know anything about what enforcement
5 was doing.

6 Q But was Rick Bookstaber allowed to just
7 acknowledge the existence of the SEC Goldman
8 investigation given that you said it seemed like
9 Senator Levin already knew about it?

10 A No. No. And I believe what happened
11 was -- well, what happened was I went back to -- I
12 sent this e-mail to -- to (b)(7)(C) I discussed
13 in internally. I also discussed it with (b)(7)(C)
14 And the thought was that if Rick were going to
15 provide the assistance that Senator Levin
16 requested, he would have to be walled off entirely
17 from the investigation and that was not something
18 that folks thought was a good idea. Not because
19 he -- Rick was assisting in this investigation,
20 but he did have a certain expertise and who knew
21 if he might be needed as an asset or a resource in
22 the future. So what -- what I communicated back
23 to PSI was basically without confirming that there
24 is an investigation, to the extent that there were
25 one that related to Goldman, if he were to provide

1 this assistance, he would be foreclosed from
2 serving in any capacity. So given that we're
3 unable to -- (b)(7)(C) not going to be able to
4 provide the assistance that you're looking for.

5 Q Okay. So (b)(7)(C) didn't provide any
6 further assistance to Senator Levin or his office
7 after that first meeting?

8 A He did have another meeting -- what
9 happened is they -- they sort of -- they -- we had
10 a few discussions about this issue where we sort
11 of -- they finally came to understood that (b)(7)(C)
12 was not going to be able to review the documents.
13 My memory is they came back and asked well, what
14 if we showed you documents but we don't tell you
15 where they're from and it won't have any markings
16 on them. These were sort of risk-related
17 documents that (b)(7)(C) would maybe have an expertise
18 in. Would he be able to review those? We
19 discussed that internally with -- with (b)(7)(C)
20 and others and the thought was that it seems like
21 form over substance. We're not going to sort of
22 close our eyes and pretend that these aren't
23 Goldman documents. Subsequent to that, I want to
24 say a few weeks later, they -- they asked if they
25 could just talk to him generally about risk

1 related issues. Sort of what certain terms meant.
2 And I don't even know necessarily what all these
3 things mean, but value-at-risk and convexity and
4 gamma, alpha -- or gamma, theta, something called
5 NVO1. And also just generically how it is that
6 certain -- how risk departments would be set up.
7 If -- sort of if -- if -- if you had different
8 trading desks, how it would flow up generally. So
9 (b)(7)(C) did have a meeting with PSI where he
10 discussed those issues subsequent to Exhibit 5 and
11 what we've been talking about.

12 Q Were you at that meeting?

13 A Yes.

14 Q Okay. And was any information about the
15 SEC investigation of Goldman discussed at that
16 meeting?

17 A No.

18 Q Okay. Do you know if Senator Levin or
19 his staff at any point in time was made aware of
20 the SEC's timing or in planned timing of their
21 Goldman investigation?

22 A I don't believe that they were. On the
23 night before the actual case was filed -- and I
24 should back up. Subsequent, pretty soon after

25 (b)(7)(C) met with PSI staff, PSI requested

1 forth e-mails where I know my view was we should
2 just tell her basically you can't disclose any
3 nonpublic information. I didn't have an
4 understanding that she had disclosed any up to
5 that point in time. But I thought it would make
6 sense just to reiterate what we had told her
7 before which is basically you can't disclose
8 nonpublic information on the transcripts. PSI
9 knows how to get them if they need them basically
10 and there's a protocol to follow for that. The
11 gentle reminder -- my memory is and it says it
12 here that that basically that was on the point
13 that everything should flow through Leg Affairs.
14 She shouldn't try to reach out to Reid or other
15 people she knows. And that's when Reid said maybe
16 a gentle reminder is in order.

17 **Q Did you provide that general reminder?**

18 **A I did have a call with her where in**
19 substance I communicated what was reflected in the
20 e-mails to Pauline.

21 **Q And so your confident that Ms. Calande**
22 **did not disclose any nonpublic information to PSI?**

23 **A I don't -- I don't know if she did or**
24 not. I know that we -- I told her again at this
25 point in time in a phone conversation you

1 shouldn't disclose any nonpublic information to
2 PSI.

3 Q And she didn't kind of indicate to you I
4 already did or whoops?

5 A No. No, she did not.

6 Q So she didn't give you any indication
7 that she had disclosed any nonpublic information?

8 A No.

9 Q Alright. The next two documents
10 actually relate to the discussion we were having
11 before. We're going to mark as Exhibit 8 and 9.
12 Exhibit 8 is an e-mail exchange with you and Eric
13 Spitler, 4/11/10, 6:47 p.m. And then for
14 Exhibit 9 is an exchange also between you and Eric
15 Spitler, 4/14/10, 9:23 p.m. This relates to the
16 discussions that you referenced earlier about
17 having an SEC person -- particularly Rick
18 Bookstaber -- testify at the hearing.

19 A Yeah. I'm familiar with these e-mails.

20 (Exhibit Nos. 8 and 9 were marked for
21 identification.)

22 BY MR. KOTZ:

23 Q So basically, the point here is what you
24 were saying that Senator Levin was requesting that
25 Rick Bookstaber or somebody else testify and the

1 SEC didn't think it was a good idea and in the end
2 what happened?

3 A I had numerous conversations with PSI
4 staff --

5 Q Right.

6 A -- about -- about -- well, first of all,
7 internally, I tried to press Rick Bookstaber as
8 well as ultimately my memory is Henry Hu, who is
9 the head of Risk Fin, to try to find another
10 academic or another expert that we could say to
11 PSI here's a person who can speak to the same
12 sorts of things that Rick can. I know there were
13 some names thrown about, but those never -- it
14 never resulted in anyone that we thought would be
15 an adequate substitute. So I had numerous
16 conversations with PSI where I tried to impress
17 upon them the importance of not calling Bookstaber
18 or anyone else at the SEC -- that it would be a
19 bad idea if in fact there -- there were an
20 investigation related to Goldman and -- and word
21 got out -- or -- or -- or if there were in fact an
22 investigation of Goldman and people began asking.
23 There was a fear that questions would be planted
24 basically and that Rick may say something that
25 could harm the investigation.

1 expert in legislative affairs -- were you aware of
2 the affect that the SEC's filing of the Goldman
3 action had on the financial reform process?

4 A I would not -- not withstanding the fact
5 that I used to work on Capitol Hill, and I am in
6 Leg Affairs, I would not refer to myself as an
7 expert in legislative affairs -- just given the
8 intricacies --

9 Q Okay.

10 A -- and the things I've seen, but --

11 Q Based on your experience in legislative
12 affairs?

13 A I actually was -- I personally was not
14 aware of the impact that the filing of the case
15 would have. I, for whatever reason -- I knew it
16 was an important case, but I was very surprised at
17 the level of interest, the level of media interest
18 in the case and the fact that it -- it was just --
19 it was everywhere it seemed like after the case
20 was filed and I was not expecting that.

21 Q I mean is it fair to say that given the
22 interest -- the tremendous interest that the SEC
23 case against Goldman got, that it did have an
24 impact on the financial reform legislation?

25 A My personal opinion -- again I don't

1 those lines.

2 Q Alright. Let me ask you several other
3 questions. So just for the record, do you have
4 any reason to believe that the SEC's action
5 against Goldman Sachs or the timing of that action
6 was to advance financial regulatory reform
7 legislation?

8 A No.

9 Q Are you aware of any information
10 indicating that the SEC's action against Goldman
11 Sachs or the timing of that action was to advance
12 financial regulatory reform legislation?

13 A Can you say that one more time? I just
14 want to figure out how that's different.

15 Q Sure. Are you aware of information
16 indicating that the SEC's action against Goldman
17 Sachs or the timing of that action was done to
18 advance financial regulatory reform legislation?

19 A No.

20 Q Are you aware of any information
21 indicating that the SEC coordinated its action
22 against Goldman Sachs with the Democratic National
23 Committee, the Democratic Senate Campaign
24 Committee, the Democratic Congressional Campaign
25 Committee or any of their employees?

1 A No.

2 Q Are you aware of any information
3 indicating that anyone at the SEC shared any
4 information concerning its Goldman Sachs
5 investigation with the Democratic National
6 Committee, the Democratic Senate Campaign
7 Committee, the Democratic Congressional Campaign
8 Committee or any of their employees prior to the
9 complaint being filed?

10 A No.

11 Q Did you have any interaction with the
12 Democratic National Committee, the Democratic
13 Senate Campaign Committee, the Democratic
14 Congressional Campaign Committee or any of the
15 employees with regard to the financial reform
16 legislation?

17 A No.

18 Q Were you aware of anybody at the SEC who
19 had such interactions?

20 A I am not.

21 Q Are you aware of any information
22 indicating that anyone at the SEC shared any
23 information concerning its Goldman Sachs
24 investigation with the U.S. Department of
25 Treasury, the Federal Reserve or any of their

1 wasn't a part of it.

2 Q You're aware that there was a media
3 report after the Goldman case was filed which
4 provided information about what the Commission
5 vote was?

6 A Correct.

7 Q Are you aware of who might have leaked
8 that information?

9 A I am not.

10 Q Was there some concern within the SEC
11 that that information got out?

12 A Me, personally, I think yes, but I don't
13 have any specific memory of discussions. Me,
14 personally, I mean I was troubled by that fact
15 because, you know, the nonpublic -- the closed
16 Commission meetings are closed for a reason and
17 there shouldn't be leaks about what the votes are
18 or what's discussed at the closed meeting.
19 They're supposed to be a candid discussion about
20 the case and that's not something that should be
21 out there for public consumption.

22 Q Do you have any idea who might have
23 leaked that information?

24 A I do not.

25 Q Do you know of anyone who may have

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. OIG-534
OIG-534)

WITNESS: Number 21

PAGES: 1 through 48

PLACE: Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C.

DATE: Tuesday, July 27, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 11:15 a.m.

ORIGINAL

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, Inspector General

5 (b)(7)(C) ESQ.

6 Office of Inspector General

7 Securities and Exchange Commission

8 100 F Street, N.E.

9 Washington, D.C. 20549

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C O N T E N T S

1			
2			
3	WITNESS		EXAMINATION
4	Julie Davis		4
5			
6	EXHIBITS:	DESCRIPTION	IDENTIFIED
7	1	January 5, 2010, E-mail Chain,	
8		Khuzami to Spitler, et al.	12
9	2	January 15, 2010, E-mail Chain,	
10		Davis to Henseler, et al.	13
11	3	April 16, 2010, E-mail,	
12		Marlin to Schapiro	20
13	4	April 16, 2010, E-mail,	
14		(b)(7)(C) to Davis	24
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 (Exhibit No. 4 was marked for
2 identification.)

3 BY MR. KOTZ:

4 Q And so at the bottom of the page we see
5 Anne Marie Kelley's e-mail of the press release.
6 Is that what you were referring to that she sent
7 out the press release to various folks in
8 Congress?

9 A Yes. Yes.

10 Q And then you have this individual who
11 e-mails back, "Wow." And you e-mail back, "Do you
12 know how hard I was biting my tongue yesterday?" And
13 then he responds, "You are the Sphinx!"

14 A Yes.

15 Q What was that referring to?

16 A If I recall correctly, Senator Kaufman,
17 for whom (b)(7)(C) works -- I can't
18 remember if it was the senator himself or (b)(7)(C)
19 his chief of staff -- wanted to meet with members
20 of Enforcement -- it might have been Rob Khuzami
21 and Lorin Reisner; I know he's met with them
22 before -- to ask why we hadn't brought any big
23 cases yet.

24 Q Wow.

25 A And so I had to have a long conversation

1 with (b)(7)(C) talking about how he wanted
2 to meet with these guys to complain that we
3 haven't brought any big cases, and I just had to
4 listen, and so then when he says, "Wow," that's
5 when I said I had to bite my tongue, because
6 obviously I couldn't say anything. And after
7 that, he said we don't need the meeting; you guys
8 go -- go work on your case.

9 Q And so what does he refer to, "You are
10 the Sphinx?"

11 A I guess that I -- it's funny, because I
12 remember at the time thinking I guess he means
13 that I sat quietly like a sphinx.

14 Q Oh, okay. So, when was this
15 conversation that you had with (b)(7)(C)

16 A Well, I say here "yesterday," so I'm
17 guessing it was Thursday.

18 Q Do you remember if it was in the morning
19 or the afternoon or the evening?

20 A I don't remember.

21 Q But clearly you knew Thursday that the
22 SEC was going to bring a case against Goldman.

23 A Yes.

24 Q Do you think you might have known that
25 before Thursday?

1 A No. I mean, yes, there was more press
2 about the financial crisis, but I never -- I --
3 I'm not aware of that switching any votes or, you
4 know, anything specific. It -- it kind of added
5 to the overall din or the overall noise
6 surrounding the need for reform.

7 Q Okay.

8 A So, I wouldn't want to say that I don't
9 think it had -- played any role, but I also don't
10 think it played a specific role.

11 Q Did any conversations you had -- I
12 assume you had numerous conversations with members
13 of and staff of members of Congress about the
14 financial reform legislation.

15 A Yes.

16 Q Did any conversation that you had with
17 any member of Congress or any staff member of
18 Congress relating to financial regulatory reform
19 legislation -- did the Goldman Sachs investigation
20 or the filing of an action against Goldman Sachs
21 by the SEC ever come up?

22 A After the complaint was filed, it might
23 have --

24 Q Okay, I'm --

25 A But I'm not --

1 Q Before the complaint stopped.

2 A No.

3 Q Was there any point in time where any
4 member of Congress or staff member said, you know,
5 do you have any big cases coming, like this
6 conversation with (b)(7)(C) that might help to
7 provide some momentum for financial regulatory
8 reform?

9 A I never had that conversation, no.

10 Q Do you know if the SEC gave anyone in
11 either the White House or Congress a heads-up that
12 the SEC was about to file its case against Goldman
13 Sachs?

14 A I know I didn't, and my understanding is
15 that no one else did either, and I'm not aware of
16 anyone doing that.

17 Q All right. Did you have any
18 communications with the Democratic National
19 Committee, the Democratic Senate Campaign
20 Committee, the Democratic Congressional Campaign
21 Committee, or any of their employees relating to
22 financial regulatory reform?

23 A No.

24 Q You --

25 A Not that I'm aware of at all.

1 Q Were you aware that shortly after the
2 SEC brought its action against Goldman there was a
3 press report about the commission vote of that
4 action?

5 A Yes.

6 Q Do you have any idea who might have
7 provided that information to the news media?

8 A No.

9 Q Was there any effort within the SEC to
10 try to figure out who may have brought that, who
11 may have leaked that information?

12 A There might have been, but I wasn't a
13 part of that effort.

14 Q Are you aware of any information
15 indicating that anyone at the SEC shared any
16 information concerning its Goldman Sachs
17 investigation with the news media or any
18 journalist prior to the complaint being filed?

19 A Ask the question again?, I'm sorry.

20 Q Sure. Are you aware of any information
21 indicating that anyone at the SEC shared any
22 information concerning its Goldman Sachs
23 investigation with the news media or --

24 A Am I --

25 Q -- or journalist prior to the complaint

1 being filed?

2 A Am I aware that information was shared?

3 Q Right.

4 A Or --

5 Q Right.

6 A I mean, I saw the news reports.--

7 Q Oh, I see.

8 A -- about the -- but I'm not aware of,
9 anything other than what I read in the -- in the
10 press, if that --

11 Q So, you're not aware of anyone in the
12 SEC sharing any information with the news media --

13 A That's right.

14 Q -- about the Goldman case prior to it
15 being filed.

16 A That's right, I am not.

17 Q You're aware that there was an article,
18 and the article seemed to convey information.

19 A That's right.

20 Q All right. Were you aware of the issue
21 about whether or why the SEC did not inform
22 Goldman Sachs immediately prior to the filing of
23 its action -- that it intended to file an action?

24 A Am I aware that that's a complaint?

25 Q Yeah.

1 ready to be announced, and then once there was the
2 date that the Senate would vote, the timing of the
3 settlement wouldn't be changed simply to avoid
4 appearances, because then that would actually be
5 changing because of political reasons. So --

6 Q Mm-hmm. Was there any discussion about
7 that possibility: Hey, maybe let's not issue the
8 settlement on the same day, given the previous
9 allegations, you know, in connection --

10 A No. In fact, I said do you realize that
11 this is probably going to be -- you know, because
12 the Senate -- the votes were working out and it
13 wasn't -- we -- no one knew for sure when the
14 Senate vote would be -- I remember this -- as we
15 talk about it, I remember more. The Senate was
16 going to invoke cloture again at 60 votes and then
17 time would tick. And some Senate -- there was a
18 lot of talk on the Senate would this -- would the
19 actual vote occur Saturday or Friday or Monday or
20 -- and I said -- one thing I've always thought is
21 once the Senate gets its 60 votes and the
22 writing's on the wall, they often tend to just
23 move along and get it done quickly. And I said
24 this is -- looks like it's going to happen at the
25 same time as the settlement. And I had this

12

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. OIG-534
OIG-534)

WITNESS: Number 22

PAGES: 1 through 43

PLACE: Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C.

DATE: Tuesday, July 27, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 12:42 p.m.

ORIGINAL

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, Inspector General

5 (b)(7)(C) ESQ.

6 Office of Inspector General

7 Securities and Exchange Commission

8 100 F Street, N.E.

9 Washington, D.C. 20549

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C O N T E N T S

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

WITNESS

EXAMINATION

Anne-Marie Kelley

4

EXHIBITS:

DESCRIPTION

IDENTIFIED

1

April 16, 2010, E-mail Chain,
Spitler to Kelley

12

2

April 19, 2010, E-mail Chain,
Spitler to Kelley

15

3

April 19, 2010, E-mail Chain,
Becker to Kelley

18

4

April 19, 2010, E-mail Chain,
(b)(7)(C) to Kelley

20

5

April 12, 2010, E-mail,
Kelley to Spitler

26

6

April 13, 2010, E-mail,
Kelley to Spitler

27

7

April 14, 2010, E-mail,
Kelley to Spitler

27

8

April 19, 2010, E-mail Chain,
Spitler to Nisanci

28

1 journalists prior to the complaint being filed?

2 A No.

3 Q I assume you're aware of the financial
4 reform regulatory legislation that advanced
5 through Congress and was recently signed into law?

6 A Yes.

7 Q And you spent a significant time working
8 on that?

9 A Yes.

10 Q Did you ever have any communications
11 with anyone at the White House about --

12 A No.

13 Q Let me just get the whole question so
14 you can have the answer. Did you have any
15 communications with anybody at the White House
16 about the financial regulatory reform legislation?

17 A No.

18 Q Do you know if anyone at the SEC did?

19 A Not to my knowledge.

20 Q But you, I assume, did have numerous
21 communications with members of Congress and/or
22 staff members of Congress regarding the financial
23 regulatory reform legislation.

24 A Yes.

25 Q In any of those conversations did the

1 the Goldman Sachs investigation or in connection
2 with the filing of an action against Goldman
3 Sachs?

4 A No.

5 Q Do you have any reason to believe that
6 the SEC action against Goldman Sachs or the timing
7 of that action was to advance or related to
8 financial regulatory reform?

9 A No.

10 Q Are you aware of any information
11 indicating that the SEC's action against Goldman
12 Sachs or the timing of that action --

13 A No.

14 Q -- was to advance financial regulatory
15 reform?

16 A No.

17 Q Just let me finish the thing --

18 A Sorry.

19 Q -- so we can have a clean transcript.

20 Are you aware of any information indicating that
21 the SEC coordinated its action against Goldman
22 Sachs with the Executive Office of the President,
23 the White House, or any of its employees?

24 A No.

25 Q Are you aware of any information

1 indicating that anyone with the SEC shared any of
2 the information concerning its Goldman Sachs
3 investigation with the Executive Office of the
4 President, the White House, or any of its
5 employees prior to the complaint being filed?

6 A No.

7 Q Are you aware of any information
8 indicating the SEC coordinated its action against
9 Goldman Sachs with any members of Congress or any
10 congressional employees?

11 A No.

12 Q Are you aware of any information
13 indicating that anyone at the SEC shared any
14 information concerning its Goldman Sachs
15 investigation with any members of Congress or
16 congressional employees prior to the complaint
17 being filed?

18 A No.

19 Q Are you aware of any information
20 indicating that the SEC coordinated its action
21 against Goldman Sachs with the Democratic National
22 Committee, the Democratic Senate Campaign
23 Committee, the Democratic Congressional Campaign
24 Committee, or any of their employees?

25 A No.

1 Q Are you aware of any information
2 indicating that anyone at the SEC shared any
3 information concerning its Goldman Sachs
4 investigation with the Democratic National
5 Committee, the Democratic Senate Campaign
6 Committee, the Democratic Congressional Campaign
7 Committee, or any of their employees prior to the
8 complaint being filed?

9 A No.

10 Q Did you have any communications with the
11 Democratic National Committee, the Democratic
12 Senate Campaign Committee, or the Democratic
13 Congressional Campaign Committee regarding
14 financial regulatory reform?

15 A No.

16 Q Are you aware of any information
17 indicating anyone with the SEC shared any
18 information concerning its Goldman Sachs
19 investigation with the U.S. Department of
20 Treasury, the Federal Reserve, or any of their
21 employees prior to the complaint being filed?

22 A No.

23 Q Were you aware of the issue relating to
24 the SEC not providing Goldman notice right before
25 it filed the case against them?

1 A No.

2 Q Are you aware of that issue?

3 A No.

4 Q Are you aware of the issue relating to
5 the fact that the SEC didn't inform the New York
6 Stock Exchange that it intended to file a
7 complaint against Goldman and there was a market
8 impact from the complaint?

9 A I'm aware there was a market impact. I
10 didn't know that they were supposed to let the New
11 York Stock Exchange know.

12 Q Are you aware of any issue regarding
13 whether the SEC should be announcing an action
14 against a publicly traded company, like Goldman,
15 during the trading hours given the effect on
16 Goldman stock?

17 A No.

18 Q Were you surprised at how much coverage
19 the SEC's action against Goldman got?

20 A Yes.

21 Q Did you assume that there would be some
22 coverage?

23 A Yes.

24 Q But you were surprised at how much?

25 A Yeah.

1 Q You mean the action memo?

2 A Yeah.

3 BY (b)(7)(C)

4 Q Who told you that?

5 A Eric.

6 Q Spitler?

7 A Spitler, yes.

8 BY MR. KOTZ:

9 Q Did you or anyone else say to him can't
10 we do it on a different day? Do you see how this
11 is going to look?

12 A I think I said it. Well, I didn't say
13 can we do it on a different day? I said we're
14 going to get yelled at by Congress for this, and
15 they said that we can't stop it, speed it up, or
16 slow it down because that would be then wrong.

