

FW: WSJ.com - story posted

7/14/2010 9:58:13 PM

From: Cohen, Stephen L.
To: Marlin, Myron L. (b)(7)(C)

Guess they got first crack at framing the story...

From: (b)(7)(C)
Sent: Wednesday, July 14, 2010 9:25 PM
To: Khuzami, Robert; Nester, John J.; Marlin, Myron L.; Muoio, Reid; Reisner, Lorin L.; Lench, Kenneth; Cohen, Stephen L.; (b)(7)(C)
Subject: WSJ.com - story posted

Goldman, SEC Discuss Catch-All Settlement

JULY 15, 2010

By SUSANNE CRAIG and KARA SCANNELL

Goldman Sachs Group Inc. and the Securities and Exchange Commission recently held discussions about a possible settlement to simultaneously resolve the fraud lawsuit against Goldman and some of the agency's lower-profile probes of the Wall Street firm's mortgage department, according to people familiar with the situation.

The settlement idea was floated by Goldman, which is eager to end the bad publicity swirling around the New York company ever since the SEC sued it in April over a collateralized debt obligation called Abacus 2007-AC1, these people said. Combining a settlement of the Abacus lawsuit with a resolution of related SEC probes could soothe Goldman clients and investors, while shielding the firm from the release of information that could be used against Goldman in private litigation.

Some shareholders have been pushing Goldman to seek an all-in-one settlement, people familiar with the matter said. Goldman proposed the deal as part of continuing settlement discussions with the SEC. It isn't clear how the agency responded, but the SEC likely wouldn't agree to any broad settlement unless it was confident that the terms would withstand scrutiny from lawmakers and a federal judge who would have to approve the deal, according to people familiar with the SEC's position.

Another hurdle is how to structure a settlement that is narrow enough to satisfy Goldman, including by limiting its legal liability, but would allow the SEC to go after the company if the agency uncovers new evidence of wrongdoing related to the existing cases, according to people familiar with the discussions. Goldman and SEC spokesmen declined to comment.

"It's a no-brainer that if you're going to resolve one government investigation, you try to resolve as many as you can as broadly as you can," said Robert G. Morvillo, a veteran defense lawyer.

Goldman remains steadfast in the settlement talks that it wants to avoid ending the case with a civil-fraud charge, according to people familiar with the matter. Even a deal in which Goldman neither admitted to nor denied committing fraud in the Abacus deal would damage the 141-year-old firm's standing with clients and increase the likelihood of a wave of civil lawsuits.

Some analysts have predicted that Goldman will agree to fine of more than \$1 billion in order to end the fraud suit. Goldman hasn't spoken publicly about potential fines but could be pressed for more details when the company reports second-quarter results Tuesday.

Goldman has denied any wrongdoing in the Abacus deal. The firm faces a Monday deadline to file a response to the lawsuit, which accuses the firm of selling the CDO without disclosing to other participants in the deal that hedge-fund firm Paulson & Co. helped select some of the underlying mortgage securities and was betting on the financial instrument's decline.

It is expected that the firm will seek more time to file its response, since it is proceeding with negotiations with the SEC. In addition to the Abacus deal, the SEC has sought information about other CDOs the firm was involved with, without disclosing which deals are being investigated.

A Senate subcommittee cited three Goldman debt pools in an April report about conflicts of interest: Hudson Mezzanine 2006-1, Anderson Mezzanine Funding 2007-1 and Timberwolf I.

The SEC investigations into the various Goldman CDOs are at different stages, another obstacle in reaching a catch-all settlement because agency officials aren't sure what those probes will yield.

Goldman already has taken steps that could help convince the SEC that it is willing to agree to changes in its business practices. In May, the firm created its Business Standards Committee, which is conducting a review of Goldman's internal practices, including how it manages conflicts and disclosures.

Even if the SEC and Goldman agree to a deal, the company faces numerous civil lawsuits related to its activities during the mortgage bubble. In addition, criminal prosecutors are looking into whether Goldman or its employees committed securities fraud in connection with its mortgage trading, according to people familiar with the matter. Goldman hasn't commented on the criminal investigation.

Write to Susanne Craig at susanne.craig@wsj.com and Kara Scannell at kara.scannell@wsj.com

http://online.wsj.com/article/SB10001424052748704746804575367532286867918.html?mod=googlenews_wsj

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Re:

7/15/2010 2:55:55 PM

From:

(b)(7)(C)

To: Khuzami, Robert

(b)(7)(C)

Could you also send us your press statement in advance of its release? Thanks.

From: Khuzami, Robert

(b)(7)(C)

Sent: Thursday, July 15, 2010 2:46 PM

To:

(b)(7)(C)

Subject:

Approved.

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Re: News conference timing

7/15/2010 3:24:54 PM

From: Nester, John J. (b)(7)(C)
To: Nester, John J. (b)(7)(C); Cohen, Stephen L. (b)(7)(C); Reisner, Lorin L. (b)(7)(C); Khuzami, Robert (b)(7)(C); (b)(7)(C); Lench, Kenneth (b)(7)(C); Muoio, Reid (b)(7)(C); Marlin, Myron L. (b)(7)(C)

FINAL

From: Nester, John J.
Sent: Thursday, July 15, 2010 2:46 PM
To: Cohen, Stephen L.; Reisner, Lorin L.; Khuzami, Robert (b)(7)(C); Lench, Kenneth; Muoio, Reid; (b)(7)(C); Marlin, Myron L.
Subject: RE: News conference timing
Importance: High

Here's the revised timeline.

3:15 pm issue advisory announcing 4:45 pm event
 3:30 pre-circulate press release to Commissioners and counsel
 4 pm courtesy copies to Judge Jones
 4:15 electronically file
 4:16 Courtesy copy to respondents
 4:30 issue press release
 4:45 news conference

From: Cohen, Stephen L.
Sent: Thursday, July 15, 2010 2:38 PM
To: Nester, John J.; Reisner, Lorin L.; Khuzami, Robert (b)(7)(C); Lench, Kenneth; Muoio, Reid; (b)(7)(C); Marlin, Myron L.
Subject: Re: News conference timing

Done

From: Nester, John J.
To: Reisner, Lorin L.; Khuzami, Robert; Cohen, Stephen L. (b)(7)(C); Lench, Kenneth; Muoio, Reid; (b)(7)(C); Marlin, Myron L.
Sent: Thu Jul 15 14:20:32 2010
Subject: News conference timing

Rob, Myron and I have discussed. depending on what time the Commission acts, and what time the Commission adjourns, we may move the news conference up to 4:30 or shortly thereafter, rather than start at 5. So please keep that in mind as you plan.

In any event, we'll issue a final timeline when we have the basis for doing so.

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NEWS CONFERENCE

7/15/2010 3:31:56 PM

From: (b)(7)(C)

To: (b)(7)(C)

(b)(7)(C)

I was about to head out of the office when I saw the email about this afternoon's press conference. Can you offer any guidance what this might be regarding? Would it possibly involve Goldman Sachs? I only ask because we just need to work out staffing issues...

Thanks

(b)(7)(C)

CNNMoney.com Staff Writer

(b)(7)(C)

1 Time Warner Center, New York, NY 10019

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Possible Goldman settlement?

7/15/2010 4:25:47 PM

From: (b)(7)(C)
To: #ENF-ALL TRIAL ATTORNEYS [#ENF-ALLTRIALATTORNEYS@SEC.GOV]
Cc: (b)(7)(C)

Just FYI (or maybe FYS, the "S" being for speculation):

The Associated Press - 11 minutes ago

NEW YORK — Stocks have had a late-day turnaround on expectations that Goldman Sachs is settling civil fraud charges. The Securities and Exchange Commission has scheduled a late-afternoon announcement. The belief on trading desks was that the government and Goldman are settling charges ...

(b)(7)(C)

United States Securities and Exchange Commission
5670 Wilshire Boulevard, 11th Floor
Los Angeles, CA 90036

GOLDMAN SACHS TO PAY RECORD \$550 MILLION TO SETTLE SEC CHARGES RELATED TO SUBPRIME MORTGAGE CDO

7/15/2010 4:28:12 PM

From: SEC NEWS

To:

Attachments: 2010-123.doc, Goldman Consent - 7-15-10.pdf, Proposed Judgment - Goldman - 7-15-10.pdf

Goldman's consent and the proposed judgment are attached.

Defense Counsel: Rich Klapper (b)(7)(C) and (b)(7)(C) at Sullivan & Cromwell in New York

FOR IMMEDIATE RELEASE

2010-123

GOLDMAN SACHS TO PAY RECORD \$550 MILLION TO SETTLE SEC CHARGES RELATED TO SUBPRIME MORTGAGE CDO

Firm Acknowledges CDO Marketing Materials Were Incomplete and Should Have Revealed Paulson's Role

Washington, D.C., July 15, 2010 – The Securities and Exchange Commission today announced that Goldman, Sachs & Co. will pay \$550 million and reform its business practices to settle SEC charges that Goldman misled investors in a subprime mortgage product just as the U.S. housing market was starting to collapse.

In agreeing to the SEC's largest-ever penalty paid by a Wall Street firm, Goldman also acknowledged that its marketing materials for the subprime product contained incomplete information.

In its April 16 complaint, the SEC alleged that Goldman misstated and omitted key facts regarding a synthetic collateralized debt obligation (CDO) it marketed that hinged on the performance of subprime residential mortgage-backed securities. Goldman failed to disclose to investors vital information about the CDO, known as ABACUS 2007-AC1, particularly the role that hedge fund Paulson & Co. Inc. played in the portfolio selection process and the fact that Paulson had taken a short position against the CDO.

In settlement papers submitted to the U.S. District Court for the Southern District of New York, Goldman made the following acknowledgement:

Goldman acknowledges that the marketing materials for the ABACUS 2007-AC1 transaction contained incomplete information. In particular, it was a mistake for the Goldman marketing materials to state that the reference portfolio was "selected by" ACA Management LLC without disclosing the role of Paulson & Co. Inc. in the portfolio selection process and that Paulson's economic interests were adverse to CDO investors. Goldman regrets that the marketing materials did not contain that disclosure.

"Half a billion dollars is the largest penalty ever assessed against a financial services firm in the history of the SEC," said Robert Khuzami, Director of the SEC's Division of Enforcement. "This settlement is a stark lesson to Wall Street firms that no product is too complex, and no investor too sophisticated, to avoid a heavy price if a firm violates the fundamental principles of honest treatment and fair

dealing.”

Lorin L. Reisner, Deputy Director of the SEC’s Division of Enforcement, added, “The unmistakable message of this lawsuit and today’s settlement is that half-truths and deception cannot be tolerated and that the integrity of the securities markets depends on all market participants acting with uncompromising adherence to the requirements of truthfulness and honesty.”

Goldman agreed to settle the SEC’s charges without admitting or denying the allegations by consenting to the entry of a final judgment that provides for a permanent injunction from violations of the antifraud provisions of the Securities Act of 1933. Of the \$550 million to be paid by Goldman in the settlement, \$250 million would be returned to harmed investors through a Fair Fund distribution and \$300 million would be paid to the U.S. Treasury.

The landmark settlement also requires remedial action by Goldman in its review and approval of offerings of certain mortgage securities. This includes the role and responsibilities of internal legal counsel, compliance personnel, and outside counsel in the review of written marketing materials for such offerings. The settlement also requires additional education and training of Goldman employees in this area of the firm’s business. In the settlement, Goldman acknowledged that it is presently conducting a comprehensive, firm-wide review of its business standards, which the SEC has taken into account in connection with the settlement of this matter.

The settlement is subject to approval by the Honorable Barbara S. Jones, United States District Judge for the Southern District of New York.

Today’s settlement, if approved by Judge Jones, resolves the SEC’s enforcement action against Goldman related to the ABACUS 2007-AC1 CDO. It does not settle any other past, current or future SEC investigations against the firm. Meanwhile, the SEC’s litigation continues against Fabrice Tourre, a vice president at Goldman.

The SEC investigation that led to the filing and settlement of this enforcement action was conducted by the Enforcement Division’s Structured and New Products Unit, led by Kenneth Lench and Reid Muoio, and including (b)(7)(C) and (b)(7)(C). Additionally, together with Deputy Director Reisner, (b)(7)(C) and (b)(7)(C) have been handling the litigation.

###

For more information about this enforcement action, contact:

Robert S. Khuzami
Director, SEC Enforcement Division
(b)(7)(C)

Lorin L. Reisner
Deputy Director, SEC Enforcement Division
(b)(7)(C)

Kenneth R. Lench
Chief of Structured and New Products Unit, SEC Enforcement Division
(b)(7)(C)

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RE: And for your next investigation . . .

7/15/2010 4:26:09 PM

From: (b)(7)(C)**To:** Muoio, Reid

(b)(7)(C)

They announced that prior to the end of trading? Not too clever.

From: Muoio, Reid**Sent:** Thursday, July 15, 2010 4:25 PM**To:** (b)(7)(C)**Subject:** RE: And for your next investigation . . .

Goldman's stock price moved in response to our press office announcing a "significant event" after the close of trading today.

From: (b)(7)(C)**Sent:** Thursday, July 15, 2010 4:23 PM**To:** (b)(7)(C)

Muoio, Reid

Subject: And for your next investigation . . .

Insider trading:

Both BP and Goldman Sachs soared in the late minutes of trading today, with BP claiming to have closed the leak in the Gulf of Mexico and Goldman Sachs rumors, now confirmed, suggesting a settlement with the SEC.

BP dragged up related companies with it, and Goldman Sachs also soared at the day's end.

Check out this chart showing BP (blue), Goldman Sachs (red), and the S&P 500 (green):

<< OLE Object: Picture (Device Independent Bitmap) >>

Read more: <http://www.businessinsider.com/check-out-the-amazing-late-day-surge-in-bp-and-goldman-sachs-2010-7#ixzz0tmhc0NX8>

(b)(7)(C)

United States Securities & Exchange Commission
Division of Enforcement

(b)(7)(C)

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)

) File No. 07C-534
ORIGINAL

OIG-534)

PAGES: 1 through 134

PLACE: Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C.

DATE: Friday, August 13, 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 H. DAVID KOTZ, ESQ., Inspector General

5 (b)(6),(b)(7)(C)

6 Office of the Inspector General

7 Securities and Exchange Commission

8 100 F Street, N.E.