17 Q That was Eric Spitler said that?

18 A Yes.

19 Q And did you understand that he had had
20 communications with other folks about this?

21 A I assumed so.

22 Q Now, this was the Thursday that both
23 things happened, if you remember. And were you
24 aware generally that week that the financial
25 regulatory reform vote was going to occur on

1 (A brief recess was taken.)

2 BY MR. KOTZ:

3 Q Back on the record. Do you have any
4 knowledge as to who might have provided the
5 information to a reporter about the particular
6 vote that occurred in the Commission when they
7 approved the Goldman case?

8 A No.

9 Q Were you aware that prior to the SEC
10 announcing its Goldman settlement, a day or two
11 before there were news reports that the SEC and
12 Goldman were getting close to a settlement?

13 A Yes.

14 Q And was that a concern within the SEC
15 that this information was getting leaked out
16 again?

17 A Not that I'm aware of.

18 Q You said the SEC leaks like a sieve. Is
19 it kind of a general concern and more particularly
20 lately because of all of the leaks?

21 A During my three years here, that's been
22 a concern the entire time.

23 Q But have there been other cases where
24 votes like that were leaked?

25 A Yes. I remember several times under

1 Chairman Cox.

2 Q And do you remember any particular
3 concern with respect to the announcement of the
4 Goldman settlement about concerns about leaks
5 given that the vote was previously leaked?

6 A Just that as soon as the vote was
7 finished Rob Khuzami was going to do a press
8 conference right afterwards and then we were -- at
9 the same time, we were letting the Hill know.

10 Q So there was an interest in ensuring
11 that the settlement be announced immediately after
12 the vote so to avoid too much time going by where
13 there could be leak?

14 A The -- they were not specifically saying
15 that it would be a leak, but they said just so
16 that it was -- it was out to the public as soon as
17 possible.

18 Q But then, of course, the vote on the
19 settlement leaked, too, didn't it?

20 A Yes.

21 Q And you don't have any idea who might
22 have leaked that?

23 A No.

24 MR. KOTZ: All right. I don't have
25 anything further.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)

) File No. OIG-534

OIG-534)

ORIGINAL

WITNESS: Number 24

PAGES: 1 through 38

PLACE: Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C.

DATE: Thursday, July 29, 2010

The above-entitled matter came on for hearing, pursuant to notice, at 2:01 p.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, Inspector General

5 (b)(7)(C) ESQ.

6 Office of Inspector General

7 Securities and Exchange Commission

8 100 F Street, N.E.

9 Washington, D.C. 20549

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C O N T E N T S

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

WITNESS

(b)(7)(C)

EXAMINATION

4

EXHIBITS:

DESCRIPTION

IDENTIFIED

1

April 16, 2010, E-mail Chain,

Marlin to Nester

14

2

April 16, 2010, E-mail Chain,

(b)(7)(C)

to Lench

23

1 call the director directly, or call the chairman
2 directly.

3 Q So what occurred in the conversation
4 between you and (b)(7)(C)

5 A (b)(7)(C) had concerns about the
6 intra-day release by the Commission of the Goldman
7 matter because, in his opinion -- which I didn't
8 disagree with -- caused or may have added to
9 excess volatility in the marketplace by doing an
10 intra-day release of an enforcement case of this
11 magnitude.

12 Q Right. And did (b)(7)(C) also talk
13 about the fact that the NYSE wasn't given a head's
14 up that this was coming down the pike? And that
15 they noted that there are times when they consider
16 whether they should halt trading in the securities
17 of a listed company because of certain news?

18 A I don't recall him mentioning that.

19 Q But he was concerned that the SEC
20 brought the Goldman case during the trading hours?

21 A That was the crux of his concern, yes.

22 Q And that was because Goldman is a traded
23 company.

24 A That's correct.

25 Q And the news of the announcement of the

1 SEC action against Goldman, had an impact on
2 Goldman's stock?

3 A That's right. His concerns were
4 multi-focused. One, Goldman's a publicly traded
5 company, so it had a volatility effect on the
6 price of Goldman itself.

7 Second, they're big in the financial
8 industry, so there's derivative action that occurs
9 in the market place off of just the action by
10 Goldman, or CitiGroup, or any other major player
11 in the financial industry has broader market
12 impact than just on the individual security. And
13 that was his two major concerns.

14 Q And so was there a concern that
15 investors would be potentially harmed by virtue of
16 the effect that this announcement had on the
17 stock, since it was announced during trading
18 hours?

19 A It wasn't discussed, but I think that
20 was the implication.

21 Q And do you agree -- did you or do you
22 share these concerns that were expressed to you by

23 (b)(7)(C)

24 A I think I did with him -- I won't say, I
25 think -- I did agree with him. I'm a huge

1 proponent of off hours announcements, at least in
2 major announcements and I voiced that to him.
3 And, you know, cautioned him that that and two
4 dollars will get him, you know, a cup of coffee at
5 Starbucks. But I was -- I was open to his
6 concerns and I, as my e-mail mentioned -- I sent
7 it to the head of our Enforcement -- I didn't know
8 if I could just send it to Lorin, but I sent it to
9 Lorin, with his concerns, and asked that they have
10 a conversation with him because that's what I felt
11 the level that conversation should have occurred.

12 Q Now if you file a complaint, right? And
13 you file it -- you have to file it while the court
14 house is open.

15 A Yes.

16 Q So how do you do that not during trading
17 hours?

18 A My understanding is that the -- and I
19 followed up on this because I didn't know what the
20 rules were about the filing of the case because I
21 had the same concern about did we have
22 availability to do this off hours? My
23 understanding is that we had until 4:30 during the
24 day to file that case in court. So we have a
25 window of a half an hour, if you want to play it

1 the whole night to gather other information, so
2 that's just --

3 BY MR. KOTZ:

4 Q What do you think of the idea of giving
5 the New York Stock Exchange a heads-up, so they
6 can make a decision whether to halt trading? That
7 way you could file at any time you wanted, but the
8 NYSE could halt trading if they determined that
9 was appropriate.

10 A That sounds like a rational response.
11 That if you halt trading in time, and the filing,
12 to give the information time to disseminate,
13 you're going to limit volatility.

14 BY (b)(7)(C)

15 Q And this may seem like an obvious
16 question, but it's good to ask so I'll understand,
17 is it in the Commission's interest to limit
18 volatility, or is volatility ever a concern to the
19 Commission?

20 A It's a concern to me because it makes a
21 lot more work for me. Volatility causes lots of
22 alerts on the exchanges. It causes lots of alerts
23 and red flags in my office, so it makes a -- you
24 know, intra-day reviews are a lot more difficult
25 to get your hands around than full-day reviews --

1 it's so far out of my hands at that point that I'm
2 just not even involved in the case anymore, so I
3 have little input as to timings, or questions, or
4 Commission meetings. I'm just plowing ahead in
5 new issues.

6 Q Based on your experience on how the
7 markets work, do you think it should ever be a
8 consideration as to whether to file on an option
9 expiration Friday?

10 A Yeah, I think that's -- yes, obviously I
11 do. I think that's a little narrow. I think I
12 would take it broader. And it should definitely
13 be a consideration of Enforcement to even file
14 intra-day, being the expiration or not. Personal
15 opinion, I just don't think we need to throw the
16 excess noise in the marketplace unless that's your
17 goal.

18 I mean, sometimes we want to make a case
19 and we want to make a big splash when we file it.
20 And if that's your goal, file it intra-day. I
21 mean, it depends on what your goal is, right?

22 Q That makes sense.

23 A That's way above my pay graded side.

24 BY MR. KOTZ:

25 Q Are you aware of whether the SEC has

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. OIG-534
OIG-534)

WITNESS: Number 25

PAGES: 1 through 157

PLACE: Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C.

DATE: Friday, July 30, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 9:34 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, Inspector General

5 (b)(7)(C) ESQ.

6 Office of Inspector General

7 Securities and Exchange Commission

8 100 F Street, N.E.

9 Washington, D.C. 20549

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C O N T E N T S

1			
2			
3	WITNESS		EXAMINATION
4	John J. Nester		5
5			
6	EXHIBITS:	DESCRIPTION	IDENTIFIED
7	1	November 6, 2009, E-mail Chain,	
8		(b)(7)(C) to Cohen	25
9	2	December 22, 2009, E-mail,	
10		Muoio to Nester	27
11	3	December 24, 2009, E-mail, (b)(7)(C)	30
12	4	March 4, 2010, E-mail,	
13		Nester to Lench	34
14	5	April 13, 2010, E-mail,	
15		Nester to Duberly	37
16	6	April 14, 2010, E-mail,	
17		Marlin to Nester	53
18	7	April 15, 2010, E-mail,	
19		Cohen to (b)(7)(C)	63
20	8	April 15, 2010, E-mail,	
21		Marlin to Nester	72
22	9	April 15, 2010, E-mail,	
23		Reisner to Muoio	79
24	10	April 16, 2010, E-mail,	
25		Nester to Muoio, et al.	81

1 A All things being equal, yes. But there
2 are some times where it's just not possible.

3 Q All right. But just looking at the case
4 in and of itself, why would you give that advice?

5 A There are a number of things. As I said
6 at the beginning, our job is to accurately portray
7 -- to communicate the Commission's work. It is a
8 fairly common occurrence that news of our actions
9 precedes our announcements.

10 Q Right.

11 A Those reports can be accurate. They can
12 also be inaccurate. And then people start to make
13 judgments based on inaccurate statements. And
14 then, by the time we make a formal announcement,
15 you start -- that -- you're starting off where
16 some of your efforts are directed at correcting
17 the misperceptions or the inaccuracies in the
18 marketplace before you even begin to communicate
19 what it is and the benefit of what you did.

20 Q And is it also fair to say that the
21 story is a different story or even a smaller story
22 because some of the information relating to the
23 case has already been public?

24 A Yes, in some instances; no in others.
25 And there's so many parameters to -- to these

1 judgments. If one news outlet has been the one on
2 a story, sometimes other news outlets actually
3 don't want to cover that story as much because it
4 requires them to write in "as first reported in"
5 rival publication. So sometimes the official
6 announcement, which always will have greater
7 detail than the limited amount that was available
8 in the marketplace -- so it can cut both ways.

9 Q But from your perspective as a press
10 person, you think it's best if as soon as possible
11 after the SEC approves the action that it's
12 announced by the SEC?

13 A Assuming we're prepared to announce it,
14 yes, right.

15 Q And that you would do whatever you need
16 to do to prepare so that you are ready to go as
17 soon as the Commission approves it?

18 A That's correct.

19 Q And is it also because you're concerned
20 that information will leak out prior to the
21 announcement? I mean, is that what you were
22 saying before?

23 A Right, it's a fairly common occurrence
24 that information is -- it happened yesterday. I
25 was getting -- I got myself two calls from

1 reporters asking about a case that we hadn't yet
2 announced for a couple hours. And then -- so I
3 didn't -- because I was working on other matters,
4 somebody actually apparently published a story to
5 that effect and then a couple more come in because
6 now they've seen this. That's a very common
7 occurrence.

8 And so, you know, it just makes perfect
9 sense that the authority who -- the body that has
10 the best grasp of the facts and the information
11 ought to be the first one that informs the public
12 because it's going to be accurate and complete.

13 Q All right. So all things being equal,
14 just from your perspective, you would have
15 preferred that the Goldman announcements, say,
16 occur on Thursday because that was, I guess, the
17 day after the Commission approved it?

18 A Or even the day that the Commission
19 approved it if we were -- if we were prepared to
20 do that.

21 Q So even Wednesday possibly?

22 A Possibly.

23 Q All right. And so what happened? Were
24 you prepared to do that on Wednesday or Thursday
25 in this case?

1 provision of the press relations policies,
2 wouldn't the Enforcement Division have to actually
3 reach somebody in Goldman Sachs rather than just
4 calling them a few minutes before and leaving a
5 message?

6 A Well, I'm not a lawyer and -- and so I
7 don't want to get lawyerly.

8 Q But it's your policy.

9 A Right. But it says "every effort,"
10 which --

11 Q So in your view -- I mean, this is your
12 policy. In your view, every effort was satisfied
13 by what happened here, which is making a phone
14 call minutes before the filing and leaving a
15 message?

16 A Yeah, I -- I just haven't formulated an
17 opinion. Like, I know it is shorter than -- that
18 people get, that's all I know. But I don't know
19 what other factors that they had -- that they had
20 at their disposal that they needed to consider in
21 making that determination.

22 Q Do you know if the folks in the
23 Enforcement Division are familiar with this
24 provision?

25 A About at least once a year we actually

1 do send them the press policy.

2 Q But do you know if they're familiar with
3 it even though you send it to them once a year?
4 Because we've asked a lot of people and they seem
5 to not be aware of it.

6 A I don't know, but we do make an
7 affirmative effort. There's usually some time
8 where something has gone contrary to the press
9 policy that we use as an occasion to remind people
10 of and call attention to a particular passage of
11 it.

12 Q And are you aware that after the
13 complaint was filed Goldman expressed the view
14 that they hadn't been given notice?

15 A Yes.

16 Q And is it fair to say that that might
17 have been avoided if this policy had been more
18 strictly adhered to?

19 A I think that's a fair interpretation. I
20 don't know what other factors that went into the
21 decision -- the Enforcement Division and its
22 timing of the --

23 Q So you weren't involved specifically in
24 the decision about when to make that call that
25 Friday morning?

1 Q So it is possible that Goldman Sachs
2 called and Enforcement didn't call them back?

3 A Well, that'd be speculative on my part,
4 but the information -- it's not our practice to
5 not return calls and be --

6 Q Right. But based on your knowledge of
7 the situation you don't know for sure whether that
8 happened or not?

9 A That's correct.

10 MR. KOTZ: All right, let me show you
11 the next document marked as Exhibit 17, an e-mail
12 exchange between you and Myron Marlin, 4/16/10,
13 3:55 p.m.

14 (SEC Exhibit No. 17 was marked for
15 identification.)

16 BY MR. KOTZ:

17 Q It was an e-mail initially from (b)(7)(C)
18 (b)(7)(C) to (b)(7)(C) (b)(7)(C) sends it
19 to Lorin Reisner. Lorin Reisner sends it to Rob
20 Khuzami and Stephen Cohen. Stephen Cohen sends it
21 to Friday folks and then it gets up to you.

22 A Right, right.

23 Q Do you remember anything about this
24 issue, this concern expressed by (b)(7)(C)

25 A I -- I remember that -- that somewhere

1 along the line Lorin says to -- to Steve, this is
2 something that we should discuss with the
3 Exchange. I don't know if it's on this exchange,
4 but I know that that was the last time I ever saw
5 of it.

6 Q But was it discussed with the Exchange?

7 A I don't know.

8 Q (b)(7)(C) certainly thought it wasn't
9 discussed with the Exchange.

10 A Oh, no, I'm sorry. If -- make it clear.
11 It sounds like that the New York Stock Exchange
12 wants to discuss with the SEC its policy on -- or
13 on when --

14 Q Are you aware that the New York Stock
15 Exchange was upset that the SEC didn't give them a
16 heads-up?

17 A Yeah, when I got CC'ed here. And then
18 there are successive e-mails that indicated that
19 Enforcement people were going to take that up with
20 the appropriate people to see, like, if the policy
21 going forward.

22 Q But do you know why the SEC didn't give
23 the New York Stock Exchange a heads-up in this
24 Goldman matter?

25 A Don't know, but I don't know whether

1 this? Thursday, the actual announcement?

2 Q Right.

3 A Yeah, it was the Friday before. And the
4 only reason that I really remember that with
5 specificity is because I was going to be and was
6 on vacation the week after the Goldman settlement
7 announcement. And so that was the first time that
8 I learned -- because there was -- there was a
9 court deadline while I was going to be on
10 vacation, and it was the first time that I learned
11 that there's a possibility that the court filing
12 deadline was going to become moot. And so,
13 therefore, I wasn't going to have to spend -- lose
14 vacation with my family to deal with the court
15 case.

16 Q I see. So this --

17 A So it was about the Friday before in one
18 of my conversations with Myron.

19 Q And so this court deadline was this July
20 19th deadline that's referenced in Exhibit 19?

21 A Mm-hmm.

22 Q Yes?

23 A Yes.

24 Q So what was the impact of the court
25 deadline?

1 A Well, the -- Goldman had to file a
2 response by July 19th, when -- when -- in the
3 normal course of my work, once they file it, even
4 though we won't say anything substantively, I'm
5 going to get besieged with phone calls with how do
6 we counter the assertion they made.

7 Q I see. And did you understand that the
8 settlement was going to be entered into prior to
9 the Goldman -- that they had to file?

10 A Right. On Friday, the week before, the
11 week we announced the settlement, I learned that
12 the -- that talks had progressed to the point that
13 it was very likely that an offer of settlement was
14 going to be presented to the Commission at its
15 closed Commission meeting the week of -- the week
16 we did it.

17 Q And so what do you remember at that
18 point? Do you remember -- the filing was on
19 Thursday, the deadline was the following week.
20 What do you remember about when was the Commission
21 meeting that approved the settlement?

22 A Can you ask me that one more time?

23 Q So I'm trying to see what you remember
24 about the circumstances of that week. On Friday,
25 you learned from Myron that there's a settlement

1 marketplace about these talks.

2 Q And your assumption at this point was it
3 found its way from Goldman, not the SEC?

4 A No, I -- I -- I -- I really don't do
5 that. I -- I could ascribe motives to -- like,
6 that -- that article they eventually ran wasn't
7 one-sided. It had stuff that only the negotiators
8 could know, but it -- like, you couldn't read that
9 article and say this could only come. Yeah, I
10 could make -- I could make an argument that it
11 might have come from the respondent through
12 counsel, but I -- I just wouldn't --

13 Q Now, would there be concern that Goldman
14 or their counsel would provide information to a
15 reporter and spin the settlement to their benefit?

16 A Absolutely.

17 Q And why would that be a concern?

18 A Because our -- our job is to communicate
19 it accurately and faithfully. And if the -- if
20 the perception of it is being distorted before we
21 even make an announcement, as I said before,
22 without trying to make a hand signal, we're
23 already starting off behind the curve just to get
24 the -- the -- back to neutral for people's, you
25 know, fair understanding of our action.

1 Q And certainly Goldman in this case would
2 have an incentive to spin the story the way they
3 wanted it to, right? I mean, it could affect
4 their stock price. I mean, there could be
5 numerous reasons.

6 A Every party has potential incentives to
7 have the story told in the most favorable light to
8 that party.

9 Q Right, but particularly in this case
10 given the import of this story, how much press it
11 got the first time, the effect on the stock price
12 of Goldman initially.

13 A Right.

14 Q I mean, don't you think in this case
15 Goldman would have a much greater incentive to try
16 to tell the story themselves first?

17 A It's -- it's a reasonable perception,
18 but I -- it's not one that I would spend a lot of
19 time on, and I don't. But yes, that -- that is --
20 I can -- for any party in a negotiation, I can --
21 can construct very valid scenarios why someone
22 would want to get that information in their own
23 telling.

24 Q Right. And was that a particular
25 concern in this case?

1 A No more or less in the sense of what is
2 happening. In other words, that's a frequent
3 occurrence. I think --

4 Q How about --

5 A In this -- in this case it is -- it
6 would be of higher concern.

7 Q But was it? I'm asking was it in this
8 case a concern on the part of the SEC, folks in
9 the SEC, that Goldman might get this information
10 out earlier and tell the story the way they want
11 to tell it?

12 A That would be my concern.

13 Q Was it your concern?

14 A Yes.

15 Q And was it the concern of others? I
16 mean, did people talk about this as a concern?

17 A I don't recall. You know, concurrent
18 with this when these stories are coming and I
19 remember conversations about information that's
20 finding its way into the marketplace. And you
21 don't have to spend your time figuring out where
22 it's coming from. You just know that it's -- it's
23 going into the marketplace.

24 MR. KOTZ: All right, let me show you
25 the next document. We're going to skip a couple.

1 settlement, I learned for the first time that
2 they'd just done the cloture vote to cut off
3 debate. And I didn't even know there was going to
4 be a cloture vote. So then -- then they did final
5 approval before we announced our action. So like,
6 I'm aware of those things happening, but I wasn't
7 --

8 Q All right. So you were aware before the
9 SEC announced its action that the Senate had done
10 final approval of the financial regulatory reform
11 legislation?

12 A Correct. About an hour before, I think
13 is what it was.

14 Q Was there any concern expressed by
15 anyone that the SEC after being criticized for
16 allegedly coordinating previously regarding
17 financial regulatory reform, regarding the Goldman
18 announcement of the action, now was going to be
19 issuing the settlement on the same day of this
20 momentous moment in financial regulatory reform?
21 Did it come up?

22 A No. There was one time the day before
23 where we said, like, we're going to get criticized
24 again because we always do. It happens before,
25 but we have to do what we have to do. We can't

1 let --

2 Q So what was that discussion about?

3 A Oh, just because we don't know -- I
4 don't know when it's going to happen, but I know
5 that the Senate -- there's nothing but stories
6 about vote counts all week long. I know we're in
7 that milieu.

8 Q Who did you have that discussion with?

9 A Myron and Steve.

10 Q And what was said in that discussion?

11 A Just sort of like, you know, like, I
12 understand the same thing. Like, we're going to
13 -- like, we can't not do what we have to do
14 because of something -- and particularly when we
15 can't control the events on the other side.

16 Q All right. But you said that it was 55
17 to 45 whether to announce it on Thursday or
18 Friday.

19 A Mm-hmm.

20 Q So you could have announced it on
21 Friday.

22 A Right.

23 Q It wouldn't have been a terrible thing.

24 A Right.

25 Q Was there any discussion about the fact

1 ready to go, we'll be ready to go and we still
2 have all the rest of the time for the -- for the
3 --

4 Q What time was the Commission meeting?
5 Was it in the morning?

6 A It was, I think, 2:00. There -- I know
7 at some point there was some discussion of maybe
8 moving it up earlier, but I don't think they ever
9 did. And our timelines had it, but we had -- when
10 we thought the Commission would address the matter
11 at hand, the Goldman matter, how much more of the
12 meeting would take place because -- and then time
13 for the notification of the commissioners and all
14 of the sequencing. As it -- as I recall, I got a
15 call or an e-mail from Steve Cohen around quarter
16 of 3:00 that they'd approved the Goldman action
17 and I believe I was already aware that another
18 action that was expected to be time-consuming was
19 no longer going to be considered anyway. So then
20 we sort of knew that we were going to be -- we
21 were going to be able to execute that afternoon.
22 If the meeting had gone long, we would have done
23 it the next morning.

24 Q Right. But the thinking was if at all
25 possible, based on the timing of the Commission

1 meeting, there was a strong interest in trying to
2 file it and announce it that day?

3 A Yes.

4 Q And was one of the factors in that that,
5 again, time was going on and there would be more
6 time for leaks?

7 A That's one of the considerations in the
8 timing of any high-profile action.

9 Q Right. And maybe more so in this case
10 because there had been some leaks already
11 regarding Goldman, right? I mean, it --

12 A That's a --

13 Q Not every case is going to leak like
14 this one because not every case is as important or
15 as interesting to the press.

16 A Right. Yeah, there are unique aspects
17 to this case because of the confluence of the type
18 of charge, violation, and the party, but --

19 Q And those unique aspects make it more of
20 a concern about leaks, right? Because they're
21 more likely to be a leak and the press is more
22 interested in gathering information.

23 A Yeah.

24 Q Right?

25 A The more that gets out there means the

1 more diluted the Commission's message is going to
2 be.

3 Q And this is -- so what I'm trying to
4 establish is that --

5 A But actually --

6 Q -- this was a particular concern in the
7 Goldman case because there was more interest in
8 the Goldman case.

9 A That's a reasonable viewpoint, but
10 there's also, when you think about it, there was
11 actually a little bit less or -- or somewhat less
12 in both the announcement of the original action
13 and the announcement of the settlement in some
14 cases. So even though there's greater interest
15 here, there's less maybe getting out as a
16 percentage of that interest. Like, in other
17 words, there's much interest here on this case,
18 you might even expect more pressure to get things
19 out. And like it -- it -- other than the story
20 that appeared on a Wednesday, I think it was,
21 there really wasn't much in the run-up to the
22 Commission's action. And, you know, I sometimes
23 see more than that on lesser cases.

24 Q And were you aware then that the vote on
25 the settlement then got out into the press as

1 to be a \$2 billion settlement. Then there's a
2 different -- different set of motivations that
3 could come into play of, like, minimizing
4 expectations.

5 Q Right. In any of the discussions that
6 you had with anyone about the initial filing of
7 the Goldman case was there any discussion at all
8 of financial regulatory reform?

9 A None.

10 Q In connection with the filing of the
11 settlement and the announcement of the settlement
12 was there any discussion about financial
13 regulatory reform other than the fact that it
14 might happen on the same day?

15 A Right, that was the -- the extent of my
16 conversations in that.

17 MR. KOTZ: All right. You want to take
18 a minute?

19 (b)(7)(C) Sure.

20 MR. KOTZ: Okay, so we'll take a minute
21 and see if we have anything more.

22 THE WITNESS: Okay.

23 MR. KOTZ: We're off the record.

24 (A brief recess was taken.)

25 MR. KOTZ: Back on the record.

1 BY MR. KOTZ:

2 Q You are aware that there were
3 allegations that the SEC coordinated its action
4 against Goldman Sachs with the White House, with
5 Congress, with the Democratic National Committee,
6 or similar entities, yes?

7 A Yes, I'm aware of the allegations as
8 they were made.

9 Q Right. Are you aware of any information
10 at all, whether while it was going on or what you
11 learned afterward, that would lead you to believe
12 that there was any such either sharing of
13 information or coordinating by the SEC as related
14 to Goldman Sachs with the White House, Congress,
15 or any Democratic committee?

16 A Not aware of any and no reason to
17 believe that such took place.

18 MR. KOTZ: All right. With that, we're
19 off the record. There's just one other thing. I
20 would ask --

21 (Whereupon, at 12:08 p.m., the examination was
22 concluded.)

23 * * * * *

24

25

15

ORIGINAL

Page 1

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. OIG-534
OIG-534)

WITNESS: Number 26

PAGES: 1 through 35

PLACE: Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C.

DATE: Friday, July 30, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 1:31 p.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, Inspector General

5 (b)(7)(C) ESQ.

6 Office of Inspector General

7 Securities and Exchange Commission

8 100 F Street, N.E.

9 Washington, D.C. 20549

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C O N T E N T S

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

WITNESS

EXAMINATION

(b)(7)(C)

4

EXHIBITS:

DESCRIPTION

IDENTIFIED

1

November 4, 2009, E-mail,

(b)(7)(C)

to Cohen

13

2

November 6, 2009, E-mail,

(b)(7)(C)

to Cohen

15

3

April 20, 2010, E-mail,

Dorner to (b)(7)(C)

21

4

Document from Office of Public Affairs

23

5

April 16, 2010, E-mail,

(b)(7)(C)

to Reisner

25

6

July 15, 2010, E-mail,

(b)(7)(C)

to

(b)(7)(C)

29

1 the discussions about when it would be filed, or
2 preparing press release. There was an issue of
3 Rob being -- Rob Khuzami -- being in New Orleans.
4 You weren't involved in those discussions?

5 A No, not in any serious way. I think I
6 do remember being advised that he was down in New
7 Orleans and --

8 Q Do you remember anybody expressing any
9 concern that information was getting out to the
10 press about the Goldman case before the SEC had a
11 chance to announce it?

12 A I don't recall anything specific. I
13 mean, that sort of concern is always in the back
14 of people's minds, but --

15 Q Is it generally the case that the Office
16 of Public Affairs prefers that the first word
17 about a new filing of an enforcement action by the
18 SEC, come from the SEC itself, to the press?

19 A Oh, yeah. That's our model. That's
20 what we strive for.

21 Q And what's the reason for that?

22 A Primarily so that we kind of shape the
23 way that the action is covered.

24 Q And when the SEC has a significant
25 enforcement case, like the Goldman case, it's

1 helpful for the SEC to get positive press coverage
2 out of it, right?

3 A Well, and also we consider ourselves to
4 be the best source of information about the action
5 we're filing.

6 Q Right.

7 A There's usually -- there's sometimes
8 rumors out in the market place and sometimes
9 they're wildly off the target.

10 Q But isn't it also the case that the Sec
11 wants to get credit in the press -- favorable
12 press -- for an action that they bring, right? I
13 mean, doesn't that serve as the deterrent
14 affector? There are other reasons why it's good
15 for the SEC to have favorable coverage?

16 A Favorable and, at a minimum, accurate.
17 I mean, that's the principle.

18 Q Now, throughout this process we have
19 learned that there was some kind of internal
20 discussions in the office -- or in the SEC, I
21 guess -- about whether to file enforcement actions
22 on Friday, with two schools of thought, I guess.

23 Some saying, you never file a case that
24 you want to get a lot of press attention on Friday
25 because, you know, the Saturday newspaper isn't

1 BY MR. KOTZ:

2 Q And this relates to a telephone call
3 that you had with (b)(7)(C) the head of the New
4 York Stock Exchange Regulation, in April.

5 A Correct.

6 Q Do you remember that conversation?

7 A I'll have to review the e-mail.

8 Q Please. I can also tell you that we did
9 speak with (b)(7)(C) so I can tell you what he
10 recalls, as well.

11 A Ah, yes. Okay, I remember the issue
12 now.

13 Q Okay, great. What do you remember?

14 A Well, I took a call from (b)(7)(C) who
15 had been trying to get in touch with (b)(7)(C)
16 He was expressing concern that the first thing
17 that the New York Stock Exchange knew about the
18 Goldman action was what they got over the TV. And
19 the action against Goldman was market moving and
20 he was wondering if he could set up a conversation
21 with (b)(7)(C) about how to proceed in the
22 future in situations like that, involving
23 companies that are listed on the Exchange that
24 might -- whose securities might be affected by SEC
25 action.

1 Q So, with respect to this allegation that
2 the SEC coordinated its action against Goldman
3 Sachs with either the White House, Congress, or
4 some Democratic committee, do you have any reason
5 to believe or any information that would suggest
6 that that's the truth?

7 A No.

8 Q Are you aware of whether the SEC shared
9 any information about its goal in investigation
10 with any member of Congress, the White House, or
11 any Democratic committee?

12 A I'm not aware of any information that
13 would support that.

14 Q And are you aware of anyone within the
15 SEC providing non-public information about either
16 the Goldman investigation or the Goldman
17 settlement to any members of the press prior to
18 the action being public?

19 A No.

20 Q All right. I don't have any more
21 questions. I will say, first, before we go off
22 the record. First, thank you for your time.
23 Second of all, I would ask that you do one thing
24 for us and this is an important matter. In order
25 to preserve the integrity of our investigation, I

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)

 COPY

) File No. OIG-534

OIG-534)

WITNESS: Number 29

PAGES: 1 through 79

PLACE: Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C.

DATE: Tuesday, August 3, 2010

The above-entitled matter came on for hearing, pursuant to notice, at 1:33 p.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, Inspector General

5 (b)(7)(C) ESQ.

6 Office of Inspector General

7 Securities and Exchange Commission

8 100 F Street, N.E.

9 Washington, D.C. 20549

10

11 On behalf of the Witness:

12 (b)(7)(C)

13

14 Robbins Russell Englert Orseck Untereiner & Sauber, LLP

15 1801 K Street, N.W., Suite 411L

16 Washington, D.C. 20006

17 (202) 775-4506

18

19

20

21

22

23

24

25

C O N T E N T S

1			
2			
3	WITNESS		EXAMINATION
4	Eric Spitler		5
5			
6	EXHIBITS:	DESCRIPTION	IDENTIFIED
7	1	Agreements	12
8	2	January 4, 2010, E-mail,	
9		Spitler and Khuzami	12
10	3	January 15, 2010, E-mail,	
11		Henseler, Davis, Cohen and Nisanci	16
12	4	February 25, 2010, E-mail,	
13		Henseler and Spitler	17
14	5	April 11, 2010, E-mail,	
15		Henseler and Spitler	28
16	6	April 14, 2010, E-mail,	
17		Henseler and Spitler	31
18	7	April 14, 2010, E-mail,	
19		Muoio and Lench	33
20	8	April 14, 2010, E-mail,	
21		Marlin to Spitler, Cohen and Nisanci	43
22	9	April 15, 2010, E-mail, Muoio	47
23	10	April 16, 2010, E-mail,	
24		Marlin to Schapiro	48
25			

1 were I thought positive.

2 Q What was your sense of the Chairman's
3 view?

4 A Similar.

5 Q In any conversations that you had or to
6 your knowledge your staff had with either members
7 of Congress or staff of members of Congress
8 regarding reg reform, was there any discussion
9 about the filing of the Goldman case prior to the
10 case being filed?

11 A No.

12 Q Was there any discussion that it would
13 be helpful for the SEC to bring a high-profile
14 case as a way to enhance its reputation?

15 A No. I don't recall anything like that.

16 Q Did you have any contact with the White
17 House or any members or staff of the White House
18 regarding financial regulatory reform?

19 A Very limited on discrete legislative
20 issues. A handful of legislative issues. Very
21 rare.

22 Q What were those contacts?

23 A I can't recall. They would have just

24 been with (b)(7)(C) who is (b)(7)(C)

25 (b)(7)(C) and it

1 timing of that action was related to or to advance
2 financial regulatory reform?

3 A No.

4 Q Are you aware of any information
5 indicating that the SEC's action against Goldman
6 Sachs or the timing of the action was related to
7 or to advance financial regulatory reform?

8 A No.

9 Q Are you aware of any information
10 indicating that the SEC coordinated its against
11 Goldman Sachs with the Executive Office of the
12 President, the White House or any of its
13 employees?

14 A No.

15 Q Are you aware of any information
16 indicating that anyone at the SEC shared any
17 information concerning its Goldman Sachs
18 investigation with the Executive Office of the
19 President, the White House or any of its employees
20 prior to the complaint being filed?

21 A No.

22 Q Do you know if the White House was
23 notified after the complaint was filed?

24 A I don't know.

25 Q Are you aware of any information

1 indicating that the SEC coordinated its action
2 against Goldman Sachs with any members of Congress
3 or any congressional employees?

4 A No.

5 Q Are you aware of any information
6 indicating that anyone at the SEC shared any
7 information concerning its Goldman Sachs
8 investigation with any members of Congress or
9 congressional employees prior to the complaint
10 being filed?

11 A No.

12 Q Are you aware of any information
13 indicating that the SEC coordinated its action
14 against Goldman Sachs with the Democratic National
15 Committee, the Democratic Senate Campaign
16 Committee, the Democratic Congressional Campaign
17 Committee or any of their employees?

18 A No.

19 Q Did you have any conversations with the
20 Democratic National Committee, the Democratic
21 Senate Campaign Committee, the Democratic
22 Congressional Campaign Committee or any of their
23 employees about reg reform?

24 A I will say no, but the only thing I
25 don't know is I have no idea whether or not any of

1 the Hill staff I was dealing with were employees
2 of any of those entities. I dealt with them only
3 as congressional staff and I did not coordinate or
4 discuss anything about the case before it was
5 filed with anybody outside the building.

6 Q Case meaning the Goldman case?

7 A Yes.

8 Q Are you aware of any information
9 indicating that anyone at the SEC shared any
10 information concerning its Goldman Sachs
11 investigation with the Democratic National
12 Committee, the Democratic Senate Campaign
13 Committee, the Democratic Congressional Campaign
14 Committee or any of their employees prior to the
15 complaint being filed?

16 A No.

17 MR. KOTZ: Let me show you the next
18 document. We're going to mark it as Exhibit 13
19 which is an e-mail from you to Didem Nisanci,
20 Steve Cohen and (b)(7)(C) 4-19-2010 at 10:15
21 p.m.

22 (Exhibit No. 13 was marked for
23 identification.)

24 BY MR. KOTZ:

25 Q If you'll to page 3, there's an e-mail

1 Q And you weren't aware of that issue when
2 the SEC announced its settlement?

3 A I was aware that they were timing the
4 settlement after the market closed -- the
5 announcement of the settlement after the market
6 closed which did not make sense to me because the
7 press advisory I believe went out before the
8 market closed.

9 Q Do you know why it was timed after the
10 market closed?

11 A No.

12 BY (b)(7)(C)

13 Q Just to make sure I understand. When
14 you say the announcement, what you are referring
15 to versus the press release?

16 A The -- yeah, I mean the -- the release
17 of the press release. That's what I'm referring
18 to as the --

19 MR. SAUBER: What is a press advisory?

20 THE WITNESS: The press advisory was --
21 is just a notice to reporters that the Press
22 Office sends out that says there will be some news
23 announced at 4:15. It doesn't say what the news
24 is. And in light of the -- in light of the -- the
25 previous press reports you'd -- you'd mentioned,

1 as soon as the press advisory went out, the
2 conclusion that everybody on TV jumped to was that
3 it would be a Goldman announcement.

4 BY MR. KOTZ:

5 Q But the actual press release announcing
6 the Goldman settlement was done after trading
7 hours?

8 A Yes. That's my understanding.

9 Q Do you know how long of a gap there was
10 between the two?

11 A No.

12 BY (b)(7)(C)

13 Q Do you know who decided to announce it
14 after market hours?

15 A I don't know for sure. I assume it was
16 the Press Office.

17 MR. KOTZ: Why don't we take a few
18 minutes? Let's go off the record and we'll see if
19 we have anything else.

20 (A brief recess was taken.)

21 BY MR. KOTZ:

22 Q I don't think we have anything else. Is
23 there anything else you would like to add or
24 anything else you think is relevant about these
25 issues that we didn't ask?

1 the case?

2 A I don't think it did. I mean, I think
3 the momentum would have come about with or without
4 the action. I mean, PSI was going to do their
5 hearing anyhow. Members were still going -- the
6 Democrats were following a strategy of forcing the
7 Republicans to vote on cloture every date and then
8 telling them that it was protecting Wall Street.
9 I don't think you can separate those kinds of
10 things out.

11 Q Were you surprised at the amount of
12 press coverage that the SEC got for the Goldman
13 case?

14 A I was.

15 Q We don't have any further questions.
16 The one thing I would ask, and this is
17 significant, in order to preserve the integrity of
18 our investigation, that you not discuss the
19 content of your testimony with anyone. Obviously
20 you can discuss it with counsel, but with anyone
21 at the Commission.

22 A Okay. Okay. Sure.

23 MR. KOTZ: We're off the record.

24 (Whereupon, at 3:13 p.m., the examination was
25 concluded.)

17

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

ORIGINAL

In the Matter of:)
) File No. OIG-534
OIG-534)

WITNESS: Number 30

PAGES: 1 through 50

PLACE: Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C.

DATE: Tuesday, August 3, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 3:32 p.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, Inspector General

5

(b)(7)(C)

ESQ.

6

Office of Inspector General

7

Securities and Exchange Commission

8

100 F Street, N.E.

9

Washington, D.C. 20549

10

11 On behalf of the Witness:

12

(b)(7)(C)

13

Robbins Russell Englert Orseck Untereiner & Sauber, LLP

14

1801 K Street, N.W., Suite 411L

15

Washington, D.C. 20006

16

(202) 775-4506

17

18

19

20

21

22

23

24

25

C O N T E N T S

1			
2			
3	WITNESS		EXAMINATION
4	Ricardo R. Delfin		5
5			
6	EXHIBITS:	DESCRIPTION	IDENTIFIED
7	1	Confidentiality and Non-Disclosure	
8		Statement	6
9	2	December 8, 2009, E-mail,	
10		Muoio and (b)(7)(C)	14
11	3	January 27, 2010, E-mail,	
12		(b)(7)(C) and Muoio	16
13	4	April 11, 2010, E-mail,	
14		Henseler to Spitler and Delfin	16
15	5	March 5, 2010, E-mail,	
16		Delfin, Davis, Cohen, and Spitler	20
17	6	April 14, 2010, E-mail,	
18		Mouio, Lench, and (b)(7)(C)	24
19	7	April 19, 2010, E-mail,	
20		Spitler to Nisanci, Cohen, and Delfin	29
21	8	April 16, 2010, E-mail,	
22		Marlin and Nestor	33
23	9	April 16, 2010, E-mail,	
24		Cohen to Delfin, Becker and Nisanc	44
25			

1 Q In all your conversations that you had
2 with folks on Capitol Hill, whether they were
3 members of Congress or staff of members of
4 Congress, regarding Financial Regulatory Reform,
5 was the Goldman investigation ever raised prior to
6 the filing of the complaint?

7 A Oh, no.

8 Q At any point in time in any of those
9 conversations with either staffers or members of
10 Congress, anyone say it would be really helpful if
11 the SEC brought a big case?

12 A No.

13 Q Have you ever had any contact with the
14 White House regarding Financial Regulatory Reform?

15 A No.

16 Q Are you aware of anyone in the SEC who
17 has?

18 A No.

19 Q Was the self-funding aspect -- potential
20 aspect of the legislation something that the
21 chairman was very much in favor of?

22 A Yes.

23 Q Did anybody ever indicate that perhaps
24 the filing of the Goldman case helped in the SEC's
25 efforts to try to get self-funding?

1 A No.

2 Q Was there any point in time in the
3 discussions you had with folks on Capitol Hill
4 where it was mentioned that the SEC had some
5 negative effects to its reputation because of the
6 Madoff case or other matters and that that had
7 some impact on whether the reform legislation
8 would go through in a favorable way to the SEC?

9 A Could you -- I'm sorry. So I'm just
10 trying to under --

11 Q Did anybody on Capitol Hill, either
12 staffers or members of Congress, ever indicate
13 that the fact that the SEC's reputation had taken
14 a hit because of Madoff or whatever other matter,
15 that that had some impact on --

16 A No. I don't remember anyone ever saying
17 that.

18 Q Do you have any reason to believe that
19 the SEC's action against Goldman Sachs or the
20 timing of that action was related to or to advance
21 Financial Regulatory Reform legislation?

22 A Absolutely not.

23 Q Are you aware of any information
24 indicating that the SEC's action against Goldman
25 Sachs or the timing of that action was related to

1 or specifically to advance Financial Regulatory
2 Reform legislation?

3 A No. Isn't that the same question?

4 Q Well, one -- no, they're slightly
5 different. One is whether information was
6 relayed. One is just general.

7 A I see. No.

8 Q Okay.

9 A I'm aware of no information of any
10 connection whatsoever.

11 Q All right. Now I'm going to go through
12 a series of questions --

13 A Fire away.

14 Q Are you aware of any information
15 indicating --

16 MR. SAUDER: Let him finish the whole
17 question before you --

18 THE WITNESS: Okay. Sorry.

19 BY MR. KOTZ:

20 Q Are you aware of any information
21 indicating the SEC coordinated this action against
22 Goldman Sachs with the Executive Office of the
23 President, the White House, or any of its
24 employees?

25 A No.

1 Q Are you aware of any information
2 indicating that anyone at the SEC shared any
3 information concerning this Goldman Sachs
4 investigation with the Executive Office of the
5 President, the White House, or any of its
6 employees prior to the complaint being filed?

7 A No.

8 Q Are you aware of any information
9 indicating that the SEC coordinated its action
10 against Goldman Sachs with any members of Congress
11 or any Congressional Committee?

12 A No.

13 Q Are you aware of any information
14 indicating that anyone at the SEC shared any
15 information concerning its Goldman Sachs
16 investigation with any members of Congress or
17 congressional employees prior to the complaint
18 being filed?

19 A No.

20 Q Are you aware of any information
21 indicating the SEC coordinated its action against
22 Goldman Sachs with the Democratic National
23 Committee, the Democratic Senate Campaign
24 Committee, the Democratic Congressional Campaign
25 Committee, or any of their employees?

1 A No.

2 Q Are you aware of any information
3 indicating that anyone at the SEC shared any
4 information concerning its Goldman Sachs
5 investigation with the Democratic National
6 Committee, the Democratic Senate Campaign
7 Committee, the Democratic Congressional Campaign
8 Committee, or any of their employees prior to the
9 complaint being filed?

10 A No.

11 Q Did you have any communications with the
12 Democratic National Committee, Democratic Senate
13 Campaign Committee, or Democratic Congressional
14 Campaign Committee about the National Regulatory
15 Reform?