9 Washington, D.C. 20549

10 (b)(6),(b)(7)(C)

11

12

13 On behalf of the Witness:

14 ROBERT KHUZAMI, PRO SE

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C O N T E N T S

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2			
3	WITNESS:		EXAMINATION
4	Robert Khuzami		5
5			
6	EXHIBITS:	DESCRIPTION	IDENTIFIED
7	1	E-mail chain 12/07/2009	11
8	2	E-mail chain 12/08/2009	13
9	3	E-mail chain 12/25/2009	15
10	4	E-mail chain 12/29/2009	18
11	5	E-mail chain 1/04/2010	19
12	6	E-mail chain 1/05/2010, 7:52 p.m.	24
13	7	E-mail chain 1/05/2010, 7:07 p.m.	27
14	8	E-mail chain 1/15/2010	29
15	9	E-mail chain 1/25/2010	31
16	10	E-mail chain 3/23/2010	36
17	11	E-mail chain 3/08/2010	38
18	12	E-mail chain 4/07/2010	41
19	13	E-mail chain 4/12/2010, 3:08 p.m.	43
20	14	E-mail chain 4/12/2010, 6:02 p.m.	44
21	15	E-mail chain 4/12/2010, 10:54 p.m.	44
22	16	E-mail chain 4/13/2010, 8:53 a.m.	46
23	17	E-mail chain 4/13/2010, 2:14 p.m.	47
24	18	E-mail chain 4/14/2010, 11:06 p.m.	48
25	19	E-mail chain 4/14/2010, 10:11 p.m.	48

1	EXHIBITS:	DESCRIPTION	IDENTIFIED
2	20	E-mail chain 4/15/2010, 9:44 a.m.	50
3	21	E-mail chain 4/15/2010, 7:22 p.m.	52
4	22	E-mail chain 4/14/2010, 6:08 p.m.	54
5	23	E-mail chain 4/18/2010	56
6	24	SEC Administrative Regulations	63
7	25	E-mail chain 4/16/2010	65
8	26	E-mail chain 4/19/2010	71
9	27	E-mail chain 5/05/2010	72
10	28	E-mail chain 6/17/2010	73
11	29	E-mail chain 7/1/2010	75
12	30	E-mail chain 7/14/2010, 12:04 p.m.	79
13	31	E-mail chain 7/14/2010, 9:58 p.m.	79
14	32	E-mail chain 7/15/2010, 9:55 a.m.	83
15			
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1 PROCEEDINGS

2 MR. KOTZ: We are on the record at 9:33 a.m. on
3 August 13, 2010 at the United States Securities and Exchange
4 Commission.

5 I'm going to swear you in.

6 Would you please raise your right hand?

7 Whereupon,

8 ROBERT S. KHUZAMI

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

11 EXAMINATION

12 BY MR. KOTZ:

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

15 A Robert S, no period, Khuzami, K-h-u-z-a-m-i.

16 Q Mr. Khuzami, my name is David Kotz. I'm the
17 Inspector General of the United States Securities and
18 Exchange Commission. I have with me my colleague from the
19 Office of the Inspector General, (b)(6),(b)(7)(C) This is an
20 investigation by the Office of Inspector General, case number
21 OIG-534. I'm going to ask you certain questions, and you'll
22 be providing answers under oath.

23 The court reporter will record and later transcribe
24 everything that is said. Please therefore provide verbal
25 answers to the questions, as a nod of the head or another

1 non-verbal response won't be picked up by the court reporter.
2 Also, so the record will be clear, please let me finish my
3 question before you provide your response.

4 In addition, it is important you understand the
5 questions and give accurate answers. If there's anything you
6 don't understand, or anything you do not know or are not sure
7 about, please let me know. Otherwise, I will assume that you
8 heard and understood the question. Do you understand those
9 instructions?

10 A Yes.

11 Q All right. I'm going to give you the perjury
12 warning. As you can see, your responses and statements given
13 today are provided after you've sworn an oath. It will taken
14 down verbatim by the court reporter. This is an official
15 U.S. government law enforcement investigation. The claims
16 asserted in this case are serious ones. It is very important
17 you tell me everything you know about the matter at hand and
18 are completely forthcoming and truthful with me.

19 I'm formally advising you that your testimony today
20 is subject to the laws of perjury. Providing false or
21 misleading testimony under oath is a serious offense. If the
22 evidence shows the testimony you've given is false we may
23 refer it as appropriate. Do you understand those
24 instructions?

25 A Yes.

1 Q Okay. All right. Let's start with a little bit of
2 background. Could you describe for me your education,
3 beginning with college?

4 A (b)(6),(b)(7)(C)
5 (b)(6),(b)(7)(C)

6 Q And if you could briefly summarize your work
7 experience (b)(6),(b)(7)(C) before coming to
8 the SEC?

9 A (b)(6),(b)(7)(C)
10 (b)(6),(b)(7)(C)
11

12 Q Did you do securities-type cases there?

13 A I did (b)(6),(b)(7)(C) in
14 general.

15 Q Okay. (b)(6),(b)(7)(C)
16 (b)(6),(b)(7)(C)
17
18
19
20
21
22

23 Q And from (b)(6),(b)(7)(C) you came to the SEC?

24 A Correct.

25 Q What year -- when exactly did you come to the SEC?

1 A My start date was March 30, 2009.

2 Q And you came in as the director of the enforcement
3 division?

4 A Correct.

5 Q And that's your current position?

6 A Yes.

7 Q And just generally, what are your duties as
8 director of the enforcement division?

9 A Overall responsibility, management, strategic
10 direction for the enforcement division. Everything from kind
11 of review, case review, primarily, you know, more significant
12 cases, kind of the public face of the division, dealing with
13 other division directors and Commissioners, managing the
14 operations, selecting high-level staff positions, managing
15 positions, overall responsibility.

16 Q Okay. And who do you currently report to?

17 A The Chairman, Mary Shapiro.

18 Q All right. Did there come a time where you became
19 aware of the investigation by the SEC into the sale of
20 collateralized debt obligations by Goldman Sachs known as the
21 Abacus investigation?

22 A Yes.

23 Q Okay. Do you know when you first learned of that?

24 A Roughly I'd say within the first couple of months
25 of starting, probably no later than the summer, you know,

1 June, July at the latest.

2 Q Of 2009?

3 A Correct.

4 Q And what did you learn about that case initially?

5 A It was in the course of case reviews of significant
6 cases. I learned generally about the investigation, what the
7 focus was. I think at that point we had, you know, developed
8 roughly the legal theory about the case that ultimately was
9 the basis upon which it was brought. And I, you know, chose
10 to make it sort of a high priority. We had an emphasis on
11 credit-crisis-related, mortgage-related, cases, structured
12 products as well, given their role in the credit crisis. So
13 I met with the team and learned about the case in that way.

14 Q And so about how many cases were a high priority,
15 like the Goldman Abacus case?

16 A Well, subsequent to that -- later in the fall we
17 developed a national priority list.

18 Q Right.

19 A I don't think it was intact at that time, at least
20 not formally. When the national priority list -- at that
21 point I think each regional director and maybe each SO in the
22 home office had like a top ten kind of -- top ten and maybe
23 even a top three or both of cases. And that was the way
24 priority cases were kind of communicated up the chain. But I
25 focused more on I wanted a national priority case, so we

1 developed a list. When it was first developed -- and even
2 over time, it's ranged between 60 -- I think it's currently
3 at 59 and ranges between 60 and 80 as some roll off and
4 some --

5 Q And the Goldman Abacus case was one of them on the
6 national priority list?

7 A As soon as the first list came out, yes.
8 Absolutely. And even before that it was a priority.

9 Q Okay. And because of the priority of the case, was
10 it a case that you would brief the Chairman about?

11 A Yeah. Yeah. We have a senior staff meeting on
12 Monday mornings. I had briefed the Chairman on those
13 occasions and others as well.

14 Q How many times would you say you briefed the
15 Chairman on the Goldman Abacus case?

16 A That's going to be difficult to estimate. You
17 know, I suspect I raised it at -- I don't know -- half a
18 dozen to ten senior staff meetings over the course of nine
19 months or a year. And then I'm sure we had a few meetings
20 outside of staff meetings where it was raised. And then as
21 the case got closer to bringing brought there was more
22 conversation.

23 Q Okay. Did she ever express any particular
24 direction about the case to you?

25 A No. Just wanting -- you know, her priorities were

1 the same as ours, so she would want to keep tabs on, but she
2 never really -- and she would ask about where it was. And
3 again, as we got closer she got more involved. But never
4 sort of dictating any direction in that sense.

5 Q What we've understood from various people's
6 testimony and documents is that generally she was concerned
7 about moving cases along and getting cases out, not only the
8 Goldman case but just in general, and that that may have been
9 conveyed with respect to Goldman and other cases. Is that --
10

11 A We shared that view, and she communicated to me, I
12 communicated to her, and we communicated all the way around.
13 And that's frankly -- the national priority list, if you've
14 ever seen it, we require people to set a target date. And
15 then if they slip that target date they've got to tell us and
16 explain why it is it went from, you know, July to October,
17 why the slippage. And that's why we want to monitor.

18 Q Okay. So would you say generally it was both your
19 and the Chairman's view that we should try to move the
20 Goldman and other cases as quickly as possible, assuming that
21 there's appropriate facts in order, etcetera?

22 A Yes. They were priority.

23 MR. KOTZ: Okay. Let me go to the first document.
24 This we're going to mark as Exhibit 1, an email exchange
25 between you and Lorin Reisner. There's an email from Lorin

1 Reisner to you, 12/7/2009, 11:28 a.m.

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

4 THE WITNESS: Yes.

5 BY MR. KOTZ:

6 Q And so you're aware that the Goldman Abacus case
7 was first put on the calendar in December of 2009.

8 A That's right. Yes.

9 Q Okay. And at that time there was some disagreement
10 among the team about different approaches that involved (b)(6),(b)(7)(C)
11 (b)(6),(b)(7)(C) Do you remember that?

12 A I remember. I mean we had extensive discussions
13 about legal theories, appropriate defendants that continued
14 for some time. (b)(6),(b)(7)(C) certainly had -- (b)(6),(b)(7)(C) had a view about the
15 case. Others had different views.

16 Q Right. And it looks like (b)(6),(b)(7)(C) asked to be
17 taken off, and then Lorin wanted to hold off. In this email
18 I guess he's saying, "I suggest holding off making this change
19 for now." Do you remember, you know, why that was?

20 A My recollection is that (b)(6),(b)(7)(C) had -- you know, there
21 was some tension between (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) and maybe a
22 couple of others. I don't know how much of it at that point
23 had to deal with -- you know, some of it is always
24 personality and some of it was maybe substance. I don't know
25 at that time exactly what -- my sense is that early on --

1 since (b)(6), (b)(7)(C) stayed on the case and participated in the
2 deliberations about how the case would be structured, my
3 sense is that this was more -- may have had a dust-up or a
4 flare-up on a particular issue, and maybe in some sort of
5 peak of anger asked to be taken off. But I think we kind of
6 calmed everybody down and kept the team together.

7 Q Okay. And were you personally involved in the
8 substantive disagreement, or was that more left to Lorin at
9 this point?

10 A On this one? Exhibit 1?

11 Q Yeah.

12 A I don't think I was all that involved in it, except
13 to be aware of it.

14 Q Lorin was more hands-on in that matter, do you
15 remember?

16 A You know --

17 Q Because he had indicated that he had spoken to (b)(6), (b)(7)(C)
18 (b)(6), (b)(7)(C)

19 A Yeah. I don't -- I think that Lorin was -- I think
20 that's probably accurate. He was keeping me apprised. I
21 don't think I got into it at that point.

22 MR. KOTZ: Okay. All right. Let me show you the
23 next document. I'm going to mark it as Exhibit 2.

24 (Exhibit No. 2 was marked for
25 identification.)

1 BY MR. KOTZ:

2 Q On the top is an email from John McKown to Cheryl
3 Scarboro, 12/8/2009, 10:58 a.m. And so the email below is
4 where Cheryl Scarboro is telling Joan McKown, with a copy to
5 you and Lorin, "the matter will not be the calendar for
6 December 17th. We will not discuss it at today's 2B
7 meeting." So do you recall the reason that that Goldman
8 Abacus case was taken off the calendar in December?

9 A I think -- it's a little blurred with reasons in
10 January, but my recollection is that we wanted to take the
11 testimony of (b)(6),(b)(7)(C), I think which had not been done.
12 That's the primary reason that I recall.

13 Q Okay. And do you recall that there was sort of
14 internal disagreement? (b)(6),(b)(7)(C) thought that (b)(6),(b)(7)(C)
15 (b)(6),(b)(7)(C) testimony should be taken; (b)(6),(b)(7)(C) didn't think it
16 was necessary or important. Do you remember that?

17 A That I don't recall.

18 Q Okay.

19 A That I don't recall.

20 Q All right. So you just generally remember that the
21 decision was made to take it off the calendar in order to
22 take (b)(6),(b)(7)(C) testimony?

23 A There may have been just some other reason, about
24 whether or not it was generally otherwise ready, even in
25 terms of drafting the documents and things like that. But

1 that certainly I think was the primary reason.

2 Q And were you aware that prior to it being placed on
3 the calendar there were actually efforts made to schedule
4 (b)(6),(b)(7) testimony, but there was pushback or there were, you
(C)
5 know, scheduling issues, and then they decided that it wasn't
6 necessary and put it on the calendar at least initially?
7 Were you aware of that?

8 A That I don't necessarily remember. I wouldn't be
9 surprised, but --

10 Q Okay. But was it your understanding in the
11 December timeframe that the decision to take it off the
12 calendar was essentially made by the enforcement staff, who
13 had put it on the calendar, that it was not based on any
14 feedback from the Commission or Commissioners?

15 A That's correct. That's correct.

16 MR. KOTZ: Okay. All right. Okay. All right.
17 Let me show you the next document. All right. This is an
18 email exchange that start with an email from Mary Shapiro to
19 you, 12/25/2009 at 8:30 a.m., which we're going to mark as
20 Exhibit 3.

21 (Exhibit No. 3 was marked for
22 identification.)

23 THE WITNESS: Yes.

24 BY MR. KOTZ:

25 Q All right. Do you remember this day before

1 Christmas article in the newspaper about (b)(6),(b)(7)(C) and Goldman
2 Sachs?

3 A I do.

4 Q And you sent an email to Mary Shapiro, Thursday,
5 December 24, 11:42. "It looks like her sources are leaks
6 from ex-Goldman folks rather than from inside the SEC."