16 A No.

17 Q Do you know of anyone else who did?

18 A No.

19 Q Are you aware of any information
20 indicating that anyone at the SEC shared any
21 information concerning its Goldman Sachs
22 investigation with the U.S. Department of
23 Treasury, the Federal Reserve, or any of their
24 employees prior to the complaint being filed?

25 A No.

1 Q You are aware that certain nonpublic
2 information about the votes, the Commission
3 decisions on Goldman Sachs both with respect to
4 the initial action and the settlement were leaked
5 to the press?

6 A Yes.

7 Q Do you know who leaked that?

8 A I do not.

9 Q Do you know if any efforts were made to
10 try to figure out who might have leaked that?

11 A I don't know.

12 Q Are you aware of anyone who leaked any
13 nonpublic information about Goldman Sachs' --

14 A No.

15 Q -- investigation to the press?

16 A No.

17 Q Are you aware of whether the SEC
18 informed Goldman Sachs that the Commission had
19 approved the staff's recommendation to file an
20 action against them before they actually filed?

21 A No.

22 Q Are you aware that there were reports
23 that Goldman was complaining they didn't receive a
24 heads up?

25 A Yes.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. OIG-534
OIG-534)

A rectangular stamp with the word "COPY" in bold, uppercase letters. To the left of the word is a small square icon containing the letter "C".

WITNESS: Number 31
PAGES: 1 through 40
PLACE: Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C.
DATE: Wednesday, August 4, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 1:05 p.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, Inspector General

5 (b)(7)(C) ESQ.

6 Office of Inspector General

7 Securities and Exchange Commission

8 100 F Street, N.E.

9 Washington, D.C. 20549

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C O N T E N T S

1			
2			
3	WITNESS		EXAMINATION
4	Kayla L. Gillan		4
5			
6	EXHIBITS:	DESCRIPTION	IDENTIFIED
7	1	Notice of Rights	6
8	2	January 24, 2010, E-mail,	
9		Cohen to Gillan	11
10	3	April 14, 2010, E-mail,	
11		Muoio and Lench	13
12	4	April 14, 2010, E-mail,	
13		Muoio and (b)(7)(C)	13
14	5	April 14, 2010, E-mail, from Muoio	14
15	6	April 16, 2010, E-mail, from Marlin	15
16	7	April 7, 2010, E-mail Chain	18
17	8	April 16, 2010, E-mail,	
18		Gillan and Cohen	24
19	9	April 20, 2010, E-mail,	
20		Marlin to Spitler	26

21

22

23

24

25

1 Q And what, if any, involvement do you
2 have with actions brought by the Enforcement
3 Division?

4 A Occasional.

5 Q When would that be?

6 A I think I've been involved in two closed
7 sessions on enforcement matters. One of them was
8 the first month I came to work here. I have no
9 recollection at all what the subject was, I just
10 went because I had never been to one and decided I
11 was unlikely to come to very many of them. I was
12 at one executive session on a BOA matter because
13 it involved some corporate governance related
14 provisions as far as a settlement, and I had
15 consulted with the court then about those.

16 Q Okay. That's Bank of America?

17 A Yes, Bank of America.

18 Q Are you briefed regularly on enforcement
19 investigations that are ongoing?

20 A No, I receive the priority report, I
21 rarely read it.

22 Q All right. Did there come a time when
23 you became aware of the existence of an
24 investigation by the SEC into the sale of
25 collateralized data obligations by Goldman Sachs

1 known as the Abacus investigation?

2 A I became aware of an investigation
3 concerning Goldman.

4 Q You didn't necessarily know it as
5 Abacus?

6 A No, not until after it became impressed.

7 Q When did you first become aware of an
8 investigation involving Goldman?

9 A Within a few days of the data that they
10 brought it to the Commission for approval to bring
11 the action.

12 Q In April?

13 A Yeah, it would have been April.

14 Q So prior to that, you didn't know that
15 it was kind of coming down the line?

16 A I mean somebody might have mentioned it,
17 but I have no recollection and wasn't involved in
18 any discussions.

19 Q Okay. Let me show you some documents so
20 you have everything in front of you. Were you
21 aware that the Goldman Sachs investigation known
22 as Abacus was put on the calendar in December,
23 taken off, and then put on the calendar again in
24 January and taken off?

25 A I found that out in April. I believe

1 that was -- knew that that was happening.

2 Q After the case was filed?

3 A Around that same week, just before the
4 closed session in April.

5 Q All right. So I -- have to put this
6 into evidence, but this is a document (b)(7)(C)
7 sends out to Commission counsels providing
8 information about enforcement cases.

9 A Yeah; I get those, I pretty much always
10 delete them, I don't read them.

11 Q All right. Let me show you another
12 document, we're going to mark this as Exhibit 2.
13 This is an e-mail from Stephen Cohen to you and
14 two others, Sunday, January 24, 2010, 9:56 a.m.
15 So do you remember receiving this?

16 A No.

17 (Exhibit No. 2 was marked for
18 identification.)

19 BY MR. KOTZ:

20 Q Okay, it was on a Sunday.

21 A Yeah, I -- I'm sure I did on -- I don't
22 -- I -- I'm quite sure I didn't read any
23 attachment, and I'm quite sure I either just filed
24 it in my enforcement e-mails or deleted it.

25 Q And it says you asked to be kept

1 of it was set by Senator Schumer.

2 Q Okay.

3 A And my involvement in that was, I know
4 some of the former chairmen who he wanted to be at
5 that -- was it the same press conference where the
6 former chairman came?

7 (b)(7)(C) I'm not sure.

8 THE WITNESS: I think it was. I helped
9 him get the former chairmen together and got his
10 office in contact with some of them, so that was
11 my involvement with that. And I -- I don't
12 believe, like I said, we have a role in the timing
13 of it, I think we were just following Senator
14 Schumer's lead. The IG report was what I was
15 focused on, and I was working with your office, as
16 well as General Counsel, in -- in helping it get
17 through the Commission release process. And I was
18 motivated, and my incentive was to try to get it
19 out as soon as possible, but not on a Friday
20 afternoon.

21 Q How come?

22 A Because you and I had a conversation
23 about the fact that it's perceived very negatively
24 in the public, that if we release things on Friday
25 afternoons, that we're trying to hide them, and so

1 I was trying to push it to try to get as early in
2 the -- as early as possible that week. And as I
3 recall, I don't remember when Mary, who was the
4 last person to sign off on the release, if it was
5 Thursday or Friday morning, but there were some
6 last minute slight changes that I think a couple
7 of Commissioners had wanted, so we didn't get it
8 as early in the week as I had hoped.

9 Q All right. Let me move to this
10 document, we're going to mark as Exhibit 7,
11 because this relates to what you just said. This
12 is an e-mail exchange between you and (b)(7)(C)
13 (b)(7)(C) Richard Humes, Mark Cahn, Barry Walters,
14 dated 4-17, 2010, 9:50 a.m.

15 (Exhibit No. 7 was marked for
16 identification.)

17 BY MR. KOTZ:

18 Q And so you're asking about the review
19 progressing, and then you say, just to be more
20 clear about Mary's goal, it would be most ideal if
21 we could release this report no later than next
22 Wednesday, April 14th. You're referring to the
23 Stanford report there, right?

24 A Yes.

25 Q Okay. And then he says it would be

1 know much about it, so --

2 Q So in the course of conversations you've
3 had -- let me back up. Have you had conversations
4 with either members of Congress or staff of
5 members of Congress about financial regulatory
6 reform?

7 A I spoke to I believe Senator Dodd's
8 office about self-funding, I believe those are the
9 only -- is the only office I spoke to about -- I
10 might have spoken to one or two other offices
11 about the proxy access provision.

12 Q So the conversations you had with staff
13 or members of Congress, did the Goldman
14 investigation that the SEC conducted ever come up?

15 A No.

16 Q At any point --

17 A Not in any conversation I was involved
18 in.

19 Q Did at any point anyone say perhaps from
20 Congress, it would be good if the SEC would bring
21 a big case, that would help us in terms of
22 financial regulatory reform?

23 A Not that I've ever heard.

24 Q Have you had any contact with the White
25 House in connection with financial regulatory

1 mentioned the financial regulatory reform
2 legislation in connection with the Goldman Sachs
3 investigation or in connection with the filing of
4 an action against Goldman Sachs?

5 A Only in the context of the Isa letter
6 and -- and the accusations both in the press and
7 by certain members of Congress.

8 Q But no one ever mentioned the
9 legislation in connection with the Goldman Sachs
10 investigation or the filing of an action against
11 Goldman Sachs prior to the action being filed?

12 A No.

13 Q Okay. Do you have any reason to believe
14 that the SEC's action against Goldman Sachs or the
15 timing of that action was in any way related to or
16 particularly to advance financial regulatory
17 reform?

18 A No.

19 Q Are you aware of any information
20 indicating that the SEC's action against Goldman
21 Sachs or the timing of that action was to advance
22 financial regulatory reform?

23 A No.

24 Q Are you aware of any information
25 indicating that the SEC coordinated its action

1 against Goldman Sachs with the Executive Office of
2 the President, the White House or any of its
3 employees?

4 A No.

5 Q Are you aware of any information
6 indicating that anyone at the SEC shared any
7 information concerning its Goldman Sachs
8 investigation with the Executive Office of the
9 President, the White House or any of its employees
10 prior to the complaint being filed?

11 A No.

12 Q Are you aware of any information
13 indicating that the SEC coordinated its action
14 against Goldman Sachs with any members of Congress
15 or any congressional employees?

16 A No.

17 Q Are you aware of any information
18 indicating that anyone at the SEC shared any
19 information concerning its Goldman Sachs
20 investigation with any members of Congress or
21 congressional employees prior to the complaint
22 being filed?

23 A No.

24 Q Are you aware of any information
25 indicating that the SEC coordinated its action

1 against Goldman Sachs with the Democratic National
2 Committee, the Democratic Senate Campaign
3 Committee, the Democratic Congressional Campaign
4 Committee or any of their employees?

5 A No.

6 Q Are you aware of any information
7 indicating that anyone at the SEC shared any
8 information concerning its Goldman Sachs
9 investigation with the Democratic National
10 Committee, the Democratic Senate Campaign
11 Committee, the Democratic Congressional Campaign
12 Committee or any of their employees prior to the
13 complaint being filed?

14 A No.

15 Q And just to be clear, since you're named
16 in this letter, have you had any communication
17 with the Executive Office of the President, the
18 White House, the Democratic National Committee
19 Organizing for America, the Democratic Senate
20 Campaign Committee, the Democratic Congressional
21 Campaign Committee or any member of the House or
22 Senate or any employee of the House or Senate with
23 respect to the action that the SEC brought against
24 Goldman?

25 A No.

1 fifth hand, was that it had to do with the timing
2 of when the Goldman board was meeting.

3 Q You were aware during that time period
4 that the SEC had been -- there was an allegation
5 from Congressman Isa that the SEC had
6 inappropriately coordinated with various officials
7 to assist and help financial regulatory reform,
8 you were aware of that allegation generally from
9 this letter, right?

10 A Yes.

11 Q And so was there any consideration given
12 during the week that the SEC was about to announce
13 the settlement of Goldman to perhaps not have that
14 be announced the same day that the financial
15 regulatory reform was finalized by the Senate?

16 A I remember some people speculating that
17 the timing of the release would be criticized
18 similarly to the timing of the -- of the case
19 initiation. And I remember Mary making the
20 statement, we don't time our cases or our
21 settlements for anything external to, you know,
22 our cases, and so she said we can't change.

23 Q So if you had changed it because you
24 were concerned about a perception based on the
25 finalizing of the financial regulatory reform

1 through Congress, then potentially you would have
2 actually changed the date, which is exactly what
3 you were potentially going to be accused of doing?

4 A Yeah, the discussion was if we want to
5 be able to say with honesty and sincerity that we
6 don't time our cases or our settlements for
7 external factors, then we have to be consistent
8 with that throughout.

9 Q And so you're not aware of any other
10 matters that effected the timing of the SEC
11 settlement with Goldman?

12 A I -- I heard that in addition to the --
13 and again, fourth and fifth hand, in addition to
14 the timing of the board meeting, that Goldman was
15 anxious to have a settlement that was before some
16 quarterly earnings call, but I don't -- again,
17 that was just what somebody had mentioned, and I
18 don't know the dates of those things.

19 Q Were you aware during that week that on
20 Thursday was going to be the day that the Senate
21 was going to vote on financial regulatory reform?

22 A No; I think I probably became aware
23 somewhere maybe late Tuesday or Wednesday.

24 Q All right.

25 Why don't you give us a minute, we'll go off the

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. OIG-534
OIG-534)

SC COPY

WITNESS: Number 32

PAGES: 1 through 63

PLACE: Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C.

DATE: Wednesday, August 4, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 2:30 p.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, Inspector General

5 (b)(7)(C) ESQ.

6 Office of Inspector General

7 Securities and Exchange Commission

8 100 F Street, N.E.

9 Washington, D.C. 20549

10

11 On behalf of the Witness:

12 (b)(7)(C)

13 Robbins Russell Englert Orseck Untereiner & Sauber, LLP

14 1801 K Street, N.W., Suite 411L

15 Washington, D.C. 20006

16 (202) 775-4506

17

18

19

20

21

22

23

24

25

C O N T E N T S

1			
2			
3	WITNESS		EXAMINATION
4	Didem Nisanci		5
5			
6	EXHIBITS:	DESCRIPTION	IDENTIFIED
7	1	Notice of Rights	7
8	2	Confidentiality and Non-Disclosure	
9		Agreement	8
10	3	E-mail Exchange	13
11	4	January 12, 2010, E-mail,	
12		Nisanci and Schapiro	15
13	5	January 25, 2010, E-mail,	
14		Cohen to Nisanci, Gillan and Marlin	16
15	6	January 27, 2010, E-mail,	
16		(b)(7)(C) to Muoio	18
17	7	February 22, 2010, E-mail,	
18		(b)(7)(C) to Schapiro	20
19	8	March 8, 2010, E-mail,	
20		(b)(7)(C) to Khuzami	22
21	9	April 11, 2010, E-mail,	
22		Henseler to Spitler	28
23	10	March 21, 2010, E-mail,	
24		Nisanci and Marlin	33
25			

1 Q Okay. And that's because there's a
2 separate office of Legislative Affairs at the SEC?

3 A There is.

4 Q Who do you report to?

5 A The chairman.

6 Q All right. Did there come a time where
7 you became aware of the existence of an
8 investigation by the SEC into the sale of
9 collateralized debt obligations by Goldman Sachs
10 which was known as the Abacus investigation?

11 A Yes.

12 Q When was that, when did you think you
13 first heard about this investigation?

14 A I guess towards the end of last year.

15 Q Okay. What was the context in which you
16 first heard about it?

17 A The context of when I first heard about
18 it, it had to be probably in a conversation in
19 which one of my colleagues brought it up who's
20 responsible for the enforcement portfolio.

21 Q Okay. Did you understand this
22 investigation to be a priority investigation for
23 the SEC?

24 A It was one of the many investigations it
25 was doing.

1 December 17th closed meeting agenda by the staff.
 2 Would you have gotten this e-mail? There's a
 3 whole list of people, but I don't see your name on
 4 it.

5 A I get a lot of e-mails from all sorts of
 6 people --

7 Q Okay.

8 A -- because I'm the Chief of Staff. It's
 9 possible I got this e-mail, but I don't recall
 10 getting it, but it's possible.

11 Q And would you have paid particular
 12 attention to an e-mail like this relating to a
 13 case that was put on or taken off the calendar?

14 A Yes, I -- I think if I had gotten it, I
 15 would have noticed it, but again, I get so many
 16 e-mails every day, but I don't recall this one.

17 Q Okay. Do you know why in December of
 18 2009, which was the first time that the matter was
 19 put on the calendar and then taken off?

20 A I don't; I mean those are pretty much --
 21 they're -- they're directly decided from the
 22 Enforcement Division when matters come for
 23 consideration and I don't really get the
 24 information of why they're withdrawn necessarily
 25 or put on the calendar, those decisions are done

1 by the Enforcement Division.

2 Q And you don't remember specifically
3 inquiring about this?

4 A I don't.

5 Q All right. Let me show you the next
6 document, we're going to mark it as Exhibit 4.
7 It's an e-mail between you and Mary Schapiro, 1-12,
8 2010, 9:22 p.m. It looks like you're sending an
9 article that was dated December 24, 2009.

10 A Uh-huh.

11 Q To the chairman with a copy.

12 (Exhibit No. 4 was marked for
13 identification.)

14 BY MR. KOTZ:

15 Q Do you remember seeing this article?

16 A Yes.

17 Q Do you remember why you sent it to the
18 chairman or what was significant about it, if
19 anything?

20 (b)(7)(C) Do you want to take a
21 minute to look at it?

22 THE WITNESS: Yeah, I do actually. I
23 mean I guess it could be one of many reasons, one,
24 when I get interest, you know, when I read
25 interesting articles, I pass them on to the

1 A Steve Cohen.

2 Q But probably not from Rob Khuzami or
3 Lorin Reisner?

4 A It's possible from -- directly from
5 them, too, or someone else in Enforcement, through
6 Steve Cohen, or Myron Marlin.

7 Q Okay. Did you participate in any
8 decisions during that week on when to file?

9 A I did not.

10 Q Okay.

11 A I did not.

12 Q Okay. Now, were you aware that there
13 was another case, a Quadrangle case with the New
14 York AG's office?

15 A I was.

16 Q And did you learn that there were any
17 considerations given on when to file Quadrangle
18 and when to file Goldman?

19 A The one thing I remember from the
20 Quadrangle case is that it was -- it was linked up
21 with the New York AG's actions on Quadrangle, as
22 well. So I believe our announcement was tied to
23 also the action that the New York AG was also
24 bringing on Quadrangle.

25 Q Okay. Do you remember any discussions

1 Q Yes.

2 A Yes.

3 Q What about any conversation you had at
4 the White House about financial regulatory reform?

5 A At the White House, there's -- there was
6 -- there's not much communication from my hand
7 with the White House on regulatory reform.

8 Q At any conversation you had with anyone
9 at the White House, do you ever remember the
10 subject of the Goldman investigation by the SEC
11 coming up?

12 A No, no such conversations took place.
13 Just going back to clarify on the self-funding
14 conversation, it was more of a -- I believe I left
15 a voice mail, may or may not have spoken to
16 individuals at the NAC to give them a heads up
17 that the chairman did send a letter to Congress on
18 self-funding for the agency.

19 Q All right. In any communications you
20 had with congressional officials, members of
21 Congress or staff of members of Congress did the
22 subject of the SEC's investigation of Goldman ever
23 come up prior to the SEC filing its complaint?

24 A No.

25 Q Did the SEC believe generally that the

1 bring a big case, it would help move this along?

2 A No such conversations occurred.

3 Q Now, there is a theory that when the SEC
4 filed its Goldman case, that that provided
5 momentum to the financial regulatory reform.
6 Forgetting about the intentions for a second, do
7 you think that that's true, that, in fact, the
8 SEC's filing of the Goldman case provided momentum
9 for the financial regulatory reforms passage?

10 A I don't.

11 Q How come?

12 A I guess I look at the enforcement case
13 from a completely very parochial way, it was just
14 one of many cases the SEC was pursuing throughout
15 the year that related to financial crisis, and
16 somehow this captured the imagination. I don't
17 think anyone at the agency, including myself, ever
18 thought it would grab the kind of attention that
19 it did.

20 Q So you were surprised at the amount of
21 press attention about the Goldman case?

22 A Yes.

23 Q All right. I'm going to ask you a
24 series of questions now. Do you have any reason
25 to believe that the SEC's action against Goldman

1 Sachs or the timing of that action was related to
2 or specifically to advance financial regulatory
3 reform?

4 A It was not.

5 Q Are you aware of any information
6 indicating that the SEC's action against Goldman
7 Sachs or the timing of the action was related to
8 or was specifically to advance financial
9 regulatory reform?

10 A I am not aware of any.

11 Q Are you aware of any information
12 indicating the SEC coordinated its action against
13 Goldman Sachs with the Executive Office of the
14 President, the White House or any of its
15 employees?

16 A I am not aware.

17 Q Are you aware of any information
18 indicating that the SEC shared any information
19 concerning its Goldman Sachs investigation with
20 the Executive Office of the President, the White
21 House or any of its employees prior to the
22 complaint being filed?

23 A I'm not aware.

24 Q Are you aware of any information
25 indicating the SEC coordination its action against

1 Goldman Sachs with any members of Congress or any
2 congressional employees?

3 A I am not aware.

4 Q Are you aware of any information
5 indicating that anyone at the SEC shared any
6 information concerning its Goldman Sachs
7 investigation with any members of Congress or any
8 congressional employees prior to the complaint
9 being filed?

10 A I'm not aware of any.

11 Q Are you aware of any information
12 indicating the SEC coordinated its action against
13 Goldman Sachs with the Democratic National
14 Committee, the Democratic Senate Campaign
15 Committee, the Democratic Congressional Campaign
16 Committee or any of their employees?

17 A I'm not aware.

18 Q Are you aware of any information
19 indicating that anyone at the SEC shared any
20 information concerning its Goldman Sachs
21 investigation with the Democratic National
22 Committee, the Democratic Senate Campaign
23 Committee, the Democratic Congressional Campaign
24 Committee or any of their employees prior to the
25 complaint being filed?

1 of the Democratic Congressional Campaign
2 Committee, or any member of the Senate or House of
3 Representatives or any employee of the Senate or
4 House of Representatives? The question is, did
5 you ever communicate with any of these folks
6 regarding the SEC's action against Goldman prior
7 to the SEC's suit being filed?

8 A I did not.

9 Q And are you aware of any information --
10 if the SEC shared any information concerning its
11 Goldman Sachs investigation with the U.S.
12 Department of Treasury, the Federal Reserve or any
13 of their employees prior to the complaint being
14 filed?

15 A I'm not aware.

16 Q All right. Let me ask you another
17 question before I get to this. You were aware
18 that after the SEC approved the enforcement's
19 recommendation to go forward with the Goldman
20 lawsuit, the non-public information about the vote
21 of the Commission was leaked to the press?

22 A Yes.

23 Q Are you aware of who might have leaked
24 that information?

25 A I'm not aware of who would have leaked

1 the information.

2 Q Do you know if there were any efforts
3 undertaken to try to figure out who leaked the
4 information?

5 A I believe once Congressman Issa's letter
6 was sent to the chairman and he asked -- directly
7 to investigate, I don't think there were any
8 actions that were taken, because no one would want
9 to interfere with an ongoing investigation.

10 Q But we weren't asked specifically to
11 investigate the leak, we were asked to investigate
12 alleged collaboration. But I mean generally
13 leaks, you know, I assume it's a concern to you
14 and to the chairman's office --

15 A Sure.

16 Q -- that this leak occurred?

17 A But -- but, you know, the leaks could
18 come from a variety of sources.

19 Q Right.

20 A You know, you can also -- there are many
21 lawyers, many parties that are often engaged in
22 these investigations, and one cannot assume that
23 it would be an employee of the agency, especially,
24 you know, it could be someone else from the
25 outside that's party to the suit, as well.

1 anything going on that would effect that? We
2 heard about Goldman having earnings announcements.

3 A Right, Goldman had indicated to -- to
4 our lead negotiators that they wanted to have a
5 settlement before their earnings call the
6 following Tuesday morning, I believe.

7 Q Okay.

8 A So that was one of the things that
9 Goldman really wanted to kind of put it behind
10 them and be able to mention it, because the amount
11 was material enough that they would have had to
12 disclose it in their analyst -- analyst call.

13 Q Okay. Anything else similar to that
14 that you recall?

15 A No.

16 MR. KOTZ: Why don't we take a minute
17 and see if we have anything else? Why don't we go
18 off the record?

19 (A brief recess was taken.)

20 MR. KOTZ: Okay. We're back on the
21 record. We don't have any further questions. The
22 one thing I would ask is, in order to preserve the
23 integrity of our investigation, that you not
24 discuss the content of your testimony with anyone,
25 you can discuss it with counsel, but otherwise,

20

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the matter of:

OIG-534)
) File No.:
) OIG-534

WITNESS: WITNESS # 33

PAGES: 1-44

PLACE: Sullivan & Cromwell LLP
125 Broad Street
New York, New York

DATE: August 6, 2010

The above-entitled matter came on
for hearing at 11:32 a.m.

ORIGINAL

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

UNITED STATES SECURITIES AND EXCHANGE
COMMISSION

100 F Street N.E.

Washington, D.C. 20549

By: H. DAVID KOTZ, ESQ.

(b)(7)(C)

ESQ. (Via Teleconference)

SULLIVAN & CROMWELL LLP

Attorneys for the Witness

125 Broad Street

New York, New York 10004-2498

By: SHARON L. NELLES, ESQ.

(b)(7)(C)

P R O C E E D I N G S

W I T N E S S #33,

having been first duly sworn by Mr. Kotz, was examined and testified as follows:

MR. KOTZ: We're on the record at 11:32 a.m. at the law offices of Sullivan & Cromwell LLP, 125 Broad Street, New York, New York.

EXAMINATION BY MR. KOTZ:

Q. Could you state and spell your full name for the record, please?

A. Richard Klapper, it's R-i-c-h-a-r-d, last name K-l-a-p-p-e-r.

Q. Mr. Klapper, my name is David Kotz, I'm the inspector general of the United States Securities and Exchange Commission. I have with me on the phone my colleague from the Office of Inspector General, (b)(7)(C)

MR. KOTZ: And would your counsel like to announce themselves for the record.

MS. NELLES: Certainly. This is Sharon Nelles, N-e-l-l-e-s, from Sullivan & Cromwell, and with me is (b)(7)(C)

Q. This is an investigation by the Office of Inspector General, case number OIG-534. I'm

1 A. No.

2 Q. Did Goldman Sachs then make a
3 supplemental Wells submission after the
4 September 15th meeting?

5 A. Yes.

6 Q. When was that, do you recall?

7 A. It was fairly close to the meeting, I
8 don't know if it was late September or early
9 October but fairly close.

10 Q. Do you think September 25th sounds
11 about right?

12 A. It could very well be.

13 Q. Did Sullivan & Cromwell play any role
14 in the representation of Fabrice Tourre?

15 A. Yes.

16 Q. And did Tourre receive a Wells notice
17 from the SEC staff in connection with the ABACUS
18 investigation?

19 A. He did.

20 Q. When was that?

21 A. Well, the actual Wells call, what
22 happened was the staff indicated on
23 September 15th, after the meeting they called us
24 while we were on the tarmac shuttle, that they
25 wanted to arrange a call. At that point we

1 Q. Do you recall that was also at the end
2 of October 2009?

3 A. Yes.

4 Q. Were the SEC's potential charges
5 against Goldman Sachs as opposed to the case
6 against Tourre discussed at this meeting?

7 A. No, but I would qualify that to say
8 the charges against Tourre were factually and
9 legally the charges in many respects as against
10 the firm, the difference being the focus on Tourre
11 personally in his personal role as opposed to --
12 and who he was as opposed to generally the firm.

13 Q. Was the possibility of settlement
14 between Goldman Sachs and the SEC discussed at
15 Tourre's Wells meeting?

16 A. No.

17 Q. Did Sullivan & Cromwell play any role
18 in the representation of another senior employee?

19 A. Yes.

20 Q. Did that senior employee receive a
21 Wells notice from the SEC in connection with the
22 ABACUS investigation?

23 A. Yes, he did.

24 Q. Do you know when that was? We have it
25 at the end of January 2010.

1 A. That sounds right.

2 Q. And so was that employee represented
3 by Sullivan & Cromwell also as co-counsel?

4 A. Yes.

5 Q. Did that employee make a Wells
6 submission?

7 A. Yes, he did.

8 Q. We have that as late February 2010,
9 does that sound right?

10 A. That's correct.

11 Q. Did Sullivan & Cromwell and/or
12 representatives of Goldman Sachs meet with the SEC
13 in connection with that employee's Wells
14 submission?

15 A. No member of Goldman Sachs attended
16 the meeting with respect to that employee which
17 was on March 4th, 2010. The attendees were myself
18 and then (b)(7)(C) and (b)(7)(C) who
19 are at Lankler Siffert & Wohl, who were co-counsel
20 for that employee.

21 Q. Were the SEC's potential charges
22 against Goldman Sachs as opposed to the charges
23 against this other senior employee discussed at
24 all at that March 4 meeting?

25 A. No, with the same caveat, although

1 even more so, that the charges against the second
2 employee entailed many of the same issues as the
3 charges against the firm, but this was the focus
4 on that second employee, who he was, what his
5 involvement was.

6 (b)(7)(C) In what capacity was
7 Sullivan & Cromwell representing this second
8 senior employee?

9 THE WITNESS: We were co-counsel.

10 Q. Was the possibility of settlement
11 between Goldman Sachs and the SEC discussed at the
12 March 4, 2010 meeting?

13 A. No.

14 Q. Were there any settlement discussions
15 at all between Goldman Sachs and the SEC
16 throughout the entire ABACUS investigation?

17 A. No.

18 Q. Did Goldman Sachs ever raise the
19 possibility of settlement?

20 A. Goldman Sachs raised, we had
21 discussions throughout the staff concerning the
22 facts and the legal issues that were raised, and
23 after the first Wells meeting for the firm we
24 never had an official Goldman Sachs meeting with
25 the staff. But we certainly had an ongoing

1 Q. When was the last occasion in which
2 Goldman Sachs or their counsel met with the SEC in
3 connection with the ABACUS matter?

4 A. That's an interesting question. We
5 certainly spoke frequently. Now many of those
6 compensations during that time period dealt with
7 another somewhat overlapping investigation in
8 remarketing and structuring of CEO products as to
9 which we were producing documents, and they were
10 asking about potential testimony of witnesses.
11 But we spoke on a number of occasions throughout.
12 I don't believe we met between March 4th and
13 filing the complaint.

14 Q. Were you ever contacted prior to the
15 filing of the complaint to be notified that the
16 complaint was going to be filed?

17 A. No.

18 Q. Did someone leave a voicemail for you
19 that morning that the complaint was going to be
20 filed?

21 A. Not to my knowledge.

22 Q. So how did you first learn that the
23 SEC was filing an action against Goldman Sachs?

24 A. I was representing a witness who was
25 being interviewed in Washington in the offices of

1 because the division does not have the resources
2 to try the cases that it would have to try if
3 there were not resolutions. And in my experience
4 there is always a point, usually at the very tail
5 end of the investigation, where a point is made to
6 the respondent you should put something on the
7 table because we're about to move forward, and if
8 you have something to say, say it.

9 Q. But that did not happen in the Goldman
10 Sachs case?

11 A. That's correct.

12 Q. Do you know why that didn't happen?

13 A. No.

14 Q. Do you think the SEC didn't want to
15 settle with Goldman prior to filing of an action?

16 A. I can't say that I can say that what
17 they did was, I don't know about unheard of
18 because I don't know the facts of matters that I
19 wasn't engaged in, but in my experience it was
20 unheard of for them to file a complaint without
21 having at least solicited a proposal by the
22 respondent to settle.

23 Q. Now you said that normally your
24 understanding of the Division of Enforcement
25 practice is to encourage settlement. Are you

1 the last meeting.

2 Q. When was the last telephone call
3 between you or somebody representing Goldman
4 Sachs, to your knowledge, with the SEC about the
5 ABACUS investigation prior to the filing of the
6 complaint?

7 A. I don't recall. I'm sure we had
8 telephone calls over the course of the month and a
9 half. I know we submitted additional information.
10 How much of that was ABACUS versus the other
11 investigation, I don't know, but we were in
12 communication with the staff.

13 Q. In any of those telephone calls or in
14 the Wells meeting on March 4th, 2010, did you have
15 any indication from the SEC that it was poised to
16 file its action against Goldman Sachs?

17 A. No. We were waiting to hear about the
18 second employee.

19 Q. So what was your reaction when you
20 first read the press release that the SEC was
21 filing an action against Goldman Sachs in the
22 ABACUS case?

23 A. I was extremely surprised. It was
24 completely contrary to my experience as to how the
25 staff handles these matters for them to file an

1 action without first calling and indicating that a
2 decision had been made. And this was the last
3 opportunity or a last opportunity to put a
4 proposal on the table.

5 Q. Now I know this is hypothetical but if
6 you think the SEC had given Goldman Sachs one last
7 opportunity to put something on the table, that
8 that might have led to possible settlement
9 discussions, even fruitful ones, prior to the
10 complaint?

11 A. I have no doubt it would have led to
12 discussions, I have no doubt at all. Whether they
13 would have been fruitful, that's a hypothetical.
14 History indicates that it's extraordinarily rare
15 for a major financial institution to decide that
16 it would rather fight the SEC in court.

17 Q. And then of course in the end the case
18 did settle?

19 A. That's correct.

20 Q. Now, were you aware that the action
21 against Goldman Sachs was filed and announced
22 during the trading hours?

23 A. Very aware of it.

24 Q. Were you surprised by that?

25 A. I was surprised by the fact that we

1 It was very difficult for the client to respond
2 because it had not gotten a warning, and that may
3 or may not have additionally affected the market.

4 Q. But in essence, Goldman Sachs became
5 aware of the SEC's filing of its action against it
6 by reading it in the press?

7 A. Yes. Now I should say that Reid Muoio
8 called my office because I got a message from my
9 secretary. I called him along with Janet Broeckel
10 from Goldman Sachs and we were very unhappy, I
11 told Reid that it was unprecedented, in my view it
12 was contrary to decades of SEC experience that
13 they would file without calling and giving an
14 opportunity for the respondent to put a proposal
15 on the table.

16 Mr. Muoio said that he had been told
17 to call my office as soon as the action had been
18 filed. I told him that that didn't make me happy
19 but I understood him to say that he had been told
20 to do it so I didn't see any real value in giving
21 him a hard time about it.

22 Q. Do you know if that message came in
23 before or after the SEC filed and announced its
24 action?

25 A. I believe it came in after, consistent

1 with what Mr. Muoio said his instructions were.

2 Q. Mr. Muoio said his instructions were
3 to call you immediately after the SEC filed its
4 case?

5 A. That's correct.

6 Q. Do you know whether the SEC gave the
7 New York Stock Exchange advance notice that they
8 were going to file their action?

9 A. I don't.

10 Q. Is Goldman Sachs required to give the
11 New York Stock Exchange advance notice of
12 potentially material news such that if it knew
13 that the SEC was planning to file an action
14 against it, it would have informed the New York
15 Stock Exchange in advance of the public
16 announcement?

17 A. I would think so.

18 Q. After the action was filed there were
19 settlement discussions, correct?

20 A. Correct.

21 Q. Who initiated those discussions?

22 A. I believe it was Goldman Sachs.

23 Q. But the SEC was at that point in time
24 interested in encouraging settlement?

25 A. Yes.

1 A. That evening.

2 Q. You said it was condensed settlement
3 discussions for this kind of case, how do you
4 mean?

5 A. Well, in my experience there can be a
6 period of months as you proceed from engaging the
7 staff reaching kind of the outlines of what the
8 terms might look like and then negotiating the
9 papers, so that can go on for a period of time.

10 This discussion, Goldman Sachs wanted
11 affirmatively to reach resolution on a fairly
12 quick schedule, and the reasons were many. We had
13 this pending lawsuit, I believe this pending
14 lawsuit is not being helpful to the company. It
15 also had an earnings announcement coming up on
16 July 20th and there was concern that if we were in
17 the midst of discussions, it looked like they
18 would result in a significant payment, but had not
19 reached resolution at the time of the earnings
20 release, that that would create issues that we
21 would have to address and it would be better if we
22 can do it before the 20th.

23 Q. And was the SEC also interested in
24 moving the process forward along quickly?

25 A. Yes, there was also a concern by us

1 Q. Were there any discussions or concerns
2 on either side about trying to have the matter
3 filed and announced immediately after the
4 Commission approved it or was there discussion
5 about waiting until the next day?

6 A. We had various -- discussions and
7 various possibilities. Do we do it the morning of
8 Friday, do we do it at the end of the day Friday.
9 There was always the possibility of Thursday
10 evening. I think the concern there was how
11 quickly could everybody get things in line in
12 order to be able to do that. And even the
13 possibility of Monday before the opening of the
14 market. So we discussed various times.

15 Q. Do you recall what the SEC's
16 preference was?

17 A. Not really.

18 Q. In the end though it was announced and
19 filed on that Thursday toward the end of the day?

20 A. After the close of the morning, yes.

21 Q. Was that discussed that at this time
22 the settlement should be filed after the close of
23 the market?

24 A. We -- yes, in our discussions we were
25 always talking about either prior to the open or

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. OIG-534
OIG-534)



WITNESS: Number 34
PAGES: 1 through 23
PLACE: Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C.
DATE: Monday, August 9, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 2:40 p.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, Inspector General

5 (b)(7)(C) ESQ.

6 Office of Inspector General

7 Securities and Exchange Commission

8 100 F Street, N.E.

9 Washington, D.C. 20549

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C O N T E N T S

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

WITNESS

EXAMINATION

Kathleen L. Casey

4

EXHIBITS:

DESCRIPTION

IDENTIFIED

1

April 19, 2010, E-mail,

Brennan to Casey

10

1 have mentioned that there might be an -- that
2 there was an investigation of Goldman. But in a
3 formal way the first would have been the calendar
4 that I would have known that we were bringing a
5 case -- that they were asking us to consider
6 bringing a case.

7 Q Right. Now, I don't know whether you
8 knew this or not, but it was initially calendared
9 in December and then taken off the calendar, then
10 put back on the calendar in January and taken off
11 the calendar. And then in April, finally put on
12 the calendar where it was then reviewed by the
13 Commissioners and approved.

14 A No.

15 Q Were you aware the fact that it was put
16 on the calendar both in December and in January?

17 A If I was, I don't recall it, only -- I
18 don't. I wouldn't recall that it was put on and
19 put on. Put on and put on.

20 Q And to your knowledge, did you or any
21 Commissioner play in any role in decisions to take
22 it off the calendar on those two occasions?

23 A No.

24 Q All right. And so the time that you say
25 you recalled when it was put on the calendar and

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

3 BY MR. KOTZ:

4 Q And in this e-mail -- and take whatever
5 time you need to read it -- in this e-mail there's
6 a reference to an article which is entitled, "Firm
7 Contends It Was Blindsided by Lawsuit." And so
8 were you aware generally that the SEC had not
9 informed Goldman Sachs that it intended to file an
10 action against it immediately before filing the
11 action?

12 A No. I would have -- I had no
13 information about the process by which we brought
14 the case.

15 Q Are you aware generally that it was
16 Enforcement's practice after the Commission would
17 approve the recommendation to go forward with a
18 case to go to the entity and kind of say to them,
19 look, this is going to be brought, here's one last
20 opportunity for you to resolve it?

21 A I think I had a general sense that those
22 are the kinds of communications that the
23 Enforcement Division had generally engaged in.

24 Q Do you know why in this case that wasn't
25 done?

1 it was conveyed to us, just for your edification,
2 is that, you know, when a company gets a Wells
3 notice, so they are still in that point going to
4 argue that the case shouldn't be brought, so if
5 you have a Wells notice brought against a company,
6 the company says the case shouldn't be brought.
7 You don't hear anything for an extended period of
8 time --

9 A Right.

10 Q -- you may assume the case is not going
11 to be brought. You weren't going to come in with
12 a settlement offer if you thought the case wasn't
13 going to be brought.

14 A Right.

15 Q But the benefit of going to a company at
16 that point, after the Commission had approved the
17 recommendation to go forward with the case, is the
18 company then understands that the case will be
19 brought and gives them an opportunity to try to
20 resolve it --

21 A Yeah.

22 Q -- so that, you know, certain resources
23 would be lessened.

24 A That's definitely the -- that is
25 definitely what has been the policy and practice

1 historically with respect to trying to resolve
2 cases. And I think, again, without -- just
3 looking at this story and how Blaise was
4 characterizing it was that it did appear to be a
5 departure with how we have traditionally reached
6 back out to a company when those decisions have
7 been taken. And, again, without understanding why
8 it was necessarily -- why that decision was
9 ultimately taken to do something different, we
10 didn't have any insight into that.

11 **Q What about the decision to file the**
12 **complaint against Goldman Sachs at 10:30 in the**
13 **morning during trading hours? Do you have any**
14 **concerns about that and the effect that that had**
15 **on the market itself and/or the stock price and**
16 **shareholders of Goldman Sachs?**

17 **A Yeah. I -- I didn't have any**
18 **perspective at all at the time because I didn't**
19 **know when the division intended to file the case.**
20 **And certainly aware -- second, I guess, aware**
21 **after it was reported that that was when the case**
22 **was chosen to be filed. And then again, that as a**
23 **general matter there has been sensitivity brought**
24 **-- sensitivity given to when cases are -- are**
25 **brought during trading hours in the past. But I**

1 felt it undermined both the -- well, certainly
2 it's contrary to our rules and our obligations,
3 but that also I thought it undermined --
4 undermined our process and our case.

5 Q And do you know if anyone is looking
6 into the question of how this non-public
7 information was released to the newspaper?

8 A I don't. I don't.

9 Q Do you have any idea how this non-public
10 information was provided to the newspaper?

11 A I do not. I mean, that's always pure
12 speculation, just --

13 Q Right.

14 A -- you know, again, given the sheer
15 amount of people that have access to either
16 sitting in on the meetings or perhaps learn
17 secondhand, so.

18 Q Right. And are you aware that there
19 have been other instances of non-public
20 information regarding the SEC appearing in the
21 newspaper.

22 A Oh, yes, very well aware. Yes.

23 Q And, you know, just to cover all bases,
24 you're not aware of anyone in your office who's
25 ever shared --

1 when it comes to the confidentiality around our
2 Enforcement cases, so yes.

3 Q All right. Now, I know that you have
4 sort of a limited window on what happened with the
5 entire Enforcement action. But nevertheless, I'm
6 going to ask you a series of questions about
7 whether you know of any improprieties.

8 So you are, I assume, aware of the
9 Financial Regulatory Reform Legislation passed by
10 Congress?

11 A Yes.

12 Q Has anybody at the SEC ever mentioned
13 Financial Regulatory Reform Legislation in
14 connection with the Goldman Sachs investigation or
15 in connection with the filing of an action against
16 Goldman Sachs?

17 A No.

18 Q Do you have any reason to believe that
19 the SEC's action against Goldman Sachs or the
20 timing of that action was in any way related to or
21 specifically to advance Financial Regulatory
22 Reform Legislation?

23 A I have no information.

24 Q Are you aware of any information
25 indicating that the SEC coordinated its action

1 against Goldman Sachs with the Executive Office of
2 the President, the White House, or any of its
3 employees?

4 A I have no information.

5 Q Are you aware of any information
6 indicating that the SEC coordinated its action
7 against Goldman Sachs with any members of Congress
8 or any congressional employees?

9 A I do not have any information.

10 Q Are you aware of any information
11 indicating the SEC coordinated its action against
12 Goldman Sachs with the Democratic National
13 Committee, the Democratic Senate Campaign
14 Committee, the Democratic Congressional Campaign
15 Committee, or any of their employees?

16 A No information. I have no information.

17 Q And you're not aware of anyone sharing
18 any information about Goldman Sachs with either
19 the White House, Executive Office of the
20 President, the Congress, or any Democratic
21 committee?

22 A I'm not aware of any.

23 Q All right. That is all the questions we
24 have. The one thing I would ask in order to
25 preserve the integrity of the investigation that

ORIGINAL

Page 1

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. OIG-534
OIG-534)

WITNESS: Number 35

PAGES: 1 through 121

PLACE: Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C.

DATE: Tuesday, August 10, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 9:33 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 DAVID KOTZ, ESQ., Inspector General

5 (b)(7)(C) ESQ.

6 Office of the Inspector General

7 Securities and Exchange Commission

8 100 F Street, N.E.

9 Washington, D.C. 20549

10 (b)(7)(C)

12

13 On behalf of the Witness:

14 LORIN REISNER, PRO SE

15

16

17

18

19

20

21

22

23

24

25

C O N T E N T S

1			
2			
3	WITNESS:		EXAMINATION
4	Lorin Reisner		5
5			
6	EXHIBITS:	DESCRIPTION	IDENTIFIED
7	1	E-mail dated 12/07/2009	11
8	2	E-mail chain dated 12/8/2009	13
9	3	E-mail chain dated 12/14/2009	17
10	4	E-mail chain dated 12/29/2009	20
11	5	E-mail chain dated 1/4/2010	21
12	6	E-mail chain dated 1/5/2010, 7:52 p.m.	28
13	7	E-mail chain dated 1/5/2010, 7:07 p.m.	29
14	8	E-mail chain dated 1/15/2010	32
15	9	E-mail chain dated 1/22/2010, 6:09 p.m.	33
16	10	E-mail chain dated 1/22/2010, 6:59 p.m.	36
17	11	E-mail chain dated 1/25/2010, 8:24 p.m.	37
18	12	E-mail chain dated 1/26/2010, 1:24 p.m.	38
19	13	E-mail dated 1/26/2010, 1:27 p.m.	38
20	14	E-mail chain dated 1/24/2010	40
21	15	E-mail chain dated 1/25/10 2:37 p.m.	41
22	16	E-mail chain dated 1/27/2010	43
23	17	E-mail chain dated 3/5/2010	49
24	18	E-mail chain dated 3/22/2010	50
25	19	E-mail chain dated 4/7/2010	52

1 I'm inferring that the reason why this matter may have been
2 calendared and taken off the calendar was to provide an
3 opportunity for the staff to take the testimony of Jonathan
4 Egol. I think that timing makes sense.