7 A Right.

8 Q How did you come to the conclusion that you thought
9 it was not from the SEC?

10 A I think it was just -- I mean it was just the
11 article itself. I'd have to go through it and see, but I
12 vaguely recall, "according to former Goldman employees with
13 direct knowledge of the deals" -- you know, you see that in
14 the fourth paragraph. So that's the reason. It was just
15 based on what was in the article.

16 Q Right. Was there anything in the article that you
17 were concerned came from the SEC's investigation?

18 A I'd have to -- you know, I don't recall, as I sit
19 here. I'd have to sit down and read the article.

20 Q Was it generally a concern, just because there's an
21 investigation ongoing and there's an article out that has at
22 least a similar subject? Was there a concern that it would
23 impact the investigation in some way?

24 A Look, you know, publicity in general isn't a good
25 thing. You want to keep your investigations private and

1 confidential. You don't want witnesses, potential
2 defendants, third parties, reading things that can then color
3 their testimony. So as a general matter, it's not a good
4 thing for an investigation that's trying to remain
5 confidential.

6 Q Okay. But I mean there may be times where there
7 are specific facts that you would see in an article that you
8 would think, wow, the only way that could have come from was
9 from something in our investigation. And that would be more
10 than just kind of generically you don't want to see any
11 report about what you're working on, but a particular
12 concern. Do you remember any particular concern?

13 A You mean in addition to being worried about the
14 integrity of your case you're also worried that someone at
15 the SEC is leaking?

16 Q Right.

17 A Is that what you're saying?

18 Q Right.

19 A Yes. Yes. That's a concern as well. Leaks from
20 our end are, you know, prohibited and don't help the case
21 obviously either.

22 Q But there was -- you don't remember anything in
23 this situation, with respect to the December 29th article or
24 the December 24th article, of some specific fact that you
25 thought may have been leaked from the SEC?

1 A No. I had some conversations with (b)(6),(b)(7)(C) about it,
2 but as I sit here today I don't remember if there was a
3 particular fact that gave me any concern. I think as I sit
4 here today I don't remember.

5 MR. KOTZ: Okay. All right. Let me show you the
6 next document. We're going to mark it as Exhibit 4. It
7 starts with an email from you to (b)(6),(b)(7)(C) Cheryl Scarboro,
8 Lorin Reisner, (b)(6),(b)(7)(C), and (b)(6),(b)(7)(C) 12/29/2009,
9 2:19 p.m.

10 (Exhibit No. 4 was marked for
11 identification.)

12 THE WITNESS: Yes.

13 BY MR. KOTZ:

14 Q And so do you remember this article? I guess it
15 came out a few days later.

16 A You know, I must confess, this one I don't really
17 remember. Was this an editorial? Maybe an editorial.
18 Obviously I forwarded it on. As I sit here, I don't really
19 have an independent recollection of it so much.

20 Q Okay. Do you know what you meant by, "We're going
21 to get a lot of attention"?

22 A You know, I can only sort of speculate. I mean I'm
23 recommending that they read Gretchen's piece, which is the as
24 in Exhibit 3. But it means, you know, the case is sort of
25 out there, and it's in the press, and there's just going to

1 be the scrutiny that kind of -- you know, the attention that
2 comes from that.

3 Q Okay. And that fact -- does that have any impact
4 on how the case is handled particularly?

5 A No. No. You know, you're going to continue to do
6 all the same things. You know, it becomes a distraction
7 sometimes, but it doesn't really change the thrust of the
8 investigation.

9 Q Okay. Would you be kind of maybe even more careful
10 to get everything exactly right if you think there's going to
11 be a lot of people who are writing about it or looking at it?
12

13 A Maybe. You know, but it's not -- you know, as you
14 know, a number of our cases get a fair degree of attention,
15 so that's kind of always out there. So I just kind of -- we
16 assume and require our folks to be through in that sense, so
17 I wouldn't necessarily think it would require -- would
18 dictate an extra level of scrutiny.

19 MR. KOTZ: Okay. All right. Let's move on. I'm
20 going to mark Exhibit 5, an email exchange that starts with
21 an email from Steve Cohen to (b)(6),(b)(7)(C) 1/4/2010, 10:19
22 p.m.

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

25 BY MR. KOTZ:

1 Q And this is kind of a long back and forth. It
2 starts with (b)(6),(b)(7)(C) explaining why the matter was
3 withdrawn.

4 A Right.

5 Q And it was what you said, the staff will take
6 testimony from (b)(6),(b)(7)(C)

7 A Right.

8 Q And then there's a back and forth with (b)(6),(b)(7)(C)
9 saying, we'll be resending this recommendation up to the
10 Commission on Friday, January 8th, when to place it on the
11 calendar." You say, "I think the 14th is a bit aggressive
12 and probably unnecessary. Let's stick with the 21st." And
13 then there's just a little bit back and forth about what date
14 to do it.

15 A Right.

16 Q A couple of things about this email string. First,
17 I mean it seems from the email string and from the other
18 information that we have -- and I just want to see if this is
19 consistent with your recollection -- that essentially it was
20 taken off the calendar in December primarily to take (b)(6),(b)(7)(C)
21 testimony. And then, you know, once (b)(6),(b)(7)(C) testimony was
22 taken that was the step needed to be done, and so it was kind
23 of put right back on the calendar. You know, (b)(6),(b)(7)(C)
24 testimony was taken I believe in the beginning of January,
25 and then, you know, already by January 4th they're looking to

1 put it back on the calendar. Is that your recollection,
2 generally?

3 It was essentially one major investigative step,
4 and then once that was done -- now, of course, depending on
5 what they found that could change this, But based on what
6 they at least at this point found by virtue of the (b)(6),(b)(7)(C)
7 testimony, the determination was okay, we took (b)(6),(b)(7)(C)
8 testimony, now it goes back on the calendar.

9 A Two things that -- well, I guess I can only answer
10 that with my recollection as to why it ultimately didn't get
11 put on the calendar in January, regardless of whether it was
12 the 8th or the 14th or the 21st.

13 Q But it did get put on the calendar in January, but
14 then it was pulled.

15 A It was pulled. Yeah. Yeah, yeah, yeah. But the
16 reasons were two-fold. One, we discovered that we had no --
17 we did not have the sworn testimony of (b)(6),(b)(7)(C)
18 (phonetic), who was the (b)(6),(b)(7)(C) who dealt with Goldman in
19 the case. And when Lorin and I learned -- and I don't recall
20 when we learned, but when we learned that all we had was a
21 proffer and not a sworn either deposition testimony or least
22 an affidavit that concerned us.

23 This is a significant witness in the case; (b)(6),(b)(7)(C)
24 (b)(6),(b)(7)(C) You know, candidly Goldman has influence, as many
25 defendants, so you had to worry very much what if this

1 witness kind of runs for the hills when the case is filed.
2 You haven't got him locked in.

3 Q Right.

4 A And so we were very troubled by that. And then
5 two, yeah, we took (b)(6),(b)(7)(C) testimony. But the decision --
6 well, I'll put it this way. The need for an affidavit from
7 (b)(6),(b)(7)(C) and it may also have been an affidavit from the
8 (b)(6),(b)(7)(C) I don't know whether or not we had that at that
9 point. We may not have. (b)(6),(b)(7)(C) I believe her name
10 is. We either had hers and wanted (b)(6),(b)(7)(C) or we didn't
11 have either and we wanted to get them both. I don't recall
12 which it was.

13 And as long as we were going to delay to do that,
14 we decided that we would also delay because we needed to make
15 a decision about (b)(6),(b)(7)(C) Taking his testimony is one thing.
16 Deciding whether or not there was a basis to charge him was a
17 separate matter, and turned out to be a very extensive
18 debate.

19 Q Those were the deliberations that took place around
20 the time in late January, when it was placed back on the
21 calendar and then taken off the calendar. Right?

22 A I think that's right. Whether or not they
23 influenced the earlier scheduling I don't --

24 Q Right. We're still at the stage where, at least at
25 this point in time it looks like it's going to be put on the

1 calendar. Then those issues arise a little later on. Let me
2 ask you about --

3 A I'm sorry. They may have come up a little earlier,
4 and the reason for not going on the 8th -- maybe you know
5 more than --

6 Q Yeah. I mean I think when we see the emails it may
7 look differently.

8 A Okay.

9 Q But let's -- just kind of one thing at a time.

10 A Sure.

11 Q One of the things I'm curious about, (b)(6),(b)(7)(C) in
12 the Monday, January 4, 2010 at 4:15 p.m. email, on the second
13 page of this thing, he says "I see there is a meeting
14 scheduled for January 14th. Is that doable? If not what is
15 the soonest we can get on after that."

16 A I'm sorry. Where are you? Are you on page 2?

17 Q Yeah.

18 A Okay.

19 Q Right there.

20 A This one. Okay.

21 Q So he says, "This is a high-profile enforcement
22 case that recently became time sensitive. Thanks." So at
23 this point in time at least, it looks like there is an effort
24 to try to put it on the calendar as soon as possible; there's
25 talk of the 14th. You say, "The 14th is a bit aggressive and

1 probably unnecessary. Let's stick with the 21st." Do you
2 know what [REDACTED] meant -- why he would think that this was a
3 high-profile matter that recently became time sensitive?

4 A I don't, other than generally -- you know,
5 generally pushing to get it done, I don't know what
6 particular thing he was referring to.

7 MR. KOTZ: Okay. Let me show you some emails.
8 Maybe that will help with the recollection. And I'm going to
9 show you first Exhibit 6, which an email exchange. It starts
10 with an email from you to Eric Spitler, Stephen Cohen, [REDACTED]
11 [REDACTED] Lorin Reisner, 1/5/2010, 7:52 p.m.

12 (Exhibit No. 6 was marked for
13 identification.)

14 THE WITNESS: Yes.

15 BY MR. KOTZ:

16 Q Okay. So the email exchange here starts with an
17 email from you to Mary Shapiro, Didem Nisanci, [REDACTED]
18 [REDACTED] Stephen Cohen, Monday, January 4th, 2010, 1:45
19 p.m. saying that, "I heard that Senator Levin and Senate
20 Permanent Subcommittee on Investigations is preparing to haul
21 Goldman and other banks to a hearing. Late January/February
22 is what I'm hearing." Do you recall hearing that?

23 A Yes.

24 Q How did you hear that? Do you remember?

25 A Well, part of it I knew. I knew that PSI was

1 poking around in this area.

2 Q Right.

3 A Because I knew it frankly from before I came to the
4 Commission. They had been poking around for a while. I may
5 not have the timing right. In our investigation, as we
6 contacted not just Goldman but other banks, because these
7 structured products investigations cut across a number of
8 banks, when we would demand documents or try to schedule
9 witnesses we'd often learn from the banks they're also
10 producing information for PSI, FCIC.

11 Q Right. Right. And we have an email on that as
12 well.

13 A Yeah.

14 Q But do you remember how you heard that it was late
15 January or February?

16 A The only -- I think from, you know, a couple of
17 defense lawyers out there in the world, you know,
18 ex-prosecutor friends of mine, you know, what's going on and,
19 you know, just chatter like that. That was probably -- that
20 and those other things is probably what I was referring to.

21 Q Okay. And then you say, "Any intell we can get on
22 timing would be helpful, as we would certainly want to file
23 our Goldman cases, which addresses some of these same issues,
24 before the hearing, which will put us on the offensive on
25 this issue." What did you mean by that?

1 A Well, you know, as a general matter here, and even
2 at the [REDACTED] you always want to file your
3 case before your evidence gets splayed out publicly. It's
4 bad for the integrity of the case, bad for witnesses who hear
5 other testimony, bad for evidence that you may hold back and
6 not include in your complaint that gets played out, bad for
7 third parties, bad for settlement. I mean just as a general
8 matter you want as much distance between, you know, your
9 preparing your case and filing it and whatever public airing
10 there may be through Congress or other commissions.

11 Q Right.

12 A And second of all, structured products,
13 mortgage-related cases, were a high priority of ours. I also
14 didn't want, you know, the case to be viewed as one we only
15 brought in reaction to what somebody else did.

16 Q Right.

17 A This has been a high priority with us, you know,
18 nearly since I got there. I wanted to be able to bring the
19 case, you know, as quickly as possible, and, you know, based
20 on our own efforts.

21 MR. KOTZ: Okay. And so if you see in the email
22 exchange, [REDACTED] responds that she'll be happy to check
23 with PSI staff. She says, "This is somewhat delicate because
24 they likely don't want us to beat them to the punch either."
25 And then you go back talking about January 21st, saying,

1 "that is early enough that I am hopeful we will beat them to
2 the punch." And then Stephen Cohen says, "We can calendar
3 for the 14th to be safe." And then you say, "Too soon."

4 And then [REDACTED] says, "Just for information,
5 the Senate will be in recess until January 19th." And
6 eventually -- let me show you the next document. But
7 eventually -- I don't know if you recall this, but there were
8 communications with PSI, and they determined that there
9 wasn't going to be a hearing. So let me show you Exhibit 7,
10 which an email exchange that starts with an email from
11 Stephen Cohen to you and Lorin Reisner, 1/5/2010.

12 (Exhibit No. 7 was marked for
13 identification.)

14 THE WITNESS: Now I know why depositions take so
15 long. People have to read all the emails. Okay.

16 BY MR. KOTZ:

17 Q All right. And so in this email exchange Lorin
18 Reisner says to you and Stephen Cohen on Monday, January 4th,
19 2010 10:55 p.m., when you're talking about January 21st, he
20 says, "And the latest intelligence is that there may be no
21 need to expedite." And we believe that was based on
22 information that --

23 A Sorry. Where you're reading, no need to expedite,
24 where is that? Okay. Got it.

25 Q We believe that that was based on the fact that

1 after some inquiries were made it was determined that PSI
2 wasn't going to hold a hearing in January or February. Do
3 you remember that the legislative folks came back with that?

4 A No. I don't ever -- I mean, you know, it was just
5 kind of a more generalized concern. I think, as the email
6 shows, I asked them to get any information. But I don't know
7 that I ever got anything back from them. I don't recall ever
8 hearing.

9 Q Okay. But do you think that possibly, when (b)(6),(b)(7)
(C)
10 (b)(6),(b)(7) is saying on January 4, 2010, 4:15 p.m., which is in
(C)
11 the same timeframe that you sent the email talking about the
12 hearing -- you sent the email Monday, January 4th, 2010 at
13 1:45 p.m. saying, "I heard that Senator Levin and the Senate
14 Permanent Subcommittee is preparing to haul Goldman. Late
15 January or February is what I'm hearing." And then (b)(6),(b)(7)
(C)
16 (b)(6),(b)(7) sends an email the same day a few hours later, "This is
(7)(C)
17 a high-profile enforcement case that recently became time
18 sensitive." Do you think that that might have been what he
19 was referring to, the time sensitiveness related to the
20 hearing?