5 Q Yeah. We have an e-mail to show you. But so do
6 you recall a disagreement among folks working on this case as
7 to whether Jonathan Egol's testimony should be taken?

8 A You know, I don't recall -- I don't know that I'd
9 call it a disagreement. I remember there being different
10 views as to the need for taking Egol's testimony before
11 making a recommendation. I remember that one or more folks
12 felt that it was important to take Egol's testimony before
13 making a recommendation, and one or more folks thought that
14 we could proceed with the recommendation before taking Egol's
15 testimony. I remember what my view was. My view was that it
16 was -- that the right way to proceed was to take Egol's
17 testimony before making any recommendation.

18 Q How come you came to that decision?

19 A As I learned more about the facts, my view was that
20 Ego was a very substantial participant on the Goldman desk
21 that was responsible for the Abacus COLLATERALIZED DEBT
22 OBLIGATION. He was functionally the leader of that desk.
23 There were e-mails that, to me, demonstrated that he had a
24 certain level of involvement and knowledge concerning the
25 transaction. And I thought that the most thorough and

1 going on for a while; we had the sense that we knew what the
2 facts and issues were, and that we ought to take
3 responsibility for making a judgment at one time.

4 (b)(7)(C) Okay.

5 BY MR. KOTZ:

6 Q We have the document that shows -- and your
7 recollection and most people's recollection is that the
8 reason that the case was taken off the calendar in December
9 was primarily to take Egol's testimony. But we also some
10 evidence that there were efforts to take Egol's testimony
11 prior to December, and then there was some problem with dates
12 or some pushback from Egol's counsel. Do you remember any of
13 that?

14 A No.

15 Q Okay. All right. Going back to this Exhibit 5 for
16 a second, the e-mail right below the one I referenced, which
17 is an e-mail from Reid Muoio sent Monday, January 4, 2010,
18 4:15 p.m. In that he says, "This is a high-profile
19 enforcement case that recently became time sensitive." Do
20 you see that?

21 A Yeah.

22 Q Do you know what -- how it recently became time
23 sensitive?

24 A I don't. I don't know what he means by that.

25 Q Okay. Do you remember at any point this matter

1 A It doesn't -- it doesn't really seem odd to me.

2 Q Okay.

3 A Matters get put on the calendar and taken off the
4 calendar on a relatively routine basis is my impression, for
5 all different types of reasons.

6 Q But to the best of your recollection, the decision
7 to take the Abacus case of the calendar in December related
8 to internal issues within the division of enforcement. It
9 didn't have anything to do with feedback from the
10 Commissioners or the Chairman?

11 A That's my recollection.

12 MR. KOTZ: All right. Let's go to the next
13 document. I'm going to mark this as Exhibit 8, an e-mail
14 from Robert Khuzami to Reid Muoio, you, and Cheryl Scarboro,
15 1/15/2010, 10:51 a.m.

16 (Exhibit No. 8 was marked for
17 identification.)

18 THE WITNESS: Okay.

19 BY MR. KOTZ:

20 Q All right. It seems like in this e-mail Rob is at
21 least contemplating this parallel tracks idea. Is that
22 something that you had discussions with him about?

23 A I don't remember any conversations with Rob on that
24 topic. We may have had them, I just don't -- I don't
25 remember. This also may have been -- you know, sometimes

1 concern.

2 Q Okay. Do you recall any concern at all that
3 potentially PSI was holding a hearing around the same time,
4 and that might effect the investigation?

5 A Look, I saw those e-mails that you showed me
6 earlier. I do recall generally the topic of the PSI's work
7 and our work focusing on similar matters and what the
8 relationship might be, as to timing of those matters. But
9 that's -- it wasn't really my focus.

10 Q Do you think, just as a general matter, if a
11 committee or subcommittee in Congress had a hearing that it
12 might effect an ongoing investigation?

13 A You know, it depends on the circumstances. It
14 could.

15 Q Okay. In this case, could it have, do you think?

16 A I remember in the April time period, after we filed
17 our complaint, being concerned that if the Permanent
18 Subcommittee on Investigations called certain witnesses that
19 we would be relying on -- in our case that that could have a
20 negative impact on our case. And I remember communicating
21 those concerns to a representative of the Permanent
22 Subcommittee on Investigations.

23 Q Did that relate to man named (b)(7)(C) in
24 enforcement or something --

25 A No. No, no, no, no. It was Fabrice Toure. I

1 learned that PSI -- this is after the complaint was filed. I
2 learned that PSI was contemplating calling Toure as a
3 witness. And I was concerned that providing Toure with a
4 public platform to communicate whatever views he might
5 communicate on the matter, without being subject to
6 appropriate cross examination by counsel with access and
7 knowledge of the relevant facts, could negatively impact our
8 case. And I asked (b)(7)(C) of the Permanent Subcommittee --
9 I guess a staffer on the Permanent Subcommittee on
10 Investigation, to consider not calling Toure as a witness.

11 Q What happened?

12 A They called Toure as a witness.

13 Q And did it present a problem?

14 A We'll see. I had -- I appeared in court yesterday
15 at the initial conference in the Toure case in the southern
16 district of New York.

17 Q So are you litigating this case personally?

18 A I'm leading the litigation team. Yes.

19 Q Is that unusual at all for somebody at your level
20 to be leading a litigation team?

21 A I don't know.

22 Q Have you done any other -- have you done --

23 A Have I led any other -- well, you know, I get -- I
24 get very involved in some of the litigated matters. I like
25 that stuff David. But I haven't -- I think that's the only

1 this matter was filed. But then do you recall that then
2 there was this hiccup, and it wasn't filed first thing in the
3 morning?

4 A Do you have that schedule of events that I got on
5 Thursday night?

6 Q I think it's similar to this one.

7 A Yeah. I just don't remember. I just don't --
8 yeah. You know, I don't remember the precise time that we
9 were targeting for the filing of the complaint. But I
10 remember that there was a time that we were aiming for, for
11 filing the complaint. And I remember that there was, what I
12 described in this e-mail as, "a hiccup" in the filing.

13 Don't remember precisely what happened, but it had
14 to do -- something like I think (b)(7)(C) was going to
15 sign the complaint, but (b)(7)(C) turned out not to be admitted
16 in the southern district, and he couldn't sign -- you're not
17 supposed to sign somebody else's name on a complaint, so he
18 couldn't sign Reid's name to the complaint, who is admitted
19 in the southern district. So we had to find somebody in New
20 York quickly to sign the complaint so that it could be filed.

21 Q And do you remember any conversations about how
22 this going to effect the kind of choreographed schedule that
23 had been put together?

24 A No. What I remember is scrambling to find somebody
25 in New York who would be available to sign the complaint.

1 And I made a number of calls to our New York office to try to
2 make that happen.

3 Q And you did eventually find somebody?

4 A Yes.

5 Q Do you remember who that was?

6 A I think (b)(7)(C) signed the complaint.

7 MR. KOTZ: Okay. All right. Let me show you the
8 next document. We're going to mark it as Exhibit 29, an
9 e-mail from (b)(7)(C) to you, 4/16/2010 1:25 p.m.

10 (Exhibit No. 29 was marked for
11 identification.)

12 THE WITNESS: All right.

13 BY MR. KOTZ:

14 Q Do you remember talking to Mr. Goldstein?

15 A Yeah. I remember John Nester from Office of Public
16 Affairs asking me to meet with (b)(7)(C) I said,
17 fine. And he came and met with me in my office for a half an
18 hour or so at some point in early/mid April.

19 Q Before the case was filed?

20 A I think so.

21 Q And what did you talk about?

22 A Probably talked about the reorganization in the
23 enforcement division, and the specialized units, and
24 streamlining of the division, and what it was like to be the
25 deputy director, and some of our priorities focusing on the

1 I've spoken with. My own view is there is -- you have to be
2 careful about that for obvious reasons, including that if
3 practitioners assumed that there was always going to be an
4 opportunity after Commission approval to come in and discuss
5 and negotiate the terms of a possible resolution, there would
6 be a disincentive by counsel to negotiate and reach
7 settlements, resolutions, in advance of Commission
8 authorization. So I think that there's a delicate balance
9 that needs to be taken into account.

10 Q So do you think that that should be the policy of
11 the enforcement division or not?

12 A I think it really needs to be evaluated on a
13 case-by-case basis.

14 Q Okay. Was there a decision made in the Goldman
15 case to not give that type of heads up to Goldman?

16 A I don't recall any type of decision along those
17 lines. What I do recall is that in meetings with counsel for
18 Goldman and in communications with counsel for Goldman at
19 Sullivan and Cromwell, there was quite a strident and
20 uncompromising position taken by counsel for Goldman, with
21 respect to Goldman's view of the facts and the prospect of a
22 negotiated resolution was never really floated or tested by
23 counsel for Goldman.

24 Q And which meetings are you referring to?

25 A What's in my mind is at least one telephone call

1 case.

2 A You know, I really don't recall thinking seriously
3 about the calculus of litigation versus settlement around the
4 time of filing, because it seemed apparent to me that
5 Goldman, at least as communicated by its counsel, was not
6 prepared to have serious discussions about resolution.

7 Q Was there any contemplation of going to Goldman
8 immediately after the Commission approved the recommendation
9 to go forward with the case and say to them, the Commission
10 has approved this; you have X number of hours to come back
11 with something?

12 A I don't remember any conversations along those
13 lines.

14 Q And do you remember any conversations about Reid
15 Muoio contacting Goldman at or shortly after the actual case
16 was filed?

17 A I do. I remember telling Reid that it was
18 important to communicate with Goldman's counsel and give them
19 a heads up about the filing before it occurred, and that that
20 should be done, you know, a short time before the filing took
21 place.

22 Q So your instructions to Reid were to call Goldman
23 before the case was filed or at the same time that the case
24 was filed? Because --

25 A I think my best memory is that I told him to call

1 counsel for Goldman shortly before the case was filed.

2 Q And so if you learn that, in fact, the phone call
3 was made after the case was filed, would that concern you, in
4 terms of the instructions you gave to Reid?

5 A It wouldn't -- I wouldn't concern me, only because
6 I meant by my instructions to call shortly before the case
7 was filed. So if it occurred five or ten minutes before the
8 case was filed or five or ten minutes after the case was
9 filed, I don't think it would, you know, be a critical
10 distinction. But my instructions and my preference -- well,
11 let me say it another way. By best memory of my instructions
12 was to call shortly prior to the filing, and I recall that
13 being my preference.

14 Q But wouldn't it make it a difference if it was
15 before or after, such as in that interim time period Goldman
16 could have found out from another source, like the press. So
17 I mean one scenario, they find out from the SEC first. The
18 other scenario, they find out from the press first. Isn't
19 that a big distinction?

20 A You know, to me I think it's a good practice and
21 professional practice to give a heads up to your adversary in
22 these circumstances prior to filing. So it's less in my mind
23 about whether they learn it from the press or from us than
24 just the more professional thing to do is to provide, you
25 know, a short advance heads up.

1

BY

(b)(7)(C)

2

Q It may seem obvious, but just to make it explicit,
3 why even do that?

4

A I just think it's the more professional way to
5 conduct yourself.

6

BY MR. KOTZ:

7

Q As a matter of courtesy?

8

A Yes.

9

Q All right. Now, this what has been reported back
10 to us. I want to give you an opportunity to comment on it.
11 That Reid Muoio -- he left a message, then eventually he did,
12 maybe a day or two even later, spoke to someone at Sullivan
13 and Cromwell. And the question was asked to Reid Muoio, how
14 come we weren't given a more advanced notice, so we could
15 have an opportunity to resolve it, as at least Sullivan and
16 Cromwell folks believed was the practice.

17

And evidentially Reid Muoio's response was, those
18 were my instructions, and essentially saying this wasn't my
19 call, so, you know, don't give me a hard time about it,
20 because it wasn't my call; this is what I was instructed to
21 do. Do you have any response to that? I mean do you believe
22 that Reid Muoio was instructed to call Goldman Sachs maybe a
23 few minutes before but instructed not to give them the more
24 -- the longer advanced notice in this case?

25

A The only instruction that I remember giving to Reid

1 was to provide Goldman's counsel with notice shortly before
2 the filing.

3 Q Now, are you aware of SEC regulations or policies
4 concerning the notification of defendants prior to the filing
5 of an SEC action?

6 A Generally, yes.

7 (Exhibit No. 31 was marked for
8 identification.)

9 MR. KOTZ:

10 Q Okay. This is SEC Administrative Regulations,
11 Exhibit 31, dated July 31, 2005. Are you familiar with this
12 document?

13 A This is a 12-page document. Is there anything that
14 you want me to focus on in the document?

15 Q Yeah. Sure. I just wanted to first ask you if
16 you're just generally familiar with the document. It's a
17 press document. It's not a enforcement regulation. That's
18 why I'm asking.

19 A I mean I am familiar with portions of the substance
20 of this document, as a I flip through the pages. I don't
21 know whether in this form I've seen the document. But
22 elements of this appear to be elements of our enforcement
23 manual, and elements of it -- and I just looked at it very
24 briefly -- also appear to be similar to policies that I've
25 seen regarding communications with the press in the ordinary

1 a minute. I mean you're the deputy director of enforcement.

2 A Yes.

3 Q And so you make decisions for the rest of the
4 enforcement team.

5 A Yes.

6 Q Do you think that it should be the policy of the
7 enforcement division that in every case where they file an
8 action against a defendant that the defendant be notified
9 immediately prior to the action being filed?

10 A I certainly don't think it should be the rule for
11 every case. There are emergency actions that get brought,
12 where you have to worry about dissipation of assets, and you
13 certainly do not want to give notice to defendants of the
14 filing of an action. But putting those aside, and putting
15 other similar categories that may not be coming to mind
16 aside, I think it is good policy and should be the policy of
17 the enforcement division, absent other countervailing
18 reasons, to provide notice in advance of the filing of an
19 action.

20 Q And what is your view from a policy perspective as
21 to the other issue? In other words, do you believe that it
22 should be the policy of the enforcement division to notify a
23 defendant after the Commission approves a recommendation to
24 go forward to give them advance notice?

25 A I guess my view is there -- you know, let me put it

1 A You know, I think the answer is I don't know why or
2 why not.

3 Q Do you think it's a good idea?

4 A It sounds like something that ought to be
5 considered, and that looking back on it, you know, maybe
6 should have been given more consideration here, particularly
7 in light of the press reaction and the market reaction, which
8 certainly was more at a level different than we anticipated,
9 certainly than that I anticipated.

10 Q So was there a decision made not to give the New
11 York Stock Exchange a heads up, or maybe it wasn't even
12 thought about?

13 A I don't think that there was any decision made to
14 give them a heads up or not to give them a heads up, as I
15 recall. I don't remember the issue being addressed one way
16 or the other with my involvement.

17 Q Are you aware that when it came to the settlement
18 of the Goldman case the New York Stock Exchange was given a
19 heads up? Or do you know if that was the case?

20 A Gee, I don't remember. But I do remember there
21 being some discussion about whether that should happen,
22 particularly in light of the concerns that had been raised
23 during the time of the announcement of the filing of the
24 action.

25 Q In your position, do you think that it is a good

1 idea to have a policy that where there is an enforcement
2 action brought that could potentially effect the market that
3 the New York Stock Exchange be given a heads up?

4 A You know, that's an issue that I would want more
5 input from trading and markets on, and others who have
6 greater expertise in trading and markets before I sort of
7 expressed a view. I don't -- I would want input from others
8 with more experience in those matters than I have.

9 Q But do you think, in your position, it's a good
10 idea to have those discussions and figure out a policy for
11 the enforcement division about that matter?

12 A I mean theoretically it sounds fine. I think you
13 just have to be careful, because, you know, there are -- I
14 can imagine countervailing considerations, including
15 confidentiality concerns and other issues that I'm probably
16 not considering.

17 Q Going back to the most recent e-mail from (b)(7)(C)
18 (b)(7)(C) to you, he references a call from (b)(7)(C) He tried
19 to get through to you, was very understanding of the fact
20 that your line was busy and your voice-mail was probably
21 overflowing; he wanted to talk to you and whoever else might
22 be appropriate, gives you his number; he was very clear that
23 he did expect a call back until early next week, but also
24 that he would like to hear something on Monday or Tuesday.
25 Evidently you didn't call him back.

1 Q Was there any consideration given to filing and/or
2 announcing the Goldman Sachs lawsuit after trading hours, so
3 that it wouldn't have an impact on Goldman's stock or the
4 market itself?

5 A I don't remember any such conversation about filing
6 it before the market opened, or after the market opened, or
7 while the market was open.

8 Q And are you aware that the decision was made with
9 respect to the settlement to file and announce the settlement
10 after the market closed?

11 A That sounds right.

12 Q Do you think that the effect on the market and/or
13 on Goldman Sachs' stock should have been considered when the
14 SEC made the decision to file the Goldman case during trading
15 hours?

16 A Well, you know, as I said, looking back on the
17 press reaction and the market reaction, I think that, you
18 know, had we known there what we know now about the level of
19 interest and reaction, additional consultation with trading
20 and markets and others with market expertise couldn't have
21 been a bad thing.

22 Q And are you aware that the third Friday of each
23 month has a significance for the expiration of options?

24 A I mean I know generally. I think triple witching
25 day or whatever they call it -- I mean I know generally that

1 Q Has anyone at the SEC ever mentioned this financial
2 regulatory reform legislation in connection with the Goldman
3 Sachs investigation or in connection with the filing of an
4 action against Goldman Sachs?

5 A Not before the filing, but after the filing I
6 remember there were press reports suggesting that there was
7 some link between the Goldman case and financial regulatory
8 reform, and, you know, people responded to that. But there
9 was no such link.

10 Q Okay. Do you have any reason to believe that the
11 SEC's action against Goldman Sachs, or the timing of the
12 action, was in any way related to or specifically to advance
13 financial regulatory reform legislation?

14 A No. I have no reason to believe that's the case.

15 Q Are you aware of any information indicating that
16 the SEC's action against Goldman Sachs, or the timing of that
17 action, was related to or specifically to advance financial
18 regulatory reform legislation?

19 A No.

20 Q Are you aware of any information indicating that
21 the SEC coordinated its action against Goldman Sachs with the
22 Executive Office of the President, the White House, or any of
23 its employees?

24 A No.

25 Q Are you aware of any information indicating that

1 anyone at the SEC shared any information concerning its
2 Goldman Sachs investigation with the Executive Office of the
3 President, the White House, or any of its employees, prior to
4 the complaint being filed?

5 A No.

6 Q Are you aware of any information indicating that
7 the SEC coordinated its action against Goldman Sachs with any
8 members of Congress or any congressional employees?

9 A Say that one again? I'm sorry.

10 Q Sure. Are you aware of any information indicating
11 that the SEC coordinated its action against Goldman Sachs
12 with any members of Congress or any congressional employees.

13 A No. But the footnote is, you know, I met with the
14 Permanent Subcommittee on Investigation, their staff, after
15 the filing, but had no communications with them pre filing.

16 Q Okay. So clearly the SEC didn't coordinate its
17 action with them?

18 A No.

19 Q Are you aware of any information indicating that
20 anyone at the SEC shared any information concerning its
21 Goldman Sachs investigation with any members of Congress or
22 Congressional employees prior to the complaint being filed?

23 A No.

24 Q Are you aware of any information indicating the SEC
25 coordinated it's action against Goldman Sachs with the

1 Democratic National Committee, the Democratic Senate Campaign
2 Committee, the Democratic Congressional Campaign Committee,
3 or any of their employees?

4 A No.

5 Q Are you aware of any information indicating that
6 anyone at the SEC shared any information concerning its
7 Goldman Sachs investigation with the Democratic National
8 Committee, the Democratic Senate Campaign Committee, the
9 Democratic Congressional Campaign Committee, or any of their
10 employees prior to the complaint being filed?

11 A No.

12 Q Are you aware of any information indicating that
13 anyone at the SEC shared any information concerning its
14 Goldman Sachs investigation with the news media or any
15 journalist prior to the complaint being filed?

16 A No.

17 MR. KOTZ: All right. We're going to go off the
18 record. If you could just give me and Craig a few minutes to
19 see if we have anything else.

20 THE WITNESS: Sure.

21 (A brief recess was taken.)

22 BY MR. KOTZ:

23 Q All right. Back on the record. Okay. One area
24 that I want to get some clarification on, and that is with
25 respect to the settlement. And I think you may have

1 Q Okay. So by --

2 A Let me just finish. And then what happened was on
3 Monday, Monday/Tuesday, I think I was involved in some
4 meetings with a couple of the Commissioners to give them a
5 briefing on the matter, and the action memo, and what we saw
6 shaping up. So I think that, yes, it had to be that on
7 Monday we were reasonably confident of what the terms would
8 be.

9 However, I know that after Monday Goldman was still
10 pushing on stuff. I don't remember what it was. And I think
11 they were trying to push back on some of issues that we
12 reviewed as requirements. And I don't think it ever came to
13 anything, because I don't think we moved. So what was
14 presented to the Commission and what was in the action memo I
15 don't think deviated from where we landed. But there was
16 push and pull in the interim.

17 Q But do you think by Monday you guys were clear in
18 your own heads that you weren't going to move on those
19 issues?

20 A I can speak for myself.

21 Q Yeah.

22 A I think I was reasonably confident that I wasn't
23 going to support any deviations from what was set forth in
24 the action memo.

25 Q Now, were you aware that that Thursday, that the

ORIGINAL

Page 1

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of)
) File No. OIG-534
OIG-534)

WITNESS: Number 36

PAGES: 1 through 33

PLACE: Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C.

DATE: Wednesday, August 11, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 11:32 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 DAVID KOTZ, ESQ., Inspector General

5 (b)(7)(C) ESQ., Senior Investigator

6 Office of the Inspector General

7 Securities and Exchange Commission

8 100 F Street, N.E.

9 Washington, D.C. 20549

10 (b)(7)(C)

11

12 On behalf of the Witness:

13 (b)(7)(C)

14

15 Gibson, Dunn & Crutcher LLP

16 1050 Connecticut Avenue, N.W.

17 Washington, D.C. 20036-5306

18 (202) 887-3609

19

20

21

22

23

24

25

C O N T E N T S

1			
2			
3	WITNESS:		EXAMINATION
4	Mary Schapiro		6
5			
6	EXHIBITS:	DESCRIPTION	IDENTIFIED
7	1	SEC Notice of Rights, 8/11/10	6
8	2	Confidentiality and Nondisclosure	
9		Agreements, 8/11/10	6
10	3	E-mails, Schapiro/Cohen, 1/23/10	11
11	4	E-mails Schapiro, (b)(7)(C) 2/22/10	14
12	5	E-mails (b)(7)(C) Nisanci, Cohen,	
13		(b)(7)(C) 2/26/10	15
14	6	E-mail, Cohen to Khuzami, 3/8/10	16
15	7	E-mails, Schapiro/Khuzami 4/12/10	16
16	8	E-mails, Schapiro/Cohen, 4/13/10	18

17

18

19

20

21

22

23

24

25

1 congress --

2 Q Okay.

3 A -- on a very regular basis, give lots of speeches.
4 It's a very broad scope.

5 Q Okay. Sure. At what point in time did you become
6 aware of the existence of an investigation by the SEC into
7 the sale of collateralized debt obligations by Goldman Sachs
8 known as the Abacus investigation?

9 A You know, I don't know exactly when I became aware
10 of it. Certainly, last time last fall I knew that we were
11 working on a number of cases coming out of the financial
12 crisis and that this was one of them. Citigroup was one that
13 we brought recently.

14 We had Bank of America, Angelo Mozilla and
15 Countrywide, Beazer Homes, State Street Bank. So I knew this
16 was one of many; and, I've got to tell you, I think it was
17 probably sometime in the fall, but I don't know exactly.

18 Q And did you view the Goldman Abacus case as a
19 particular priority case for the SEC?

20 A No. I didn't. What I viewed as a priority was
21 cases coming out of the financial crisis. So while I have a
22 strong belief that we have to have a regulatory and
23 enforcement presence across the full range of the federal
24 securities laws, because that's what people expect of us and
25 we are the cop who can do insider trading and accounting, and

1 A I don't think so.

2 Q And in this timeframe, January 24th timeframe where
3 this e-mail is, were you aware that at that point in time
4 Goldman Sachs, the advocate's case, was put on the Commission
5 calendar a second time?

6 A I did know it was put on the calendar sometime in
7 January. I don't remember the exact dates.

8 Q Sure.

9 A And that there was some interest among
10 commissioners that we not do this case as a piecemeal case to
11 the extent the staff wasn't done looking at all the
12 individuals that it would be better to wrap. Because, you
13 know, sometimes we do cases we'll do the entity and then the
14 individuals later, or vice versa. If there was interest on
15 the part of the commissioners to group it together and get it
16 all done at one time.

17 Q And is that why, to your understanding, it was then
18 taken off the calendar?

19 A I believe so. I don't actually calendar cases or
20 get involved with when cases are put on the calendar, which
21 is not to say nobody ever asks me. I'm sure there are
22 instances where I've been asked, but that was my
23 understanding that there was not concern but a desire. And
24 Commissioner Casey raised it with me specifically, could we
25 wait and do this all as one.

1 Q Okay. And so in an e-mail exchange with Stephen
2 Cohen on Sunday, January 24th at 8:19, you say, "I'm very
3 anxious to get the GS case out." I assume you mean Goldman
4 Sachs?

5 A Yeah.

6 Q And you were referring to the Abacus case there?

7 A I assume so, yeah.

8 Q Okay. So even though you were anxious to get it
9 out, the decision was made to hold off?

10 A Yeah. If others aren't ready, or they think
11 there's a -- I'm anxious. Look. I'm anxious for us to have
12 a strong enforcement presence, generally, and I think this
13 one also mentions State Street in the prior communication.
14 I'm anxious for us to push our cases through.

15 One of the criticisms, as you know, the agency
16 historically has been it takes too long to get enforcement
17 cases done. That said, if the others needed more time, I was
18 fine with more time.

19 Q And it would belie any claim that you orchestrated
20 anything, if in fact you're saying you're anxious to get it
21 out, and then it doesn't go out for several months. Right?

22 A I mean I guess that's the conclusion you could
23 draw. It's certainly the conclusion I would draw. Just
24 generally, my view about these things is that I don't have to
25 try the case at the end of the day.

1 THE WITNESS: Okay.

2 BY MR. KOTZ:

3 Q All right. So just to orient yourself, this is on
4 Monday the 12th. The Goldman case was eventually filed that
5 Friday, the Friday of that week. And so in this e-mail
6 exchange between you and Robert Khuzami you asked can we
7 announce at the same time, I believe, referring to
8 Quadrangle.

9 A With what Cuomo announced at the same time was the
10 question, because we did the case jointly. It's nice to
11 announce jointly.

12 Q Okay. And then he says, "Yep." And then there's
13 another e-mail exchange where you say, "Let's Make sure we
14 don't announce Goldman same day." Why did you say that?

15 A This is a really important case for Cuomo. It was
16 an important case for us too. It was one of the biggest pay
17 to play cases. We had rulemaking pending on pay to play;
18 and, frankly, I didn't want to detract from the announcement
19 of a Quadrangle case with another case being announced at the
20 same time, so I was a little worried that the Attorney
21 General would be very upset if we announced multiple cases in
22 the same day.

23 MR. KOTZ: All right. And I'm going to have one
24 more question on this, but before I do that, I'm going to
25 give you another document, which we're going to mark as

1 that's not to say people might not have talked to me about
2 did I care; and, as between one day or the next, I didn't
3 have a --

4 Q Was there any concern about having it on a Friday?
5 There has been this conventional wisdom within the SEC that
6 the Enforcement Division doesn't announce prominent cases on
7 Friday for press reasons.

8 A I've heard that conventional wisdom. I don't know.
9 It sort of feels like it really is conventional, because with
10 the 24-hour news cycle, it almost doesn't matter anymore when
11 you announce something. It's going to, you know, maybe
12 Christmas eve makes a difference, but it seems like
13 everything gets picked up and covered anyway.

14 Q And the Goldman case did get covered, even though
15 it was issued on Friday?

16 A Did it ever?

17 Q Were you surprised at how much coverage there was
18 of that?

19 A Quite surprised. You know, my view was that we'd
20 done a lot of great cases already and, you know, I happen to
21 think the State Street case was an amazing case, that the
22 Mozilla case -- and I won't go through the whole list
23 again -- and I knew this would be an important case, but it
24 was a single transaction. And I was a little taken aback by,
25 I'd like to say by the intensity of media interest in it,

1 quite honestly. And the time for which the media maintained
2 their interest in it was also a surprise to me. I wasn't
3 prepared for that.

4 Q Okay. All right. I'm going to ask you now a
5 series of questions about specific allegations.

6 A Can I give these over?

7 Q Yes, please. You mentioned before that you were
8 involved in financial regulatory reform. Right?

9 A Yes.

10 Q Okay.

11 A I testified many times.

12 Q Has anyone at the SEC ever mentioned financial
13 regulatory reform legislation in connection with the Goldman
14 Sachs investigation or in connection with the filing of an
15 action against Goldman Sachs?

16 A Not to my knowledge.

17 Q Did anyone at any point say it would be helpful for
18 financial regulatory reform if the SEC would announce a big
19 case?

20 A No one's ever said that to me, for sure, and we've
21 been doing regulatory reform the whole time I've been here.

22 Q Okay. Do you have any reason to believe that the
23 SEC's action against Goldman Sachs or the timing of the
24 action was to advance financial regulatory reform?

25 A No.

1 Q There has been some speculation that there was some
2 momentum given to financial regulatory reform because of the
3 Goldman case. Do you think that's true?

4 A I've read that. I have no idea what other people
5 think, but I don't think so. I think reg reform had pretty
6 good momentum on its own. At that point it had passed the
7 House. It was moving forward.

8 Q And is it fair to say even if it did have some
9 impact on momentum, given the effect you thought the Goldman
10 case would have, you would have no reason to think it would?

11 A I will tell you it never crossed my mind that
12 anyone would ever link our filing of this case to reg reform.
13 In a million years it wouldn't have crossed my mind and
14 didn't.

15 Q All right. Are you aware of any information
16 indicating that you or anyone in the SEC coordinated its
17 action against Goldman Sachs with the executive office of the
18 President, the White House, or any of its employees?

19 A I know certainly I didn't. I have no knowledge
20 that anybody else did.

21 Q Okay. Are you aware of any information indicating
22 that anyone at the SEC shared information concerning its
23 Goldman Sachs investigation with the executive office of the
24 President, the White House, or any of its employees prior to
25 the complaint being filed?

1 A No. I have no knowledge of anything like that.

2 Q Are you aware of any information indicating that
3 the SEC coordinated its action against Goldman Sachs with any
4 members of congress or any congressional employees?

5 A None that I know of.

6 Q Are you aware of any information indicating that
7 anyone at the SEC shared any information concerning its
8 Goldman Sachs investigation with any members of congress, any
9 congressional employees, prior to the complaint being filed?

10 A I don't know of any, but let me couch that in.
11 When we testified, when I testified, when others testified,
12 we do sometimes speak generically, unless we've gotten
13 specific commission permission, of categories of cases. So
14 while I have to go back and look at my testimony, I may well
15 have said we have. We're looking at CDO cases or we're
16 looking at all the major financial market participants during
17 the crisis, or we're looking at securitization problems. So,
18 generically --

19 Q Okay. But you wouldn't have specified Goldman or
20 the Abacus case with the particular matter?

21 A No, not that I can recall.

22 Q Are you aware of any information indicating that
23 the SEC coordinate its action against Goldman Sachs with the
24 Democratic National Committee, the Democratic Senate Campaign
25 Committee, Democratic Congressional Campaign Committee or any

1 of their employees?

2 A No. Not that I know of.

3 Q Okay. Are you aware of any information indicating
4 that anyone at the SEC shared any information concerning its
5 Goldman Sachs investigation with the Democratic National
6 Committee, the Democratic Senate Campaign Committee, the
7 Democratic Congressional Campaign Committee, or any of their
8 employees prior to the complaint being filed?

9 A Not that I'm aware of.

10 Q Okay. All right. Let me ask you. Are you aware
11 of sort of a complaint that was made, I think through the
12 media, by representatives of Goldman Sachs that they felt
13 they were not given notice of the action against Goldman
14 Sachs prior to it going out?

15 A I read about it in the press that they felt that
16 they should have had more information.

17 Q Did you have any involvement in any decision on
18 whether to give notice or not to give notice?

19 A No.

20 Q Are you aware of concerns expressed by the New York
21 Stock Exchange?

22 A David, let me go back to that one.

23 Q Sure.

24 A Because I don't want to suggest that it's not
25 possible someone might have told me we're just going to file.

1 We're not going to give them the heads up. It's possible
2 somebody said that. I don't recall it.

3 Q Okay. Okay.

4 A But I wouldn't make that decision for the staff.

5 Q Okay. What about there was some concern expressed
6 by the New York Stock Exchange that they weren't given a
7 heads-up about the Goldman Sachs case before it was filed.
8 Were you aware of that?

9 A After the fact I was aware that they were concerned
10 that they would have wanted to know in order to do a news
11 pending trading halt.

12 Q And did you feel that that was appropriate?

13 A You know, it's a good question, and actually
14 something we need to think through, and I think much more
15 clear on going forward, you know, the need to keep things
16 confidential, but at the same time allow them to utilize
17 their mechanism through an orderly market. Normally, a
18 company calls the exchange and says we're going to have news
19 pending, please halt our stock. We're going to announce, you
20 know, that we missed our earnings or we're going to buy a lot
21 or we're going to announce a takeover, or something like
22 that. So I think it just didn't occur here to people that
23 this would be an issue. It certainly didn't occur to me.

24 (b)(7)(C) Who brought this issue to your
25 attention, if you can recall?

1 all between enforcement and Goldman. So I couldn't tell you
2 how many weeks before.

3 Q Do you remember at what point you knew that it was
4 a done deal? Was it a pretty short time between the time
5 that you understood it was a done deal and then it was placed
6 on the calendar?

7 A You know, there was certainly some back and forth,
8 and there's some e-mails in evidence that Goldman was coming
9 down to meet and talk, and people were going back and forth.
10 And I wasn't, to be quite clear, involved in any of the
11 discussions with Goldman, or, you know, orchestrating. But,
12 you know, I don't know. It could have been a few weeks. I
13 just don't know. I'm sorry.

14 Q Did you have any role in the decision on after the
15 Commission had approved the recommendation to go forward with
16 the settlement when the settlement would be filed and then
17 announced?

18 A I think Myron came to talk to me about it and maybe
19 Steve as well, about just how quickly should we do it. And,
20 you know, we've been accused of timing, bringing the case, so
21 there was a concern about will we be accused of timing
22 settling the case. But the view was that given leaks and all
23 that, you know, once the Commission approves it, let's just
24 get it done and file it.

25 The one thing I recall that governed a little bit

1 was that there was an answer due in court, I believe, early
2 the next week, maybe even Monday, and that Goldman also was
3 going to have an analyst call or something later in the week.
4 And if there was an agreement in principle as to the fine
5 amount, they would have to reserve it and announce it.

6 So I think those were contributing to the thought
7 process for others. Again, I didn't dictate when they did
8 it, particularly, but I think that was an accumulation of
9 things too throughout the time.

10 Q Were you aware that that same day that Thursday was
11 the day that the Senate voted on the financial regulatory
12 reform?

13 A Not until they did it. You know. There was no
14 predicting. As you will recall there was a lot of to and fro
15 about the last few holdout votes and whether they would --
16 you know, Scott Brown, in particular I think, and others --
17 would they vote for it. So there was, I mean, to be
18 perfectly honest, it would have been impossible to predict, I
19 think, until maybe that actual day and the cloture was done,
20 whether they would actually be able to pass the bill.

21 Q Was there any relationship at all between the
22 timing of the Goldman settlement and the fact that financial
23 regulatory reform was voted on and passed that day?

24 A None whatsoever. Negotiations had been going on
25 for a while. When it was done, it was done.

This document is subject to the provisions of the Privacy Act of 1974, and may require redaction before disclosure to third parties. No redaction has been performed by the Office of Inspector General. Recipients of this report should not disseminate or copy it without the Inspector General's approval.



REPORT OF INVESTIGATION

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION
OFFICE OF INSPECTOR GENERAL**

Case No. OIG-534

Appendix, Volume II of III

September 30, 2010

Report of Investigation OIG-534

Exhibit List

Allegations of Improper Coordination Between the SEC and Other Governmental Entities Concerning the SEC's Enforcement Action Against Goldman Sachs & Co.

1. Excerpts of Testimony Transcript of (b)(7)(C) July 6, 2010
2. Excerpts of Testimony Transcript of Cheryl Scarboro; July 7, 2010
3. Excerpts of Testimony Transcript of (b)(7)(C) July 13, 2010
4. Excerpts of Testimony Transcript of Unidentified Senior Counsel, Division of Enforcement; July 14, 2010
5. Excerpts of Testimony Transcript of (b)(7)(C) July 15, 2010
6. Excerpts of Testimony Transcript of Reid Muoio; July 20, 2010
7. Excerpts of Testimony Transcript of Pauline Calande; July 23, 2010
8. Excerpts of Testimony Transcript of Joan McKown; July 26, 2010
9. Excerpts of Testimony Transcript of (b)(7)(C) July 26, 2010
10. Excerpts of Testimony Transcript of Timothy Henseler; July 27, 2010
11. Excerpts of Testimony Transcript of Julie Davis; July 27, 2010
12. Excerpts of Testimony Transcript of Anne-Marie Kelley; July 27, 2010
13. Excerpts of Testimony Transcript of (b)(7)(C) July 29, 2010
14. Excerpts of Testimony Transcript of John Nester; July 30, 2010
15. Excerpts of Testimony Transcript of (b)(7)(C) July 30, 2010
16. Excerpts of Testimony Transcript of Eric Spitler; August 3, 2010
17. Excerpts of Testimony Transcript of Ricardo Delfin; August 3, 2010
18. Excerpts of Testimony Transcript of Kayla Gillan; August 4, 2010
19. Excerpts of Testimony Transcript of Didem Nisanci; August 6, 2010
20. Excerpts of Testimony Transcript of Richard Klapper; August 6, 2010
21. Excerpts of Testimony Transcript of Kathleen Casey; August 9, 2010
22. Excerpts of Testimony Transcript of Lorin Reisner; August 10, 2010
23. Excerpts of Testimony Transcript of Mary Schapiro; August 11, 2010
24. Excerpts of Testimony Transcript of Stephen Cohen; August 11, 2010

25. Excerpts of Testimony Transcript of Myron Marlin; August 12, 2010
26. Excerpts of Testimony Transcript of (b)(7)(C) August 12, 2010
27. Excerpts of Testimony Transcript of Robert Khuzami; August 13, 2010
28. Excerpts of Testimony Transcript of Scott Friestad; August 13, 2010
29. Excerpts of Testimony Transcript of Luis Aguilar; August 17, 2010
30. Excerpts of Testimony Transcript of Kenneth Lench; August 19, 2010
31. Excerpts of Testimony Transcript of Troy Paredes; August 19, 2010
32. Excerpts of Testimony Transcript of Elisse Walter; August 27, 2010
33. Memorandum of Interviews of (b)(7)(C) and (b)(7)(C) (b)(7)(C) April 27, 2010
34. Memorandum of Interview of (b)(7)(C) June 21, 2010
35. Memorandum of Interview of (b)(7)(C) August 26, 2010
36. January 24, 2010 E-mail from Stephen Cohen to Didem Nisanci
37. August 31, 2010 Letter from David McCraw to (b)(7)(C)
38. April 30, 2010 SEC.gov Press Release webpage printout
39. April 14, 2010 E-mail from Scott Friestad to Robert Khuzami
40. August 26, 2010 Golden Telephone Call Memorandum
41. April 19, 2010 E-mail from Scott Friestad to Joan McKown
42. July 16, 2010 E-mail from Louise Story to John Nester
43. April 29, 2010 HUB Report regarding ABACUS 2007-AC1
44. April 1, 2010 Action Memorandum regarding "Goldman, Sach & Co." and "Fabrice Tourre"
45. November 24, 2009 E-mail from Reid Muoio to (b)(7)(C)
46. September 17, 2009 E-mail from Stephen Cohen to Reid Muoio
47. October 1, 2009 E-mail from (b)(7)(C) to (b)(7)(C)
48. September 2, 2009 E-mail from Reid Muoio to (b)(7)(C)
49. November 2, 2009 E-mail from Reid Muoio to (b)(7)(C)
50. November 13, 2009 E-mail from Elizabeth Murphy to Reid Muoio
51. November 24, 2009 E-mail from Reid Muoio to Enforcement Action Memos
52. December 7, 2009 E-mail from Reid Muoio to (b)(7)(C)

53. December 7, 2009 E-mail from (b)(7)(C) to Reid Muoio
54. December 6, 2009 E-mail from (b)(7)(C) to Stephen Cohen
55. December 8, 2009 E-mail from Joan McKown to Cheryl Scarboro
56. December 8, 2009 E-mail from Joan McKown to (b)(7)(C) and (b)(7)(C)
(b)(7)(C)
57. December 8, 2009 E-mail from Reid Muoio to (b)(7)(C)
58. December 8, 2009 E-mail from Reid Muoio to Mark Adler and (b)(7)(C)
59. December 9, 2009 E-mail from (b)(7)(C) to Stephen Cohen
60. December 22, 2009 E-mail from (b)(7)(C) to Reid Muoio and (b)(7)(C)
61. December 25, 2009 E-mail from Mary Schapiro to Robert Khuzami
62. January 4, 2010 E-mail from Reid Muoio to (b)(7)(C)
63. December 24, 2009 E-mail from Reid Muoio to Robert Khuzami
64. January 4, 2010 E-mail from Robert Khuzami to Mary Schapiro
65. January 5, 2010 E-mail from Stephen Cohen to Lorin Reisner and Robert Khuzami
66. HUB Report Excerpt for HO-10911
67. January 7, 2010 E-mail from Reid Muoio to (b)(7)(C)
68. January 9, 2010 E-mail from Reid Muoio to Robert Khuzami
69. January 15, 2010 E-mail from Reid Muoio to Robert Khuzami
70. January 15, 2010 E-mail from (b)(7)(C) to Reid Muoio and (b)(7)(C)
71. January 15, 2010 E-mail from Stephen Cohen to Reid Muoio
72. January 15, 2010 E-mail from Didem Nisanci to Stephen Cohen
73. January 15, 2010 E-mail from Stephen Cohen to Reid Muoio
74. January 19, 2010 E-mail from Reid Muoio to (b)(7)(C) and Cheryl Scarboro
75. January 22, 2010 E-mail from Reid Muoio to Cheryl Scarboro
76. January 22, 2010 E-mail from Reid Muoio to Kenneth Lench
77. January 24, 2010 E-mail from Stephen Cohen to Mary Schapiro
78. January 25, 2010 E-mail from Stephen Cohen to Reid Muoio
79. January 25, 2010 E-mail from Stephen Cohen to Reid Muoio
80. January 26, 2010 E-mail from Stephen Cohen to Lorin Reisner
81. January 26, 2010 E-mail from Stephen Cohen to Myron Marlin