21 A You know, I'm just a little reluctant to speculate
22 about what's in his mind or to distinguish that from just a
23 generalized message to get the case done.

24 Q Okay. All right. Well, let me show you another
25 document.

1 A If we had something -- you know, if there was
2 something very firm I might think differently, in terms of
3 PSI.

4 MR. KOTZ: Okay. All right. Let me show you this.
5 This is an email exchange. It starts with an email from you
6 to [REDACTED] Lorin Reisner, Cheryl Scarboro, 1/15/2010,
7 10:51 a.m. I'm going to mark it as Exhibit 8.

8 (Exhibit 8 was marked for
9 identification.)

10 THE WITNESS: All right.

11 BY MR. KOTZ:

12 Q So this is when you learn, I guess, that Goldman's
13 providing copies to the Senate of all the documents produced
14 to the SEC.

15 A Right.

16 Q And you say, "I thought about this after our
17 meeting last night. An inquiry may be one additional reason
18 to proceed with the case and Wells [REDACTED] on parallel tracks,
19 assuming that is the result we reach with [REDACTED] Do you
20 remember what you were thinking at that point?

21 A I think the plan for the case, when we were looking
22 at a January calendaring, was we hadn't reached a decision on
23 [REDACTED] We can file the case against Tourre, because we were
24 comfortable with that, and then we would hold off on [REDACTED]
25 discuss him, make a decision, and if we were going to file

1 against him we'd just amend the complaint. And, you know,
2 candidly I don't recall the email. But certainly from the
3 language it seems to suggest that if Goldman's producing
4 copies of the documents to the Senate inquiry, then again,
5 for the reasons I said before, we want to have our case filed
6 and not be distracted, in terms of integrity of the case by a
7 Senate hearing. That's, as I said, an additional reason.

8 Q And would there be any sort of cons to proceedings
9 separately in a case where you brought some of the case,
10 initially brought the action, began the action, and then
11 separately proceeded with continuing to investigate another
12 individual? I mean at the end of the day I think you decided
13 not to do that approach.

14 A Right. Right.

15 Q So I guess I'm just trying to get, you know, when
16 you were weighing that what was the other side of it?

17 A Well, I mean I think that -- as I said, I think
18 that was the rough structure we were thinking about going in.
19 Are there cons to it? You know, I mean if you need
20 additional information, you know, that's one way to collect
21 it. I don't know that there are necessarily cons with it. I
22 mean obviously he would -- additional targets you might be
23 considering would see a complaint, and so they would see the
24 allegations.

25 Q Right. Was that a concern in this particular case?

1

2 A I don't think it was a particular concern.

3

MR. KOTZ: All right. Let's move onto the next
4 one, Exhibit 9. This email exchange with an email from Lorin
5 Reisner to you, 1/25/2010, 8:24 a.m.

6

7

(Exhibit No. 9 was marked for
identification.)

8

BY MR. KOTZ:

9

Q And it looks to us, from this correspondence and
10 some other correspondence that at least in the January
11 timeframe, before it was pulled, there was actually
12 preparations for filing, and there was actually discussions
13 even of when it would be filed. And this a little bit of
14 that exchange, although you're only -- it was only I think
15 forwarded to you. You didn't say anything. But do you
16 recall just generally that at that timeframe in January it
17 was placed back on the calendar, and assuming the Commission
18 would approve it, there were actual plans to file it before
19 it was pulled?

20

A I'm sorry. When you say plans to file, you mean
21 just like thinking about when you would file?

22

Q Right. I mean, you know, it got to the point where
23 there were discussions about when exactly it would be filed,
24 and there were discussions about filing it, you know, shortly
25 after. So on Monday, (b)(6),(b)(7)(C) talking about filing it on

1 **Friday.**

2 A So this -- I'm a little vague on the dates.

3 Q It was put back on the calendar on the 28th.

4 A 28th. I see. Which was that Thursday.

5 Q Right. And so the idea would be when to file it
6 after that.

7 A Right. I mean, you know, candidly I don't recall
8 kind of discussions of focus on when we would file. As a
9 general matter, you know, we file pretty soon after things
10 are approved. But I don't recall being involved in any
11 discussions about that.

12 Q And in this email exchange there is discussion of
13 something that we found was somewhat a debate, I guess. And
14 I don't know whether you were involved in this debate or not.
15 But this idea that conventional wisdom in the enforcement
16 division was not to file a big case on Friday. But that
17 perhaps that may not necessarily be meaningful anymore in the
18 Internet age, where there's a 24/7 news cycle.

19 A You know, I mean that kind of stuff, candidly is
20 kind of an OPA issue on [REDACTED] you know. I think I remember
21 from my old -- you know, in the [REDACTED] that
22 kind of was the view. But it seems to be we filed a bunch of
23 cases on Fridays. If I thought about it I could probably
24 list them.

25 Q Goldman eventually was filed on Friday.

1 A Goldman was filed on a Friday.

2 Q And it did seem to get some news.

3 A Yeah. Right. So I kind of -- you know, I leave
4 that to more of the OPA folks.

5 Q Okay. So I mean, Lorin forwarded this to you, but
6 you don't remember commenting or weighing in on this?

7 A No. No.

8 Q Okay. All right. And so what we show is that it
9 was then placed on the calendar for the 28th and then taken
10 off the calendar.

11 A Taken off.

12 Q And one thing we're trying to get some clarity on
13 -- maybe you can help -- is that there have been several
14 explanations given about why it was taken off the calendar.
15 One related to what you were talking about, about (b)(6),(b)(7)(C) And
16 also the idea that a decision was made to proceed with the
17 entire case and make whatever determinations were going to be
18 made about (b)(6),(b)(7)(C) and then bring the whole case together. Do
19 you remember?

20 A My recollection is as follows. It was first and
21 foremost (b)(6),(b)(7)(C) We were troubled by the absence of sworn
22 testimony in his regard. And that as long as you had to
23 delay it for that reason another benefit is that it would
24 give us an opportunity to consider what to do with (b)(6),(b)(7)(C) And
25 the additional point I think is why (b)(6),(b)(7)(C) became important.

1 It is because I believe Commissioner Paredes, in reviewing
2 and having discussions with him, expressed concern about the
3 respondeat superior theory here, which is how can you -- is

4
5
6
7

8 [REDACTED] So we thought that we kind of
9 had to address that issue. And the obvious way -- we thought
10 we still had -- it was still proper to impute and charge
11 Goldman, even if all you charged was Tourre. But if we ended
12 up charging [REDACTED] that would give Paredes more comfort on that
13 issue.

14 Q And do you remember any feedback from Commissioner
15 Casey's office about this general idea that if you were going
16 to bring a case bring it all together? Mary Shapiro
17 testified that she had a conversation with Commissioner Casey
18 where this was expressed, and she sort of said, you know,
19 okay, I understand.

20 A It's possible. You know, we bring lots of
21 corporate cases, obviously, where you don't -- you charge
22 kind of individuals down the road, typically in the
23 settlement context, so it happens, I mean slightly different
24 than this situation. But it's possible. I don't have an
25 independent recollection of it.

1 Q Okay. But do you generally recall that while it
2 was enforcement that pulled it off the calendar itself, that
3 at least it was partially based on some feedback from
4 Commissioners, like Paredes office?

5 A Again, my view is [REDACTED] - you know, the issues
6 in order of significance was [REDACTED] As long as
7 [REDACTED] making a decision is an additional reason to
8 have more time, in part because we wanted to make a decision
9 about him. And then it also addressed Commissioner Paredes's
10 concern. Those would be kind of the hierarchy of reasons, I
11 guess.

12 Q Okay. Was there any sort of frustration or
13 disappointment? This was a case that had been pending for a
14 while, we wanted it to get out, and in the end it was
15 delayed.

16 A There was a little bit of that. But again, you
17 know, you got to be -- the case has to be thoroughly
18 investigated, so, you know, that, you know, just trumps
19 everything.

20 Q Okay. And is it fair to say that there was
21 significant work done after the case was pulled in December
22 before it was eventually filed, with respect to the issues
23 that you identified as ones that you have to look at?

24 A I am. [REDACTED] went to Frankfurt maybe twice, [REDACTED] and
25 maybe others. You know, we had to track down [REDACTED] It

1 was not so easy. The Germans were, you know, reluctant, a
2 little reluctant to get involved. And working, negotiating
3 the language of the affidavit that he eventually signed,
4 which I don't think got signed until March maybe. It took
5 some time. And then in that timeframe we're also having lots
6 of debate about [REDACTED]

7 Q Okay. So there was a very significant amount of
8 time spent trying to figure out whether to bring a case
9 against [REDACTED]

10 A Running parallel with the -- that and other aspects
11 of the case. I mean, obviously drafting issues and things
12 like that. There may have been additional documents, and as
13 long as we had time we may have been nailing other stuff
14 down. And then there was a parallel track. We were debating
15 Egol.

16 Q Right. And the decision was made initially to
17 Wells [REDACTED] Right? That was done after it was pulled in
18 January?

19 A Yeah. I think so. Because we went to a meeting in
20 maybe March or so with [REDACTED] counsel.

21 MR. KOTZ: Right. Okay. All right. Let me show
22 an email about that, the [REDACTED] issue. It's Exhibit 10. It
23 starts with an email from [REDACTED] to Mark Adler,
24 3/23/2010, 3:19 p.m.

25 (Exhibit No. 10 was marked for

1 identification.)

2 THE WITNESS: Yes.

3 BY MR. KOTZ:

4 Q So it looks like you made the final call on (b)(6),(b)(7)(C)

5 A Correct.

6 Q Okay. And without getting into the specifics of
7 the facts, if you could just generally describe the lengths
8 you went to to learn all the -- both sides of the issue and
9 come to a decision?

10 A Look, we had multiple meetings with the group. We
11 sent them off to do a variety of research assignments on
12 substantial assistant, aid and abetting. We brought (b)(6),(b)(7)(C)
13 (b)(6),(b)(7)(C) in repeatedly to talk about the legal theories. I
14 think most people viewed that we didn't have the basis to
15 charge as a primary -- well, I can't say most people. There
16 was probably a majority of people that we didn't have the
17 basis to charge him for primary liability and even aiding and
18 abetting.

19 And the thing that got (b)(6),(b)(7)(C) most concerned was he
20 was a strong advocate of two things. One, he thought all
21 CDOs were inherently fraudulent. I mean he had a very broad
22 view. He said, you know, you put together a transaction
23 where both -- one side is shorting the portfolio at the same
24 time you're selling long. These things are -- his favorite
25 term was built to fail, or something like that. So he

1 thought, candidly, a lot of this discussion was beside the
2 point. They are inherently structured -- he thought we
3 should charge every bank and every transaction with this. It
4 was a very aggressive view.

5 What we did was then kind of look at the scheme
6 liability, which is where the debate really ended up. If we
7 couldn't charge him individually could you charge him being
8 part of a scheme. Somehow if you lack the evidence against
9 him individually as a primary violator can you get there
10 through the backdoor by just saying it's all one scheme,
11 which is a theory under 10B that, you know, is there. But in
12 the end (b)(6),(b)(7)(C) primarily, and others, said, even if
13 charge scheme you still have to have deceptive conduct by the
14 individuals that you're charging. And that's where I think
15 ultimately for me where it fell down.

16 And so lots of debate. (b)(6),(b)(7)(C) was a strong advocate.
17 You know, others were advocates not to charge. A lot of
18 healthy debate. It's kind of exactly what you'd want to see.
19 A difficult judgment call. That's where we ended up.

20 Q Okay. All right.

21 A You can see (b)(6),(b)(7)(C) reaction.

22 Q Right. But certainly it's fair to say that (b)(6),(b)(7)(C)
23 viewpoint was heard?

24 A You know, extensively. Extensively.

25 MR. KOTZ: Okay. All right. Let's go to the next

1 document, Exhibit 11. It starts with an email from Stephen
2 Cohen to you, Monday, March 8, 2010, 6:38 p.m.

3 (Exhibit No. 11 was marked for
4 identification.)

5 BY MR. KOTZ:

6 Q First, what involvement, if any, did Stephen Cohen
7 have, with respect to the Abacus case?

8 A You know, Steve handles kind of calendaring issues
9 for the Chairman's office. And obviously he advises her on
10 enforcement matters. So, you know, he generally keeps his --
11 keeps in touch on the significant matters in the division.

12 Q So it was more of a kind of administrative or
13 procedural role than a substantive role?

14 A Well, look, I know and I'm sure that she asks his
15 advice substantively, and he gives it. So it's a combination
16 of both.

17 Q Okay. And do you recall whether this briefing took
18 place? Was this like a special briefing on the Goldman
19 matter?

20 A Let me just take a look at this.

21 Q Sure. Do you remember anything about the briefing?
22

23 A No. I mean we had a couple up there, but I don't
24 remember this one.

25 Q Do you remember anything particularly about kind of

1 the Chairman's viewpoint? One thing that struck us a little
2 bit was there was actually an email exchange that we saw with
3 her in the December timeframe, where she says, I'm really
4 anxious to get this case out, and then it doesn't go out
5 because, you know, for other reasons. So I mean do you
6 remember anything about her expressing frustration that the
7 case hadn't gone out yet?

8 A No. Look, I mean, she has the same interest that
9 we do in moving priority cases quickly. But to her credit,
10 she has never, in my view, intervened inappropriately, like
11 bring a case before it is due, or things like that. A
12 completely open mind, and if you tell her that we have to do
13 these three things she's never going to second-guess us.

14 Q And is it fair to say you never got any impression
15 at any of the meetings you had with Mary that she had a
16 specific timeline in mind for the Goldman case?

17 A Absolutely not. Just the generalized we'd like to
18 get it out as soon as we can, but no specific timelines.

19 Q Okay. And that generalized we'd like to get it out
20 as soon as we can applied to other cases, I assume, as well.
21 Yes?

22 A Yes. Sorry. I can't nod.

23 Q And one of the other things that she referenced was
24 just wanting to bring actions against individuals when you
25 brought an action against a company. Do you remember her

1 **saying about that?**

2 A That's her. And that's -- again, that's shared --
3 that's shared throughout -- always has been shared. You
4 know, to some degree underscored by the B of A experience.
5 But a view that had always been shared by the division,
6 always been shared by me.