82. January 26, 2010 E-mail from (b)(7)(C) to Reid Muoio
83. January 25, 2010 E-mail from Reid Muoio to Cheryl Scarboro
84. January 27, 2010 E-mail from Reid Muoio to Cheryl Scarboro and Kenneth Lench
85. January 27, 2010 E-mail from Stephen Cohen to (b)(7)(C)
86. January 27, 2010 E-mail from Reid Muoio to (b)(7)(C) and (b)(7)(C)
87. January 28, 2010 E-mail from (b)(7)(C) to (b)(7)(C)
88. February 16, 2010 E-mail from Reid Muoio to (b)(7)(C)
89. March 5, 2010 E-mail from Lorin Reisner to Reid Muoio
90. March 8, 2010 E-mail from Reid Muoio to (b)(7)(C) and (b)(7)(C)
(b)(7)(C)
91. February 25, 2010 E-mail from (b)(7)(C) to (b)(7)(C)
92. March 23, 2010 E-mail from Robert Khuzami to Reid Muoio
93. March 24, 2010 E-mail from Reid Muoio to (b)(7)(C)
94. March 26, 2010 E-mail from Reid Muoio to Enforcement Action Memos
95. April 8, 2010 E-mail from Reid Muoio to Lorin Reisner
96. February 25, 2010 E-mail from Pauline Calande to (b)(7)(C)
97. February 25, 2010 E-mail from Timothy Henseler to Pauline Calande and (b)(7)(C)
(b)(7)(C)
98. April 7, 2010 E-mail from Pauline Calande to Timothy Henseler and Reid Muoio
99. April 7, 2010 E-mail from Timothy Henseler to Robert Khuzami
100. April 7, 2010 E-mail from Lorin Reisner to Timothy Henseler
101. February 22, 2010 E-mail from Timothy Henseler to (b)(7)(C)
102. March 18, 2010 E-mail from Reid Muoio to Lorin Reisner and Kenneth Lench
103. April 16, 2010 E-mail from Timothy Henseler to Didem Nisanci
104. April 17, 2010 E-mail from Timothy Henseler to Kenneth Lench
105. April 14, 2010 Closed Commission Meeting Minutes
106. April 12, 2010 E-mail from David Rosenfeld to Robert Khuzami
107. April 12, 2010 E-mail from David Rosenfeld to Robert Khuzami
108. April 12, 2010 E-mail from Robert Khuzami to Mary Schapiro
109. April 13, 2010 E-mail from Stephen Cohen to Mary Schapiro

110. April 13, 2010 E-mail from (b)(7)(C) to (b)(7)(C)
111. April 13, 2010 E-mail from Lorin Reisner to Reid Muoio
112. April 13, 2010 E-mail from David Rosenfeld to Robert Khuzami
113. April 14, 2010 E-mail from Myron Marlin to John Nester
114. April 14, 2010 E-mail from (b)(7)(C) to Reid Muoio
115. April 11, 2010 E-mail from Stephen Cohen to Mary Schapiro
116. April 14, 2010 E-mail from Kenneth Lench to (b)(7)(C)
117. April 15, 2010 E-mail from Myron Marlin to John Nester
118. April 15, 2010 E-mail from (b)(7)(C) to (b)(7)(C)
119. April 16, 2010 E-mail from Julie Davis to (b)(7)(C)
120. April 17, 2010 E-mail from Robert Khuzami to John Nester and Lorin Reisner
121. April 16, 2010 E-Mail from SEC NEWS
122. *The SEC's Impeccable Timing*, The Wall Street Journal, April 20, 2010
123. April 16, 2010 E-mail from (b)(7)(C) to (b)(7)(C)
124. David Scheer and Joshua Gallu, *Madoff Scam Reached Family of SEC Official Whose Unit Got Tip*, Bloomberg, September 7, 2009
125. Sarah N. Lynch, *Madoff: SEC Agent was a "Blowhard,"* The Wall Street Journal, October 31, 2009
126. *SEC Faulted Over Bear Probe*, the Washington Post, October 11, 2008
127. Peter Barnes, *SEC Inspector General Slams Agency, Again*, Foxbusiness.com, May 3, 2010
128. April 16, 2010 E-mail from Kayla Gillan to Myron Marlin
129. April 1, 2010 E-mail from Kayla Gillan to Mary Schapiro
130. March 26, 2010 E-mail from Kayla Gillan to Mary Schapiro
131. April 7, 2010 E-mail from Kayla Gillan to (b)(7)(C)
132. April 9, 2010 E-mail from (b)(7)(C) to COMMISSION COUNSELS
133. April 12, 2010 E-mail from (b)(7)(C) to COMMISSION COUNSELS
134. April 14, 2010 E-mail from (b)(7)(C) to Barry Walters
135. April 15, 2010 E-mail from (b)(7)(C) to Kayla Gillan and Stephen Cohen
136. April 16, 2010 E-mail from Stephen Cohen to Myron Marlin
137. August 9, 2010 Letter from Sharon Nelles to (b)(7)(C)

138. April 17, 2010 E-mail from Joan McKown to Robert Khuzami
139. April 17, 2010 E-mail from Lorin Reisner to John Nester and Robert Khuzami
140. April 17, 2010 E-mail from Robert Khuzami to John Nester and Lorin Reisner
141. April 18, 2010 E-mail from Robert Khuzami to John Nester
142. Joshua Gallu & Christine Harper, *Goldman Shares Tumble on SEC Fraud Allegations*, Bloomberg News, April 16, 2010
143. Deborah Levine, *Goldman Sachs Bonds Suffer Again on Fraud Fears*, MarketWatch, April 19, 2010
144. Miriam Marcus, *Market Crumbles After Goldman Fraud Charges*, Forbes.com, April 16, 2010
145. April 16, 2010 E-mail from (b)(7)(C) to (b)(7)(C)
146. April 16, 2010 E-mail from (b)(7)(C) to Lorin Reisner
147. New York Stock Exchange Manual Section 2
148. April 19, 2010 E-mail from Robert Khuzami to (b)(7)(C)
149. July 1, 2010 E-mail from (b)(7)(C) to Kenneth Lench
150. Attachment to July 2, 2010 E-mail from Reid Muoio to Kenneth Lench and (b)(7)(C)
(b)(7)(C)
151. July 8, 2010 E-mail from Kenneth Lench to Lorin Reisner
152. July 12, 2010 E-mail from (b)(7)(C) to Commission Counsels
153. July 12, 2010 Reid Muoio E-mail to Robert Khuzami
154. July 12, 2010 E-mail from (b)(7)(C) to Luis Aguilar and (b)(7)(C)
155. July 14, 2010 E-mail from (b)(7)(C) to (b)(7)(C)
156. July 14, 2010 E-mail from Stephen Cohen to Myron Marlin
157. July 15, 2010 E-mail from Robert Khuzami to (b)(7)(C)
158. July 15, 2010 E-mail from John Nester to Stephen Cohen
159. July 15, 2010 E-mail from (b)(7)(C) to (b)(7)(C)
160. July 15, 2010 E-mail from (b)(7)(C) to ENF-ALL TRIAL ATTORNEYS
161. July 15, 2010 E-mail from SEC NEWS
162. July 15, 2010 E-mail from Reid Muoio to (b)(7)(C)

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. OIG-534
OIG-534)

WITNESS: Number 37

PAGES: 1 through 147

PLACE: Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C.

DATE: Wednesday, August 11, 2010

The above-entitled matter came on for hearing, pursuant to notice, at 1:01 p.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 (b)(7)(C) ESQ.

6 Securities and Exchange Commission

7 100 F Street, N.E.

8 Washington, D.C. 20549

9 (b)(7)(C)

10

11 On behalf of the Witness:

12 (b)(7)(C)

13 Steptoe & Johnson, LLP

14 1330 Connecticut Avenue, N.W.

15 Washington, D.C. 20036-1795

16 (b)(7)(C)

17

18 Also Present:

19 (b)(7)(C) Paralegal

20 Steptoe & Johnson, LLP

21

22

23

24

25

C O N T E N T S

1	WITNESS:	EXAMINATION
2		
3	Stephen Cohen	8
4		
5		
6	EXHIBITS	PAGE
7	1 - Attorney confidentiality and	
8	nondisclosure agreements	8
9	2 - 9/17/2008 Cohen and Muoio e-mails	13
10	3 - 10/8/2009 Cohen and Muoio e-mails	17
11	4 - 11/4/2009 Cohen and Marlin e-mails	18
12	5 - 11/4/2009 Cohen and Marlin e-mails	21
13	6 - 12/6/2009 Cohen and (b)(7)(C) e-mails	22
14	7 - 12/8/2009 Cohen and (b)(7)(C) e-mails	26
15	8 - 12/9/2009 Cohen and (b)(7)(C) e-mails	28
16	9 - 1/4/2010 (b)(7)(C) and Marlin e-mails	34
17	10 - 1/4/2010 (b)(7)(C) and (b)(7)(C) e-mails	37
18	11 - 1/5/2010 Khuzami, Cohen, et al. e-mails	39
19	12 - 1/5/2010 Cohen e-mail to Reisner, Khuzami	42
20	13 - 1/15/2010 e-mails, Henseler, Davis et al.	43
21	14 - 1/15/2010 e-mails, Cohen to Henseler	43
22	15 - 1/15/2010 Muoio e-mail to Cohen	45
23	16 - 1/15/2010 Cohen e-mail to Muoio	47
24	17 - 1/24/2010 Cohen e-mail to Nisanci et al.	50
25	18 - 1/22/2010 Scarboro e-mail to Muoio	52

1 identification.)

2 THE WITNESS: Okay.

3 BY MR. KOTZ:

4 Q All right. So it's your recollection that
5 initially the ABACUS case was put on the Commission calendar
6 in December of 2009?

7 A Yes.

8 Q And then it was taken off the calendar?

9 A Yes.

10 Q What was your understanding as to why it was taken
11 off the calendar?

12 A My understanding is consistent with what's stated
13 in Exhibit 7. Of course, it was communicated to me directly
14 from either Reid or Rob Khuzami, which is that based on
15 internal deliberations within the Division of Enforcement,
16 the Division determined that they would take Fabrice
17 Tourre's -- I'm sorry, Jonathan Eagle's testimony before
18 making a recommendation. And so they wished to put it off
19 until a later date.

20 Q And was that sort of (b)(7)(C) position that
21 they should take Eagle's testimony? Do you remember?

22 A

23 (b)(5)

24 Q Do you know who made the decision to take it off
25 the calendar?

1 December 17th calendar in order to take Eagle's testimony."

2 What we're curious about is that we saw some
3 e-mails which showed that there were actually efforts made to
4 take Eagle's testimony prior to placing it on the calendar,
5 but that there were difficulties with dates, and so they
6 weren't able to get a date for Eagle.

7 Do you recall that?

8 A I do. I think (b)(7)(C) e-mail actually references
9 that, and I have a vague recollection that Reid mentioned
10 that to me. I think that's what (b)(7)(C) means in relaying that
11 Reid said, (b)(5)

12 (b)(5)

13 I recall Reid telling me something to that effect,
14 and that at or around the time in this time in early
15 December. Somehow I think Eagle or his counsel and the
16 Division managed to agree on testimony or a date.

17 Q So prior to putting it on the December calendar,
18 there were attempts made to take Eagle's testimony. (b)(5)

19 (b)(5)
20

21 A That's what Reid communicated to me.

22 Q And did you ever get an explanation of why Reid
23 and/or others believed it wasn't necessary to take Eagle's
24 testimony? You know, it's not a matter of charging him.
25 It's just taking his testimony. Why wouldn't you take his

1 testimony? Or did you not get into that much detail?

2 (b)(5),(b)(7)(C)

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

22 Q Okay. Did you believe that it was the correct
23 decision to take the ABACUS case off the calendar in December
24 to take Eagle's testimony, or did you not kind of weigh in?
25 Were you not able to form an opinion because you weren't

1 though -- Reid says, "We'll be re-sending this recommendation
2 up to the Commission on Friday, January 8th, a relatively
3 short time after it was taken off the calendar in December,"
4 because he --

5 MR. KOTZ: When was the date of Eagle's testimony?
6 I think it was early January.

7 (b)(7)(C) Yes. It was certainly early January.

8 BY MR. KOTZ:

9 Q Yes. I believe Eagle's testimony was early
10 January. And so essentially, the significant investigative
11 step that was intended to be done after it was taken off the
12 calendar in December was to take Eagle's testimony. And
13 after Eagle's testimony was taken, assuming that didn't bring
14 up other issues, it would go back on the calendar.

15 Is that your recollection?

16 A Right. That is my recollection.

17 Q And so Reid Muoio, in the e-mail on page 2 of 3 of

18 Exhibit 10, the e-mail he sends to (b)(7)(C), Elizabeth

19 Murphy, (b)(7)(C) with a copy to Cheryl Scarboro and

20 himself, on Monday, January 4, 2010 at 4:15 p.m., says,

21 "We'll be sending the recommendation up to the Commission on
22 Friday, January 8th," et cetera, et cetera. And then he
23 says, "This is a high profile enforcement case that recently
24 became time-sensitive."

25 Do you know why it recently became time-sensitive?

1 A (Examining.)

(b)(5)

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16 Q All right. In that vein, I'm going to show you the
17 next document. I'm going to skip one. We're going to go to
18 the Robert Khuzami e-mail to Eric Spitler, you, Julie Davis,
19 Lorin Reisner, 1/5/2010, 7:52 p.m.

20 A We're done with this?

21 Q Yes. We're going to mark this Exhibit 11.

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

24 BY MR. KOTZ:

25 Q Take your time to read it. If you go to the second

1 page, there's an e-mail from Robert Khuzami to Mary Schapiro,
2 Didem Nisanci, Eric Spitler, Julie Davis, and you, Monday,
3 January 4, 2010, 1:45 p.m., where he references what you just
4 said.

5 A (Examining.) Okay.

6 Q All right. And so was this what you were referring
7 to, that Robert Khuzami had heard that Senator Levin and the
8 Senate Permanent Subcommittee on Investigations was preparing
9 a hearing in late January or February?

10 A Yes, although -- yes. That's right.

11 Q And in this e-mail that Robert Khuzami sends out to
12 you and others, he says, "As we would certainly want to file
13 our Goldman case, which addresses some of these same issues,
14 before the hearing, which will put us on the offensive on
15 this issue."

16 Do you know what he meant by "put us on the
17 offensive"?

18 A I don't know what he meant by the use of the word
19 "offensive." But the concern I was alluding to before is
20 that with a public airing -- part of the concern is that with
21 the a public airing of the same facts and witnesses, there
22 will be a lot of questions about these facts, a lot of
23 discussion about them in the public forum.

24 And I guess the additional thing he's alluding to
25 that I don't think I mentioned is there will be a lot of

1 questions about where's the SEC on this. That's what I
2 presume he means by "on the offensive."

3 Q I see.

4 A I don't know if that's more offensive or defensive,
5 but --

6 Q So it would be helpful for the SEC if the news
7 about someone looking into Goldman came out first with the
8 SEC looking at it, so there wouldn't be questions of why the
9 SEC isn't looking at it when in fact they were, it just
10 wasn't public yet?

11 A

(b)(5)

12 (b)(5)

13

14

15

16

17

18

19

20

21

22 Q And just -- when you say "in an organized fashion
23 from us," would you mean in the form of a complaint, or in
24 what --

25 A

(b)(5)

(b)(5)

1
2
3
4

5 Q Okay. The next document we're going to mark is
6 Exhibit 12, e-mail at the top from you to Lorin Reisner and
7 Robert Khuzami, 1/5/2010, 7:07 p.m.

8 (Exhibit No. 12 was marked for
9 identification.)

10 BY MR. KOTZ:

11 Q And so do you recall generally, before we get to
12 the specifics, that Robert Khuzami had thought that there
13 might be a hearing in late January/February, and then
14 information came out that there wasn't going to be a hearing?
15 And I think that may be what Lorin Reisner is referring to in
16 this e-mail exchange in Exhibit 12.

17 A Mind if I take a look?

18 Q Sure. Please.

19 A (Examining.) Okay.

20 Q All right. Let me show you a couple other
21 documents just so that you have the full picture of e-mails
22 before I ask the questions.

23 MR. KOTZ: So Exhibit 13 is an e-mail exchange from
24 Tim Henseler to Julie Davis, you, Didem Nisanci, Eric
25 Spitler, beginning with one on 1/15/2010 at 12:52 p.m.

1 THE WITNESS: Okay.

2 BY MR. KOTZ:

3 Q And when you said in the e-mail Friday, January 15,
4 2010, 11:24 a.m. to Reid Muoio, "We really need to bring this
5 case on the 28th," was that before you learned that the PSI
6 was not going to conduct a hearing? Or was there another
7 reason why you were saying that?

8 A More likely another reason.

9 Q Do you remember what that reason might have been?

10 A I'm not sure without looking at documents, and I'm
11 not even sure whether I would find them. My recollection is
12 that there were attempts -- my recollection or belief is that
13 looking forward, there may have been very few meetings where
14 we'd have a full Commission.

15 And so knowing that they were interested in
16 bringing the case quickly, notwithstanding the PSI hearing, I
17 was sort of trying to tip off Reid that if you don't bring it
18 the 28th, you may not be able to bring it till who knows
19 when. I don't remember the lineup, but --

20 Q So you think it was a matter of scheduling?

21 A A matter of scheduling. Correct.

22 Q All right. Let me show you the next document we're
23 going to mark as Exhibit 16. At the top of the page is an
24 e-mail from you to Reid Muoio, 1/15/2010, 12:54 p.m.

25 (Exhibit No. 16 was marked for

1 identification.)

2 THE WITNESS: (Examining.) Well, this is all the
3 same day. So it's possible, depending on the timing of that
4 e-mail, that I still didn't -- I don't know. It's possible
5 that it was related to the PSI. If I didn't yet know that,
6 if this is all the same day, it's one of the two reasons that
7 I mentioned.

8 BY MR. KOTZ:

9 Q Right. Okay. And in this e-mail on 1/15/2010,
10 11:54 a.m., from you to Reid Muoio, does this refresh your
11 recollection any more about the issue of nonpublic
12 investigation? You say in here, "PSI is probably the most
13 conscientious committee about safeguarding nonpublic
14 information."

15 So maybe there was a little bit less of a concern
16 with PSI about nonpublic information. But does this refresh
17 your recollection at all about whether anything was shared
18 with PSI?

19 A I don't think that changes my view about whether
20 anything was shared. And I think this goes more to not
21 whether they would share our information, but knowing that
22 they got documents and information from Goldman, I think what
23 I was communicating to Reid is some committees that aren't
24 doing investigations, necessarily, but are looking for
25 documents for whatever their particular interests are for

1 their committee might quickly post information on their
2 website as they get it or process it.

3 And what I was trying to communicate from my
4 discussions with Tim and Julie, who have much more experience
5 than I do, is that that's not PSI's MO. They're more likely
6 to do an investigation. They may post information publicly
7 when they do a hearing, but they typically wouldn't do that
8 till the end of an investigation.

9 Q Okay. But there were still reasons to be careful
10 about sharing information with anybody, even if they were
11 conscientious about it?

12 A Sure. I was not trying to suggest otherwise.

13 Q And then, just to clarify in terms of the timing,
14 if you're interested, the e-mail you sent where you say, "We
15 really need to bring this case on the 28th," that was
16 actually at 11:24 a.m.

17 That was before Julie Davis came in with "the soft
18 touch intel we're getting from PSI is that they're not doing
19 a hearing on this any time soon," and before you said, "Feel
20 free to share with enforcement folks that the very soft
21 intelligence our folks are getting is that the PSI does not
22 intend to do a hearing."

23 So it does look like potentially, when you wrote,
24 "We really need to bring this case on the 28th," and
25 immediately below is Reid Muoio's e-mail about Goldman

1 providing copies to the Senate, that that was before you knew
2 that the PSI was not doing a hearing at that time.

3 A Okay. I don't --

4 Q So you think, given that, "We really need to bring
5 this case on the 28th" may actually have related to PSI?

6 A I think it is. It's possible or likely that. If
7 it's before I learned that there wasn't going to be a
8 hearing, then it's possible or likely that I was
9 communicating to Reid that the 28th needed to be the date.

10 Q All right. Let's move on to the next document.

11 A I just want to -- those -- the two reasons I gave
12 aren't mutually exclusive, by the way.

13 Q Sure. Sure.

14 A So I may -- given my role in the calendaring
15 process, it may be that given the press to bring the case,
16 people had concerns about bringing it before the hearing.
17 And the calendaring, I don't know. It may be that I knew,
18 for example, that February 7th there wouldn't be a full
19 calendar.

20 So I was saying, if we're in a hurry, the 28th.
21 I'm always thinking about -- since I deal with the calendar
22 every day, so I'm always thinking about when things can be
23 calendared. So those things might have gone hand in glove.

24 Q Okay. All right. Let me show you the next
25 document we're going to mark as Exhibit 17, an e-mail from

1 were, you know, real discussions about the actual filing of
2 it. Is that your recollection?

3 A That is -- that is correct. That is my
4 recollection.

5 Q Because eventually, of course, it would be pulled
6 off the calendar. But at least at this point in time, which
7 was two days before the Commission was scheduled to look at
8 it, the thought was it was going to be filed almost
9 imminently?

10 A We had every reason to believe that if the
11 Commission approved it, we were going to file it that week.

12 Q Gotcha. Yes. And do you recall what the issue
13 that Lorin had? "I've flagged the issue we discussed. He
14 will discuss with Rob. I'll raise again at the end of the
15 day. Let me know how strongly you feel." Is that the issue
16 that eventually led to it being pulled, or was that something
17 else?

18 A No. I believe this -- no. It wouldn't have been
19 that because this is an e-mail with Myron Marlin. I wouldn't
20 have discussed a substantive issue like that with Myron.
21 This would have been public relations-related. It would have
22 been around a concern that -- just what the right day to
23 bring it was from a public relations perspective.

24 My suspicion is that the issue was a belief by
25 Myron that if we waited till Monday, it would be hard to --

1 Goldman or -- the story would get out, and we wouldn't have
2 control of the story, like I was discussing earlier, with our
3 press release and a complaint. The press would get hold of
4 it.

5 Q So on the one hand, there was the discussion about
6 whether you want to issue it on Friday. But on the other
7 hand, if you wait too long, then the story will already get
8 out. Right?

9 A Correct.

10 Q All right. Let me --

11 A But Lorin's view -- I mean, if the complaint's not
12 ready, we wouldn't file it until the complaint is ready.

13 Q Right. All right. Let me show you the next
14 document. It's a little bit earlier, but a different
15 subject. So I wanted to just ask you about it now.

16 We're going to mark as Exhibit 23 an e-mail from
17 Mary Schapiro to you, at the top of the page, 1/24/2010,
18 10:21 a.m.

19 (Exhibit No. 23 was marked for
20 identification.)

21 THE WITNESS: Okay.

22 BY MR. KOTZ:

23 Q All right. So I want to draw your attention to
24 Mary Schapiro's e-mail to you, Sunday, January 24th, where
25 she says, "I'm very anxious to get the GS case out. Do we