7 Q Do you remember if she said anything specifically
8 about (b)(6),(b)(7)(C) weighing in on whether an action should be
9 brought against (b)(6),(b)(7)(C)

10 A She knew we were in a decision-making mode on him,
11 so I recall her asking about it.

12 Q And once it was clear that you made the decision
13 not to charge (b)(6),(b)(7)(C) did she disagree with that or give any --

14 A No. She understood.

15 MR. KOTZ: Okay. All right. Let's move on.
16 Exhibit 12 is an email exchange that starts with an email
17 from (b)(6),(b)(7)(C) to (b)(6),(b)(7)(C) 4/7/2010, 4:45 p.m.

18 (Exhibit No. 12 was marked for
19 identification.)

20 BY MR. KOTZ:

21 Q The main one we'll ask you about is just the first
22 email, where (b)(6),(b)(7)(C)

23 A Oh. On the bottom you mean?

24 Q Yeah.

25 A Yes.

1 Q Do you remember that [REDACTED] was actually a
2 Commission employee who was detailed over to the Senate
3 Permanent Subcommittee on Investigations?

4 A Yes. She was [REDACTED]

5 Q Okay. And do you remember a point in time where
6 she inquired about whether she could discuss the Abacus
7 investigation with the PSI? ?

8 A Yeah. Vaguely. I don't think I was -- maybe this
9 email -- but I wasn't so much involved in the back and forth,
10 but I do recall the inquiry coming in.

11 Q Do you recall what advice your folks gave her on
12 whether she could disclose this information?

13 A Only really what's in here.

14 Q Just generally that she should not. Do you
15 remember that?

16 A I think -- that's my general understanding.

17 Q And to your knowledge, did [REDACTED] disclose any
18 information about the Abacus investigation to PSI?

19 A I have no idea.

20 Q But it never came up?

21 A I knew she knew about the case, because she had --
22 you know, she had been [REDACTED] I think she was -- I
23 don't know that she actually put together the national
24 priority list, but, you know, she sat in all the meetings.
25 She knew about the case.

1 Q Do you have any reason to believe that she might
2 have shared information concerning the Abacus case with PSI?

3 A I don't know one way or the other.

4 Q Okay. But to your mind, there was certainly no
5 coordination between the SEC enforcement division and PSI
6 regarding Goldman matters?

7 A No. In fact, later on, when we brought the case,
8 we tried to, you know, talk them out of holding their
9 hearing, unsuccessfully obviously.

10 MR. KOTZ: Right. Okay. All right. Let me show
11 you this next document, marked as Exhibit 13. It starts with
12 an email from David Rosenfeld to you, Monday, April 12, 2010,
13 3:08 p.m.

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

16 BY MR. KOTZ:

17 Q So now we're getting into the week that the Goldman
18 case was filed. And it wasn't the only case that was going
19 on at that time. And there was this Quadrangle case. Do you
20 recall that the Quadrangle case was a significant matter that
21 was about to be announced that week as well?

22 A Yes.

23 Q Okay. And do you recall that there was a lot of
24 back and forth with the New York AG's office about Quadrangle
25 and when it would be announced?

1 A I remember some back and forth. Yes.

2 MR. KOTZ: Okay. Let me show you a few things. So
3 you have this email, which says, New York AG to announce AOD
4 this Thursday. And then the next email is an email exchange
5 from David Rosenfeld to you, Monday, April 12th, 6:02 p.m.,
6 so three hours later.

7 (Exhibit No. 14 was marked for
8 identification.)

9 BY MR. KOTZ:

10 Q It says, "Our internal schedule changed, and we now
11 intend to announce Wednesday rather than Thursday."

12 A Mm-hmm.

13 MR. KOTZ: All right. And then the next email is
14 an email that starts with an email from you to Mary Shapiro
15 with a copy to Stephen Cohen, 4/12/2010, 10:54 p.m.

16 (Exhibit No. 15 was marked for
17 identification.)

18 THE WITNESS: Yep.

19 BY MR. KOTZ:

20 Q Okay. And so in this email string, in Exhibit 15,
21 you inform Mary Shapiro that New York AG called, and they
22 said they want to announce Quadrangle settlement on Thursday,
23 later moved to Wednesday because AG unavailable. And Mary
24 Shapiro responds on Monday, April 12th, "Let's make sure we
25 don't announce Goldman same day." And you respond then at

1 10:54 p.m., "This would be Wednesday, Goldman likely
2 Thursday." Do you recall that that was initially the plan,
3 Quadrangle Wednesday and Goldman Thursday?

4 A Yeah. I think that's -- although I don't -- I
5 guess I don't know when the announcement date for Goldman
6 kind of solidified. But I mean my recollection is, as a
7 general matter, we didn't want to do them both on the same
8 day.

9 Q How come?

10 A Well, from my perspective it's too much. I mean,
11 you know, for me doing these things there's a lot of work
12 involved. You can't just get there and read six talking
13 points. You know, you got to answer questions; you got to
14 know the case well. I do an extensive amount of briefing.
15 And so I guess from my perspective that's what I'm most
16 concerned about. Also, as a general matter, I assume the
17 Office of Public Affairs would say you generally don't want
18 to announce two significant cases on the same day.

19 Q Because the press would be diluted?

20 A Yeah. There's that, and there's just the logistics
21 involved in getting it all done.

22 Q And do you remember a particular concern with the
23 New York AG's Office that if you announce the Goldman case
24 the same day you announce this case, Quadrangle, with the New
25 York AG's Office they might view that as sort of one-upping

1 them, or they may be upset that here you're putting another
2 case in on the same day?

3 A I don't really recall that. I mean, as I sit here,
4 I suppose I could see Andrew Cuomo thinking that, but I don't
5 know that it entered into our thinking.

6 Q Okay. All right. And so the next email has a lot
7 of details about Quadrangle, which are not that critical for
8 us. It starts with an email from David Rosenfeld to you,
9 Tuesday, April 13, 2010 8:53 a.m. as Exhibit 16.

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

12 BY MR. KOTZ:

13 Q If you could see, there's references here in an
14 email towards the bottom of the page, "We have to get
15 assurance of how we will announce the case together on
16 Wednesday -- we have to nail down time, press release, etc."

17 A Sorry. You're reading from --

18 Q Yeah. So that's here.

19 A Oh, okay. Right.

20 Q Yeah. There's a lot of discussion about the
21 penalty, and so, again, that's not really relevant. But
22 what's relevant for us is that at least on this point on
23 Monday it looks like the plans are in place to announce the
24 Quadrangle case on Wednesday, and as you saw from the
25 previous email, Goldman on Thursday.

1 A Yeah. Again, the only thing I'll say is I don't --
2 maybe the other emails will show when exactly we agreed on
3 when to announce Goldman or frankly how to announce Goldman.
4 I don't know when it had materialized.

5 Q Okay.

6 A But I see what you mean now.

7 MR. KOTZ: All right. And then the next email I'm
8 going to show you is an email from David Rosenfeld to you,
9 Tuesday, April 13, 2010, 2:14 p.m. I'm going to mark this
10 Exhibit 17.

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

13 BY MR. KOTZ:

14 Q Where you get the word now back, "I'm informed we
15 are back to Thursday." Do you remember then that it was
16 moved again?

17 A That I remember primarily because that, in fact, is
18 when it happened. Yeah.

19 Q Right. Okay. And so this is on Tuesday, April
20 13th at 2:14 p.m.

21 A Also I remember -- yeah, extra time helps. We
22 were -- we had to accelerate our efforts to get Quadrangle in
23 shape to be approved. And it ended up going to the duty
24 officer I think rather than the regular calendar, because we
25 hadn't gotten very much of a heads up that the AG wanted to

1 announce quickly.

2 Q I see.

3 A So that's why -- we had to quickly get the papers
4 together, which is why I guess (b)(6),(b)(7)(C) is saying, "I hope this
5 bit of extra time helps," because we were not quite ready.

6 Q Okay. All right. And let me show you the next
7 document. the next two documents actually. Exhibit 18, which
8 is an email exchange from (b)(6),(b)(7)(C) to Ken Lench and (b)(6),(b)(7)(C)
9 (b)(6),(b)(7)(C) 4/14/2010, 11:06 p.m. This is Wednesday. And then a
10 similar-timed email, which we're going to mark as Exhibit 19
11 from (b)(6),(b)(7)(C) to Ken Lench 4/14/2010 10:11 p.m.

12 (Exhibit Nos. 18 and 19 were marked
13 for identification.)

14 BY MR. KOTZ:

15 Q So it seems from the previous email that on Tuesday
16 you now were informed -- so that initially you were talking
17 it's Quadrangle Wednesday, Goldman Thursday. Then you get
18 the word that Quadrangle's being moved to Thursday. And so
19 then these two emails seem to indicate that on Wednesday, so
20 the next day, the decision was made to file Goldman on
21 Friday. So if you could see, Ken Lench says to (b)(6),(b)(7)(C)
22 "How did we land on Friday?"

23 A I'm sorry. Where are you reading? 19 or 18?

24 Q Yeah. So here. Right. And he says, "No idea."

25 And then in Exhibit 18, around the same time, Ken Lench sends

1 an email to [REDACTED] [REDACTED] whose idea was it to file
 2 Friday? Thanks. Ken." And [REDACTED] says, "Front Office. Just
 3 don't know their thinking." I assume when he says Front
 4 Office he refers to, you know, you and/or Lorin?

5 A I don't know if he's referring to us or the
 6 Chairman's Office.

7 Q Okay. But so these guys weren't -- they didn't
 8 know anything about Quadrangle I assume?

9 A Right. Because they weren't working the case.

10 Q So do you recall that you then get -- so initially
 11 we were talking about Goldman -- Quadrangle Wednesday,
 12 Goldman Thursday. Then you get the word that Quadrangle's
 13 moved again back to Thursday. And at that point in time the
 14 decision was made to put Goldman on Friday, so you would have
 15 Quadrangle Thursday, Goldman Friday?

16 A I'm sure that's right. The only caveat again I
 17 would say is I don't know -- the Wednesday, Thursday thing, I
 18 just don't know how certain Thursday was with Goldman at some
 19 point, just because I remember this not really solidifying
 20 until some point into the week.

21 Q Okay.

22 A But certainly as a general matter that's correct.

23 Q And so if you remember, the Commission meeting was
 24 on Wednesday for Goldman.

25 A That's right.

1 Q Okay. And then it seems as though, because there
2 was more time now for Goldman, that Lorin actually kept
3 revising the complaint, and eventually revised the complaint
4 up until I think even Thursday night. Do you remember that?

5 A I know he was working on it.

6 Q Yeah. Okay. But is it clear to you that once it
7 was understood that the Quadrangle case would be on Thursday,
8 the decision at that point would be to file Goldman on
9 Friday?

10 A Yes.

11 Q And explain to me why it is that you couldn't file
12 Quadrangle on Friday and Goldman on Thursday. I assume that
13 was because the New York AG's Office was involved in the
14 timing. Were they essentially telling you when the case
15 could be announced?

16 A Yeah. Yeah. And we considered doing a joint
17 presentation with them. So physically we couldn't -- we had
18 to do it when they wanted to do it. And that's another
19 reason why you couldn't do both on the same day. We were
20 actually going to be there with Cuomo. Ultimately we decided
21 not to do that, but that was being discussed at some point, I
22 believe.

23 MR. KOTZ: Okay. All right. Let's go to the
24 actual filings. There's an email from Steve Cohen to [REDACTED]
25 [REDACTED] Myron Marlin, and John Nester, 4/15/2010, 9:44 a.m.,

1 Exhibit 20.

2 (Exhibit No. 20 was marked for
3 identification.)

4 THE WITNESS: Okay. I see it.

5 BY MR. KOTZ:

6 Q Do you recall that were these timelines that Myron
7 prepared -- this one is actually at 2:38 in the morning.
8 There was another one that was like 1:00 in the morning.

9 A It was a busy week.

10 Q Although, from what we understand, it wasn't so
11 uncommon for Myron to send out emails in the middle of the
12 night.

13 A He's a little frenetic.

14 Q Do you remember there was a very specific timeline,
15 because there were just so many things going on that week?

16 A I do remember the timeline. Yep.

17 Q And you were actually going to be in New Orleans?

18 A Correct.

19 Q Did you participate in the timeline, or was that
20 mostly kind of Myron and Public Affairs issues?

21 A No. I really didn't, is my recollection. I, you
22 know, read it. Let's take that back. I'm not even sure I
23 particularly read it. I kind of knew what I had to do, but I
24 really didn't participate in it.

25 Q Okay. And so in this Exhibit 20 there was kind of

1 a question about when to file Goldman Sachs.

2 A Right.

3 Q And in the timeline the filing was going to be
4 9:30. And then Steve Cohen says, "Why file Goldman Sachs
5 tomorrow at 9:30? Sometimes things are not always that
6 smooth when filing. Why not give a little more lead time,
7 9:00?" [REDACTED] says, "Clerk's office opens at 8:30." Cohen
8 says, "Right. So why file at 9:30?" Do you know why that
9 decision was made?

10 A To file at 9:30?

11 Q Yeah. Why specifically at 9:30?

12 A No. Don't know.

13 Q Do you recall --

14 A We tried to file it, and it didn't get filed.

15 Q -- that Steve Cohen was prophetic, in the sense
16 that he said, "Sometimes things are not always that smooth
17 when filing," because there was that hiccup with the filing?

18 A Yep.

19 Q And it wasn't actually filed until more like 10:30?

20 A I don't remember the exact time, but I know they
21 went there, and they had the complaint, and I think they
22 didn't have -- it wasn't signed by an attorney admitted in
23 the Southern District of New York.

24 Q Okay. All right. And then there was a conference
25 call at 6:00 the night before the filing. So that's Thursday

1 evening. I'm going to show you an email that references
2 that. It's an email exchange that starts with an email from
3 Lorin Reisner to (b)(6),(b)(7)(C) Myron Marlin, Ken Lench,
4 4/15/2010, 7:42 p.m.

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

7 BY MR. KOTZ:

8 Q Do you remember this conference call? It says you
9 are able to participate.

10 A Okay. I see it.

11 Q Do you remember this conference call?

12 A I believe I participated from my hotel room in New
13 Orleans.

14 Q Okay. Do you remember anything specific that was
15 discussed? Was it more just logistics?

16 A I think it was logistics, and I wanted to get some
17 talking points for the Goldman call the next morning. We did
18 a reporter kind of call in thing.

19 Q And so at the end of the day, what is your
20 understanding as to who made the decision to go with
21 Quadrangle on Thursday and Goldman on Friday? Was that your
22 decision? Was that from the Chairman's office? Was it sort
23 of a combined thing?

24 A It wasn't really our -- I mean I don't recall it as
25 being my decision, except to the extent it was dictated by --

1 from my perspective, dictated by two events: Quadrangle had
2 to be Thursday, and I needed, you know, time to prepare,
3 given the schedule and traveling. So I think those were my
4 concerns. The actual decision as to when to do it, I think
5 it's more OPA. But obviously they include our views in that.

6

7 Q Right. Was there any discussion about perhaps
8 waiting until Monday, give you even a little more time. And
9 then there's always this kind of conventional wisdom issue
10 about filing a big case on Friday.

11 A I don't think it was -- I don't think Monday was
12 seriously considered, just because of the passage of time.

13 MR. KOTZ: Right. All right. Let me show you an
14 email that may relate to that. And so this is an email from
15 Myron Marlin to Steven Cohen, [REDACTED] and Didem Nisanci,
16 4/14/2010, 6:08 p.m. We're going mark this Exhibit 22.

17 (Exhibit No. 22 was marked for
18 identification.)

19 BY MR. KOTZ:

20 Q So this references an email that Scott Friestad
21 sent out to you and a few others, about a reporter who knows
22 the recommendation is on the calendar today.

23 A Yeah.

24 Q Do you remember that, that it looked like somebody
25 knew something?

1 A I do remember. I do remember this, which may have
2 been a reason why we wanted to move -- it was somebody from
3 -- it was one of the wire services I thought, maybe Reuters
4 or Bloomberg, or one of those folks. And I do I think
5 remember that it just gets people a little spooked that some
6 story is going to break before the case is filed.

7 Q Right. And the longer you wait to actually
8 announce it --

9 A The greater the risk.

10 Q Okay. Now, in all the discussions that you
11 participated in about the timing of the filing of the Goldman
12 case, did financial regulatory reform ever come up?

13 A No.

14 Q Was there any discussion in relation to the Office
15 of Inspector General report on Stanford that you can recall,
16 in terms of why the Goldman case was filed on the day it was?

17

18 A No. No.

19 Q You did know that the plan was to release the
20 Office of Inspector General report on Stanford on that Friday
21 as well.

22 A That I did know. Yes.

23 Q Do you know why the Goldman case was decided to be
24 released in the morning and that OIG case in the afternoon?

25 A Not -- I mean no would be the answer. I mean my

1 assumption on the Stanford report is that it was going
2 through a process, and the scheduling was dictated kind of by
3 that process. Plus, I don't know that anybody thought about
4 this, but I was in New Orleans. You know, I was in New
5 Orleans. I was on a panel. It might have been a little
6 difficult logistically to do a Goldman thing Friday afternoon
7 as well.

8 Q But did you have any involvement in decisions about
9 the Stanford OIG report being issued?

10 A About the timing of the issuance? No.

11 MR. KOTZ: All right. Okay. All right. Okay.
12 Let me move to the next issue, Exhibit 23. It's an email
13 exchange on 4/18/2010, 5:03 p.m. It starts with an email
14 from John Nester to you, Lorin Reisner, Steve Cohen, and
15 Myron Marlin.

16 (Exhibit No. 23 was marked for
17 identification.)

18 THE WITNESS: 4/18 being? What day of the week?
19 Is that the same week? Sunday. This is Sunday. Right?

20 BY MR. KOTZ:

21 Q And we don't have to get into all the specifics,
22 but that kind of raises the issue that I wanted to ask you
23 about. And that is did you learn that, I guess through the
24 media, that Goldman was complaining that they didn't get some
25 kind of heads up or an opportunity to settle in the Goldman

1 case?

2 A I did hear that and over the weekend actually spoke
3 to Greg Palm about it, the Goldman general counsel.

4 Q Okay. What was that conversation?

5 A He had called Friday, I think. And I was
6 traveling, so Lorin -- I think Lorin returned the call. I
7 asked Lorin to return the call. And then Lorin told me what
8 the call was, and then I spoke to Palm I think on Saturday
9 and maybe again on Sunday. So between those three
10 conversations I learned that Palm expressed displeasure about
11 really not having a chance to settle the case, that, you
12 know, we have good relations with our regulators; we don't
13 like to get in disputes with them; you know, we would have
14 wanted a chance to settle the case, basically.

15 Q Okay. What did you respond to him?

16 A I said, look, you know, everyone knows you have
17 many opportunities to settle a case; no one stopped you from
18 doing that. Most of our cases, defendants make it clear
19 that, while they may argue aggressively that there should be
20 no finding of liability that, you know, at the same time that
21 they're willing to consider a settlement possibility. And,
22 you know, it's a little -- it's easy to say after the fact,
23 oh, we would have settled.

24 Q Right.

25 A That certainly wasn't the impression we had gotten

1 through the course of discussions with them.

2 Q So let me ask you a few questions on that. Some
3 have said that traditionally, and maybe even prior to your
4 coming to the enforcement division, that as sort of a matter
5 of course when the SEC was bringing a case against a
6 defendant after the Commission had approved the
7 recommendation to go forward with the case a call would be
8 placed to the defendant and the defendant's lawyer to say,
9 the Commission has approved it, and you now have 48 hours or
10 X number of hours to try to resolve it. Did you understand
11 that that was sort of what enforcement division had
12 traditionally done?

13 A I guess that I understood that that can happen, and
14 did happen, but that it wasn't something that was dictated as
15 a mandatory part of our approach.

16 Q Okay. But did you get the impression that
17 oftentimes that did happen?

18 A I don't know about often, but I certainly
19 understood it happened.

20 Q Okay.

21 A And might well happen in response to a defendant
22 along the way saying, if it gets approved, just I'm putting a
23 marker down, I'd like to talk settlement.

24 Q Now, do you think as a practice that that is a good
25 policy to have?

1 A To require it?

2 Q Right. Or let's say to do it in every case?

3 A Do it in every case? I don't think it's such a
4 good idea, because, you know, if that becomes a standard part
5 of our practice then every defendant kind of knows they have
6 a last chance. Right? Nothing -- you know, they can fight
7 like hell and oppose, oppose, and they're always going to
8 have one last clear chance to settle the case. I think
9 appearance-wise it makes you appear like your maybe a little
10 weak, don't believe in your case. That's not to say that
11 it's not appropriate in a lot of cases, maybe most cases.
12 But I would want the opportunity not to have to do that.
13 Notice -- you know, there's maybe a difference between giving
14 them notice that it's coming versus an opportunity to settle,
15 two different things.

16 Q Right. Well, we'll talk about the notice. It's
17 coming in a second. But do you think in the Goldman case,
18 that in the particular facts of the Goldman case, it would
19 have been a good practice to do that, to call them after the
20 Commission --

21 A I had no reason to believe -- we had no reason to
22 believe they were interested in settling .

23 Q All right. What was that based on?

24 A Their position in all of our Wells meeting, their
25 position in litigation or in the Wells meeting and the Wells

1 submissions. No hint of that whatsoever.

2 Q Now, do you think it's possible that, because
3 lawyers for Goldman Sachs had been in cases potentially where
4 this last effort was given by the SEC, that they were kind of
5 doing what you thought you would be worried about happening,
6 which is counting on this last thing, and then assuming that
7 they were going to kind of call after the Commission had
8 approved the recommendation to go forward, and that would be
9 the point where they would bring in settlement discussions?

10 A You know -- I'm sorry. The question is were they
11 -- do I think they were assuming that would have that
12 opportunity?

13 Q Right.

14 A It's hard for me to say what they were assuming.
15 You know, they --

16 Q I mean they did come in almost immediately after
17 you filed the case and wanted to settle.

18 A Yes. Well, yeah. Some period of time after they
19 announced to the world they thought our case was merit-less.

20 Q Right.

21 A But aside from that, I don't know what they
22 assumed. But I can't answer that. I just -- I don't know,
23 just because I can't separate between what they said after.
24 You know, like I said, it's maybe a little easier to say
25 after the fact we would have done X.

1 Q Right. Right. Now, with respect to the
2 communications that your folks had with Goldman folks, where
3 you didn't get any impression of settling, what specific
4 communications were there? I mean the Wells meeting had
5 been -- at least against Goldman -- some months before. Had
6 there been communications between the Wells meeting, vis a
7 vis Goldman and Goldman's lawyers about the Goldman case in
8 that interim period? It was, you know, several months before
9 the case was filed.

10 A I don't know the answer to that. I know
11 obviously -- we obviously had the [REDACTED] Wells meeting.

12 Q Right.

13 A We were asking for additional information I
14 believe, but I can't say specifically what.

15 Q Did you participate in that March [REDACTED] Wells
16 meeting?

17 A Yes.

18 Q Okay. Were there any conversations in the [REDACTED]
19 Wells meeting more on the broader issues of Goldman's case?

20 A Well, you know, the case is not -- what is the [REDACTED]
21 case is kind of the Goldman case. Right? I mean parts of it
22 are separate. But I think Goldman's lawyer was there,
23 Klapper, Richard Klapper. And I recall it as being a
24 pretty -- you know, we were being not at all ambiguous about
25 what we thought about the case, and that we thought that

1 there was a violation. And they were being equally
2 unambiguous about they thought there was no liability.

3 Q And that's with respect to Goldman, not just [REDACTED]

4 A Yes. Yes.

5 Q Okay. So you walked out of that meeting, the Wells
6 [REDACTED] meeting in March 2010, thinking this was not a case that
7 was going to be possibly settle.

8 A That's right.

9 BY [REDACTED]

10 Q And do you recall at all in that March 4th [REDACTED]
11 Wells meeting having any separate conversations with Klapper
12 or counsel for Goldman, you know, apart from discussions with
13 [REDACTED] counsel?

14 A I don't think so. I recall Goldman later on saying
15 that they thought they were given an opportunity to submit a
16 supplemental Wells. But I know that our folks said we
17 never -- they never asked, and we never solicited one.

18 BY MR. KOTZ:

19 Q Do you know there was some statement made about a
20 phone call not returned? Did you hear that?

21 A I did hear that.

22 Q Do you know if that was true?

23 A You know, our folks dispute that that ever
24 happened, and I would be -- I'd be a little surprised if
25 people didn't return the call.

1 Q Okay. All right. So we talked about this idea of
2 giving a specific heads up after the Commission had approved
3 the recommendation to go forward. And now, as you indicated,
4 there's a separate question, which has to do with notice that
5 the case is being filed.

6 A Right.

7 MR. KOTZ: And so to that end, I want to show you a
8 document as Exhibit 24, which is an SEC Administrative
9 Regulations, Public Affairs, Press Relations Policies and
10 Procedures.

11 (Exhibit No. 24 was marked for
12 identification.)

13 THE WITNESS: Yes.

14 BY MR. KOTZ:

15 Q Are you familiar with this document?

16 A Yes.

17 Q Okay. And then if you turn your attention to page
18 6 of 12, at the bottom of the page it says, "Notification of
19 Defendants." And so it says, "Every effort should be made to
20 avoid the possibility that defendants in an SEC enforcement
21 action first learn of the action when they read about it in
22 the newspapers or when they are called by a reporter for
23 comment about the SEC's complaint. The division, regional,
24 or district office primarily responsible for the filing of a
25 particular complaint shall take all necessary steps to see

1 that the defendants and/or their counsel are giving timely
2 advice concerning the action." Were you familiar with this
3 provision?

4 A In a general sense. I can't say that I --

5 Q Was the intention in the Goldman case to give
6 Goldman a notice of the SEC filing its action against Goldman
7 prior to the SEC filed its action?

8 A You know, candidly, it wasn't something that was on
9 my checklist. You know, I wasn't -- it's just not something
10 that I would have focused on. You know, I would assume that
11 the policy would have been complied with, and as I understand
12 it, Sullivan and Cromwell was in fact called.

13 Q But do you understand whether Sullivan and Cromwell
14 was called before the SEC filed its action or after?

15 A I thought it was before.

16 Q Okay. If it in fact was after, would that concern
17 you, as not necessarily adhering to the policy you wanted to
18 adhere to?

19 A Yeah. I mean the policy -- look at a little more
20 closely, but if -- "take all necessary steps to see that
21 defendants and/or their counsel are giving timely advice
22 concerning the action." I mean, yeah. Look, it should
23 happen. I suppose if someone got it five minutes after
24 rather than 15 minutes before, I'm not sure that's of
25 particular consequence. But as a general matter, we should

1 be adhering to the policy.

2 Q Do you think generally it's a good idea in an
3 enforcement case to notify a defendant prior to the case
4 being filed, even if it's only a minute or two prior?

5 A Yeah. Yeah. I do.

6 Q Because of the courtesy?

7 A Just a courtesy. There's no -- we're not in the
8 business of kind of gotcha, so I think that's right.

9 Q Now, was there a specific decision made not to give
10 Goldman that other heads up that we discussed, the heads up
11 after the Commission had approved the recommendation to go
12 forward with the case? I mean was that raised as this would
13 be a time when we would call Goldman and a decision was made
14 not to? Or it just never happened?

15 A I don't recall any of that discussion. And, in
16 fact, I think after I talked to Greg Palm I think I sent an
17 email around asking for kind of the timeline, what happened
18 basically.

19 Q Right.

20 A Because I didn't really -- like I said, it wasn't
21 something I was focused on.

22 Q And you were not involved in any instructions given
23 to [REDACTED] about when to call Goldman to give them notice?

24

25 A No.

1 **Q Were you aware of those instructions specifically?**

2 **A No. Like I said, I just didn't focus on this.**

3 **MR. KOTZ: Okay. All right. Let's move onto**
4 **Exhibit 25. It starts with an email exchange between Myron**
5 **Marlin and John Nester, 4/16/2010, 3:55 p.m.**

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

8 **THE WITNESS: Yes.**

9 **BY MR. KOTZ:**

10 **Q Do you remember this issue, an individual from the**
11 **New York Stock Exchange came forward with concerns that the**
12 **New York Stock Exchange wasn't given a heads up about the**
13 **Goldman case?**

14 **A I do.**

15 **Q What do you remember about that?**

16 **A I remember -- I remember this. I remember that --**
17 **look, there was a significant market impact upon the filing**
18 **of the case, frankly somewhat surprisingly I will say. And**
19 **so I recall this inquiry from the Stock Exchange. I recall**
20 **some general discussion about whether or not this is**
21 **something we could do, because obviously, you know,**
22 **communicating in advance that you're going to file a case is**
23 **potentially a concern from just a confidentiality point of**
24 **view, and you couldn't -- you wouldn't what they would**
25 **necessarily do with the information.**

1 And I think we thought that his kind of market
2 impact was sufficiently rare that I didn't know that we
3 needed necessarily to adopt a broad policy in this approach.
4 So I think it just kind of -- I don't remember it actually
5 going anywhere. I don't think any commitments were made or
6 policies passed.

7 **Q Do you recall that when the settlement of the**
8 **Goldman case was filed and announced the New York Stock**
9 **Exchange was informed before then?**

10 A No. I recall -- I'll tell you what happened there.
11 I don't want to get ahead of your timeline, but --

12 **Q It's all right.**

13 A What happened was when we filed the case the Stock
14 Exchange expressed a concern and the FSA -- I spoke to
15 [REDACTED]. She's [REDACTED] at the FSA. And
16 she expressed a little bit of the we would have liked to have
17 known, because I think there was a Goldman individual who
18 worked in London, and I don't remember if they actually had a
19 case they were looking at, but they expressed some general
20 desire to know in advance.

21 When it came time to announce the settlement I
22 thought about the notification issues, because Goldman
23 brought it up as part of the settlement. They wanted to
24 notify the Fed -- they wanted to notify their primary
25 regulators. They wanted to notify the Fed; they wanted to

1 notify maybe Treasury; they wanted to notify FINRA, because
2 FINRA was looking in the same space, you know, investigating
3 the same space.

4 And I thought about the Stock Exchange, whether or
5 not they should be notified, and the FSA, you know, because
6 the issue had been raised, most of it driven by Goldman,
7 because they felt they need -- they didn't want their own
8 primary regulators to read about it in the press. And then I
9 said, well, let me think about that, because maybe we want to
10 be the ones to give the notification rather than you. So
11 what ended up happening is I informed FINRA before the
12 settlement, because they had a companion case, by calling

13 [REDACTED] And I notified [REDACTED] of the FSA.

14 We didn't -- I talked to trading and market about
15 whether or not we should notify the Stock Exchange. I didn't
16 talk -- I think I called [REDACTED] and somebody else called me
17 back. We decided no, there's just no reason. We had no
18 reason to believe necessarily the settlement would have an
19 impact, and it was just fraught with kind of -- that it
20 should be limited to people who have an actual -- other
21 regulators who actually have an interest in the case or are
22 doing the case.

23 BY [REDACTED]

24 Q Who in trading and markets?

25 A I don't remember who called me back. I called

1 (b)(6),(b)(7)(C) I don't remember if he was recused or just couldn't
2 answer. He had a deputy somebody call me back. I just don't
3 remember who it was. But that's what we decided. And then I
4 asked him -- I called Mary about it and told her that we
5 weren't going to tell the Stock Exchange. And I told her
6 that Goldman wanted to talk to the Fed and the Treasury, and
7 we both agreed we're not talking to them. They have no -- if
8 Goldman wants to do it that's up to them, but we don't --
9 it's not appropriate for us to be talking to them.

10 BY MR. KOTZ:

11 Q What about the decision to file the complaint
12 initially against Goldman during trading hours? Was there
13 any discussion at that time about not filing the Goldman case
14 during trading hours, because it might have an impact on the
15 Goldman stock or the market overall?

16 A No. I think, you know, we were all somewhat
17 surprised by the reaction. It did come up for the
18 settlement, but not at the time we filed the case.

19 Q Okay. And so what came up with respect to the
20 settlement?

21 A Goldman expressed a desire not to have it filed
22 during trading hours. And the way it shook out was that, in
23 fact, is what happened. I think we generally didn't see a
24 problem with accommodating that concern, but I don't know
25 that it drove our decision. But I don't really think it did,

1 but it was Goldman's concern that it not be filed then.

2 Q Would you be concerned about volatility in the
3 market that would be caused by an action brought by the SEC
4 or a settlement? I mean is that something that you're
5 concerned about, that there's volatility caused specifically
6 by the announcement of an SEC case or settlement?

7 A You know, it's not something -- those are things
8 I'd rather not take into account. You know, these decisions
9 should be made based on, you know, kind of the merits. But
10 on the other hand you can't really ignore that. You don't
11 want to cause unnecessary harm or volatility. So I guess I
12 don't really have an answer as to a general approach. I
13 would look at it in particular circumstances.

14 Q Okay. Were you aware that the Friday that the
15 Goldman Sachs case was filed initially was the third Friday
16 of the month, and that has a significance for the expiration
17 of options?

18 A Yeah. I didn't know that.

19 Q Okay.

20 A The triple witching hour.

21 Q So you were surprised at how much press attention
22 the Goldman Sachs filing got on that Friday?

23 A I was surprised both by the market reaction and the
24 overwhelming press focus on the case.

25 Q And do you think that that was generally shared by

1 other folks in the SEC?

2 A Well, I think the handful of us in enforcement that
3 were working on the case, I think we probably were. I mean I
4 think my personal view was it was going to be a significant
5 case because it was -- I was looking at it much more as the
6 first CDO structured products case than I was necessarily
7 that it was Goldman. So I think that -- I think we were
8 surprised. Whether or not the people in Public Affairs, more
9 experienced in these things, expected it or weren't surprised
10 by it, I don't know.

11 Q All right. Let's talk now after the action is
12 filed. Do you remember how quickly settlement discussions
13 started after the action was filed?

14 A I'd say within mid-May, give or take.

15 Q And was that initiated by Goldman?

16 A Yes.

17 Q Yes?

18 A Yes.

19 MR. KOTZ: Okay. All right. Let me show you an
20 email, April 19, 2010. It starts with an email from Lorin to
21 you and Lorin, Monday, April 19, 2010, 1:23 p.m., Exhibit 26.

22

23 (Exhibit No. 26 was marked for
24 identification.)

25 BY MR. KOTZ:

1 Q So this -- we don't need to get into the specifics,
2 but what we're trying to understand is --

3 A Interesting. I don't remember this. This -- I'm
4 sorry. Let me wait for your question.

5 Q So at this point in time it seems there were
6 already discussions about settlement.

7 A Yeah. I may have been mistaken in my previous --
8 this -- I think this came from my weekend phone calls with
9 Greg Palm, when he was talking about the -- he would have
10 wanted to settle the case. In fact, I'm sure that he kind of
11 concluded with, let's talk, because we may be interested.

12 Q I see.

13 A And this is Monday, so that's what -- that's what
14 happened.

15 Q Okay. All right. Let me show you the next
16 document.

17 A I don't think -- I guess mid-May was when things
18 kind of heated up a little, when we had our first-to-face
19 meeting about it.

20 MR. KOTZ: Okay. Well, let me just so you this
21 document. It's an email from you to George Canellos,
22 5/5/2010, 5:11 p.m., Exhibit 27.

23 (Exhibit No. 27 was marked for
24 identification.)

25 BY MR. KOTZ:

1 Q It looks like at least in early May, May 5th, there
2 was a settlement consent sheet.

3 A Yep. Yep. I don't know that we had had -- it may
4 have been that we set up a meeting, and we were thinking
5 about terms in advance, and Lorin was -- I know Lorin was
6 very -- he was very attentive to this and drafting a terms
7 sheet. And then I sent it to George for his views.

8 MR. KOTZ: All right. Let me show you the next
9 document, marked Exhibit 28. It starts with an email from
10 Lorin to Steve Cohen, 6/17/2010, 6:44 p.m.

11 (Exhibit No. 28 was marked for
12 identification.)

13 BY MR. KOTZ:

14 Q It looks like things are more coalescing at this
15 point. Do you recall a decision to extend to July 19 the
16 time for Goldman to answer the complaint?

17 A Yes. I remember the stipulation.

18 Q And was it your general sense that you would hope
19 that the settlement would be finalized before July 19th, kind
20 of giving them an additional time period, but that it would
21 make sense to finalize the settlement before Goldman's time
22 to answer the complaint?

23 A We certainly extended it because we were talking
24 then. You know, obviously no -- you know, no assurance that
25 we were going to get there, but no one wanted an answer filed

1 while we were in discussions.

2 Q And do you think at this stage in mid-June that you
3 were hoping that you would get something finalized within a
4 month or so?

5 A Well, the real -- the -- I don't remember when it
6 was raised, but Goldman made it clear they wanted to for two
7 reasons. One, the answer was due on July 19th. The second
8 thing was their second quarter earnings, their books closed
9 on -- I think their books closed on July 9th, and they were
10 due to report earnings on the Tuesday, the 20th.

11 Q Right.

12 A And so they're going to have to take a big reserve
13 under -- even if there was no final settlement, they might
14 have to take a reserve. And so all of the sudden a big fat
15 number would appear in their books. And we thought, that's
16 going to tell the world that they're getting ready to settle,
17 so I think everybody was of the view that if we're going to
18 get it done it had to get done before those two dates.

19 Q Okay. And how early on did you have an
20 understanding of those two dates? Was that something that
21 came up a week or two before, or was that something that came
22 up sort of a month or two before?

23 A I think it came up -- I think it came up earlier.
24 I don't know -- two months would be no. One month is
25 possible. Somewhere between -- well, obviously it had to

1 be -- it had to be before July 9th, because I remember -- I
2 think it was (b)(6),(b)(7)(C) said our books close on July 9th.
3 So it was before July 9th. And my sense it was two weeks to
4 a month before, something in that area. We can track it down
5 by -- I think it was (b)(6),(b)(7)(C) who said it in a meeting, a
6 settlement meeting that he intended. But it's also possible
7 I learned it before from counsel. So it was not -- something
8 that we knew for some period of time.

9 Q Okay. And was it helpful, generally, in this
10 settlement? In other settlements to kind of have a date
11 that, you know, is looming and then you move things along.

12 A I'm a big believer in deadlines.

13 Q Okay. All right. So at least for a couple of
14 weeks to a month you had those dates, July 19th or 20th, in
15 mind as the dates that if you were going to get it done you
16 wanted to get it done by.

17 A Before that. Yeah. Yeah. Exactly.

18 MR. KOTZ: All right. Let me show you the next
19 document, Exhibit 29. It's an email. It starts with an
20 email from Lorin to Ken Lench, you, and (b)(6),(b)(7)(C) 7/1/2010,
21 10:50 a.m.

22 (Exhibit No. 29 was marked for
23 identification.)

24 BY MR. KOTZ:

25 Q So we don't have to go into all the specifics, but

1 I guess what I was trying to get a sense is, when do you
2 think you had sort of a settlement in principle? I mean
3 obviously there are always odds and ends that need to be
4 finalized. But at what point in time did you believe that
5 you had a settlement in principle and you were looking to
6 schedule something on the calendar for the Commission to
7 approve it?

8 A That's going to be hard to answer, because I have
9 to go back to -- what date is this? July 1.

10 Q This is July 1. We have a draft action memo, which
11 I can show you, which is July 12th. But I assume sometime
12 between July 1st and July 12th the decision was made to draft
13 the action memo, which you would have only done if you
14 thought that there was something that --

15 A Yeah. You know, it's hard just because, you know,
16 some investigations go up to -- I mean we were negotiating
17 even the week on some points. I just don't know. You know,
18 the -- tell me if this is not responsive. The big issue in
19 the settlement was the other investigations. You know,
20 Goldman came in. I think we had a sense early on that the
21 money, we would be able to -- even though we were far apart,
22 you'd get to. You'd get to a resolution on the money.

23 The fraud, non-fraud was very significant for them.
24 And that continued -- I mean even though you may have said,
25 you know, we're not moving off that it doesn't mean they

1 weren't still coming back at you. But the big issue is they
2 wanted a global settlement, because we had eight, ten, twelve
3 other matters that we were looking at, and they didn't want
4 to settle one and then have four other cases be filed against
5 them.

6 And so we had agreed to finish up our investigation
7 of these other matters so we would be able to let them know
8 what the status was, so that they could decide whether or not
9 they wanted to settle. So that continued. That took up a
10 lot of time, I think in May and June and even early July.
11 And then there were a handful of other issues, the
12 acknowledgment and other things, the penalty offset clause,
13 so, you know, terms still open, being disclosed.

14 But I think as days go by there's a gathering sense
15 that, you know, it's going to get resolved. Nobody's out
16 there saying -- I don't think they said, this is a deal
17 breaker, you know, if we don't get X we're not going to
18 settle, and we said well, you absolutely can't have X. So
19 you didn't have that dynamic.

20 Q And so how long before the actual settlement was
21 finalized and officially gone to the Commission did you have
22 that sense that there were still issues to resolve, but there
23 were no deal breakers, and you thought the settlement would
24 go through.

25 A I think it was pretty -- I think we had probably

1 had a sense that it was going to happen, but in terms of a
2 sense that we thought Goldman shared, I don't -- I think it
3 was -- you know, it wasn't too far in advance of the
4 settlement. I mean the penalty offset, just to say -- just
5 to give you one example, the penalty offset clause, which
6 says you pay a big penalty, and then a judge later on reduces
7 a victim's award in private litigation by a certain amount
8 that they get from a fair fund, the defendant's is required
9 to write a new check to the SEC. So he gives \$100 penalty
10 that's a fair fund, then \$50 went to IKB. If they sued
11 Goldman separately, and the judge says, okay, I'm awarding
12 IKB \$100, but I'm going to reduce that to \$50, because you
13 already got \$50 from the fair fund under our penalty, they
14 also have to write a \$50 check to the SEC. That drives
15 defendants -- that I was -- I remember (b)(6),(b)(7)(C) calling
16 me in I think the day the board met, which was that week,
17 calling me and saying, this may be a deal breaker. I can't
18 guarantee they're going to approve with this language.

19 Q Okay. So was the decision made to prepare an
20 action memo, start briefing the Commissioners, set up a date
21 when the Commission would approve it, sort of just in case,
22 even if it would fall apart, because you wanted to do those
23 things.

24 A A little more than just in case. You know, like I
25 said, we had some level of comfort but no assurance. I guess

1 that's the way I'd put it.

2 Q Okay. All right. Now, do you remember if it was
3 some kind of special session of the Commission that was that
4 Thursday, that was set-up for the Goldman case? Or was it
5 the regularized calendar?

6 A I think it was only Goldman.

7 Q And what was the reason for having the Commission
8 vote on that Thursday? I think it was July 15th.

9 A I think it had to do -- my assumption is that it
10 had to do with when all the Commissioners were available.

11 MR. KOTZ: All right. Let me show you another
12 document. This is Exhibit 30. It starts with an email from
13 John Nester to you, Mary Shapiro, Steve Cohen, and several
14 others, 7/14/2010, 12:04 p.m.

15 (Exhibit No. 30 was marked for
16 identification.)

17 THE WITNESS: Right.

18 BY MR. KOTZ:

19 Q Do you recall that there were news reports a couple
20 of days before the settlement was announced that talked about
21 the fact that there were settlement discussions with Goldman
22 at the SEC?

23 A I recall Kara's article. I don't know if there
24 were others.

25 MR. KOTZ: Okay. Let me show you, I think, that

1 one. Exhibit 31 is an email from Steve Cohen to Myron
2 Marlin, 7/14/2010, 9:58 p.m., which is forwarding or
3 referencing an email that [REDACTED] sent out to you
4 enclosing an article.

5 (Exhibit No. 31 was marked for
6 identification.)

7 THE WITNESS: I recall this.

8 BY MR. KOTZ:

9 Q Do you recall I guess a concern that information
10 about the settlement was getting leaked out at this point in
11 time?

12 A Yeah. You know, always a concern.

13 Q And you were aware at that time that the actual
14 Commission vote, with respect to the Goldman action
15 recommendation had leaked out as well. Right?

16 A From the approval of the filing. Yes. By I
17 think -- I don't know. It might have been Kara Scannell as
18 well.

19 Q Right. And so in this email Stephen Cohen says to
20 Myron Marlin, "Guess they got first crack at framing the
21 story." Was there a concern that at least this article, Kara
22 Scannell's article on July 15th, came from Goldman in an
23 effort for Goldman to kind of spin the settlement as
24 something favorable to them or maybe more favorable to them?

25 A I saw it as a Goldman story, and I called Greg Palm

1 about it actually. I don't remember why I saw it -- I think
2 it was because -- again, I'd have to read it. I don't know
3 if there's something in here or just based on the substance,
4 but that was my assumption.

5 Q And what did you tell Greg Palm?

6 A It also -- you know, it's not quite clear, because
7 it talks about having settlement discussions, which have been
8 going on since May. Right? So you can't really tell how
9 timely her information was.

10 Q But what was your conversation with Mr. Palm like?

11 A I called him, and I was unhappy with this. And I
12 recall -- I think there was a press report about the
13 conversation, oddly enough.

14 Q Right.

15 A But what -- and I remember the press said something
16 like I was upset that they were getting the better of the
17 deal or something. That really wasn't the issue. What I
18 talked -- what I told him about is -- let me back up a
19 little. A critical point in the settlement was that the \$550
20 million that was going to be paid was only to settle Abacus.
21 That was it.

22 Q Right.

23 A That deal, \$550 million. We were very clear that
24 these other CDO investigations, even if we resolved them at
25 the same time, were not part of the settlement. This was not

1 a \$550 million settlement for 11 cases.

2 Q Right.

3 A It was \$550 million for one settlement, and we may
4 tell Goldman that we are concluding our investigations in
5 these other matters without recommending charges, but that
6 doesn't mean we're settling them. And that was an important
7 point for us, because we didn't want them out there saying,
8 you know, they settled 12 CDO investigations for an average
9 of \$30 million each, and, you know, didn't they get a great
10 deal. So the way we structured the settlement was everything
11 spoke only to Abacus.

12 And when we communicated to them that we're
13 discontinuing these other ones, we made it clear that, you
14 know, those were other ones that didn't include Abacus, and
15 they were very separate. The article -- I don't remember
16 where in here -- combining a settlement of Abacus with the
17 resolution of related probes -- right?-- all in one
18 settlement. I was worried that Goldman was doing exactly
19 what it is that we had told them we didn't want to happen,
20 that they were going to pitch this as settling 13 CDO cases.
21 And so that's when I called and in somewhat stark terms that
22 I thought it was inappropriate.

23 Q And so were you concerned generally that further
24 details about the actual settlement would leak out, before
25 the SEC had an opportunity to announce it?

1 A That's always -- I mean obviously they had some
2 source of information, so -- and obviously, you know, Goldman
3 knew, Sullivan and Cromwell knew. You know, the category of
4 people who know about cases is always broad. This was even
5 broader.

6 Q So was there a particular concern in this case,
7 given that Goldman could try to spin the settlement in such a
8 way that makes them look better, when that wasn't what you
9 had agreed to?

10 A Yeah. Although look better -- I mean part of it is
11 just being -- it's really just being accurate. I mean, you
12 know, it's really about accuracy.

13 MR. KOTZ: And so if you recall, the Commission --
14 and I can show you this email. Why don't I just show you the
15 email? Exhibit 32, from John Nester to you and other folks,
16 7/15/2010, 9:55 a.m.

17 (Exhibit No. 32 was marked for
18 identification.)

19 BY MR. KOTZ:

20 Q So this is another timeline that was put together
21 for Thursday, July 15, 2010.

22 A Yeah. I see it.

23 Q And so there was a decision made at this time, that
24 even though the settlement, the Goldman settlement, would be
25 approved by the Commission relatively late in the day, that

1 the Goldman case would be filed and announced that day,
2 Thursday, July 15th in the afternoon, the late afternoon.

3 A Yes.

4 Q Okay. Were you participating in that decision?

5 A Yes. I think we had a meeting amongst a number of
6 folks to talk about, maybe among other topics, but also when,
7 with the press people and myself.

8 Q Okay. And was one of the reasons that the decision
9 was made to file and issue the settlement that evening,
10 almost immediately after the SEC Commission had approved it,
11 was concern about, you know, this article or other leaks if
12 you waited until the next day?

13 A That's certainly one of the -- I think that's one
14 of the factors.

15 Q What were the other factors?

16 A I think -- I think it's just there's the
17 generalized concern about wanting to do it as soon as
18 possible. I don't recall whether or not -- this is a little
19 speculation, but if we decided we wanted to do it after the
20 market closed, then if you didn't do it on Thursday that
21 means you'd be doing it Friday at 5:00. That's probably not
22 an opportune time, just for people to -- I don't remember
23 whether or not my schedule had anything to do with -- that's
24 the best of my recollection.

25 Q Okay. You're saying not an opportune time vis a

1 vis the press to have something released on Friday --

2 A Well, Friday. Just Friday at 5:00 or later just
3 who's around, end of the week, that kind of thing. I'd have
4 to go back and look at my schedule to see if there were other
5 things going on that kind of resulted in this happening.

6 Q Could it sometimes put the SEC in a difficult
7 position if there's a settlement that has been reached, the
8 Commission has approved it, but they haven't filed it,
9 somebody else leaks information out about it, and the SEC not
10 only doesn't get an opportunity to sort of frame the story,
11 but they can't even comment on it, because they haven't yet
12 filed it, so the information is still potentially non-public?

13

14 A That sounds -- I mean that sounds like -- that
15 sounds accurate. I don't know that anyone expressed that
16 view, but it's accurate. I mean for me -- the main thing for
17 me is accuracy and, you know, it's also accuracy for the
18 people we regulate. Right? It's the financial institutions
19 and the brokers and the investment advisors. You know, it is
20 less -- it's less -- when you think about molding the
21 message, you know, that has a market aspect to it that's not
22 really -- for me, it's more we have a responsibility to a
23 regulated community of people who look at our decisions very
24 closely. And the accuracy to them is what's kind of
25 critical.

1 Q But isn't it also fair to say that there's a
2 deterrent effect when the SEC enforcement division announces
3 something, gets press coverage about an action that they
4 brought? I mean isn't there a benefit just generally
5 deterrence-wise?

6 A Sure. Sure. And the public taxpayers view it as,
7 you know, the SEC -- their tax dollars are being used for the
8 purposes for which they were intended.

9 Q Right. All right. Now, if you look at this
10 schedule on Exhibit 32, you'll see that market close at 4:00
11 p.m., copies to court clerk, 4:15, so press release issued
12 4:15 to 4:30. So the decision was made to actually file the
13 settlement and issue the press release after the market
14 closed. But the press advisory was before the market closed.
15 Do you see that?

16 A I see that.

17 Q Okay. And were you aware that because of the press
18 advisory and because there had been stories about the Goldman
19 settlement that there was actually a fluctuation in Goldman's
20 stock that occurred between 3:45 and 4:00, because I guess
21 people figured out that the press advisory from the SEC was
22 going to announce the Goldman settlement.

23 A That I don't recall.

24 Q I mean if that was the case, would that be a reason
25 to say delay even the press advisory until after 4:00, if you

1 were trying to avoid some fluctuation in the market?

2 A You know, I don't know. I can't say that I've ever
3 thought about that. You know, that's kind of OPA's decision
4 about how to time these -- you know, when to send that kind
5 of thing out.

6 Q But I mean the reason --

7 A I guess I don't know how often that the market --
8 if you issue an advisory that we're going to have a press
9 release or we have an announcement to make they will put two
10 and two together. I mean obviously in the Goldman case maybe
11 folks did, but it's a pretty unique set of circumstances. In
12 most cases I don't think that that would -- people would make
13 that connection.

14 Q But the reason that the settlement was filed and
15 announced after the market closed was to avoid the
16 fluctuation. So one would think that you would want to avoid
17 fluctuation based on the press advisory as well, maybe with
18 hindsight.

19 A Perhaps. I guess it depends on how much people are
20 able to read into it. Right?

21 Q Right. Okay.

22 A You know, here, for example, the world didn't know
23 that July 19th was the answer due. And there had been
24 speculation about -- I think I had seen commentary by people
25 saying, well, if they're going to settle they got to do it

1 before that day. And so maybe that allowed people to make a
2 connection between a general press advisory and the
3 particular case, which then would lead to the problems that
4 you identified.

5 Q Okay. All right. Generally, I assume you're
6 aware -- you were aware of the financial regulatory reform
7 legislation that made its way through Congress.

8 A Generally.

9 Q Okay. Did you have any involvement with respect to
10 that? There were provisions in there that effect the
11 enforcement division.

12 A I had some -- I had -- yes is the answer. Not
13 extensive, but some. You know, there was a lot of internal
14 communications about what we wanted to see from -- what we
15 wanted to include in the legislation, and then tracking it
16 along the way as provisions fell away, or we want to get
17 stuff added, or a Congressman had answers -- all -- virtually
18 all of it handled by Joan McKown's group and (b)(6),(b)(7)(C) and

19 (b)(6),(b)(7)(C) So the answer is yes. And I met with some
20 Congressman in '09 and '10 on a couple of discreet issues.

21 Q Okay. Did you also have conversations with
22 Congressional staff members about financial regulatory
23 reform?

24 A Well, whenever I met with a Congressman there was
25 usually a staff present.

1 Q In all the conversations you had with either
2 Congressman or Congressional staff members regarding
3 financial regulatory reform, did anyone bring up or was there
4 any discussion about the Goldman Sachs investigation prior to
5 it being filed?

6 A No.

7 Q Would you say that generally the division of
8 enforcement was in favor of financial regulatory reform going
9 forward? I mean there may have been things in it that you
10 liked more than others, but do you think it was division of
11 enforcement's view that financial regulatory reform would be
12 a good thing? I mean the Chairman is on record, but I'm
13 asking more about enforcement.

14 A You know, I'm a little reluctant to articulate a
15 view for all of enforcement. I don't think -- I think most
16 people probably didn't know a whole lot about the particular
17 stuff that was in there, mostly because the enforcement stuff
18 was not the headline stuff. I mean the biggest things for us
19 were -- I mean cell funding was important in the enforcement
20 division for the same reason it was important to everybody;
21 Grand Jury secrecy, which fell away, was important to us;
22 whistleblower was important to us. And then the rest of it
23 was kind of a dog's breakfast of particular tweaks and fixing
24 legislative oversight. So, you know, I would be reluctant to
25 try and articulate a division-wide view.

1 Q What about your view?

2 A My view was that cell funding was good; Grand Jury
3 secrecy -- was good. I didn't pay attention to a lot of the
4 rest of it, the esoterica. And the other things that I
5 thought were good for us was hedge fund registration and
6 derivatives clearing, just because it provided for more audit
7 trail and more trading information to aid our investigations.
8 But the big headline stuff, you know, college regulators, and
9 liquidation plants, credit agency reform, all the rule-making
10 stuff, which is the bulk of it, didn't -- was kind of
11 agnostic on it.

12 Q Did you think, kind of all things being equal, that
13 it would be better than not for the enforcement division if
14 financial regulatory reform went through?

15 A Again, I don't mean to be non-responsive, but I
16 thought about more in terms of the particular things rather
17 than the overall package. I guess your question is, if you
18 had no choice -- to get the things you wanted, but it had to
19 be part of everything else, you know, would you do it. I
20 don't know. I don't think I really had a view.

21 Q Were there times during the course of the financial
22 regulatory reform legislation passing through Congress where
23 there were sort of ebbs and flow? Sometimes it looked more
24 likely it was going to pass; other times it looked less
25 likely. Do you recall that generally, or were you not --

1 A Honestly I didn't track it that closely. My focus
2 was on the individual provisions, and I relied on the
3 legislative affairs people to call me and say, you know, X is
4 in trouble, X being, you know -- can you help.

5 Q So you recall that individual provisions in the
6 financial regulatory reform legislation that were important
7 to the enforcement division sort of had an ebb and flow,
8 sometimes it looked more likely those provisions would get it
9 and sometimes less likely?

10 A Well, more just when -- I think it was driven by
11 Congressional staff questions, so I had a phone conversation
12 with folks on whistleblower. I think I had a phone
13 conversation on Grand Jury secrecy with staff. I went and
14 saw Kanjorski about an 180 day deadline that the wanted to
15 impose, that kind of thing.

16 Q Okay. In any conversation, either with folks in
17 Congress or internally regarding financial regulatory reform
18 legislation was it ever raised it would be good if the
19 enforcement division would bring a big case, because that
20 would really provide a push? Perhaps a big case related to
21 the financial crisis, that would provide a push for the
22 things you wanted in financial regulatory reform.

23 A Never.

24 Q Okay. Now, some speculate that when the SEC did
25 file its action against Goldman Sachs in April 2010 that that

1 spurned some momentum for financial regulatory reform. Do
2 you think that that's true?

3 A I don't think so. I think the path of creating
4 Congressional legislation seems to be a function of a whole
5 lot of things, not any particular enforcement case.

6 Q Now, you were aware that after the SEC filed its
7 action against Goldman Sachs there was a complaint made by
8 Congressman Issa, which our office is investigating, that the
9 action against Goldman Sachs was timed to advance financial
10 regulatory reform. Right?

11 A Yes.

12 Q Okay. And are you aware of that at the time that
13 the Goldman settlement was announced? You were aware that
14 there was a previous complaint?

15 A Yes.

16 Q At what point in time did you become aware that
17 July 15, 2010, which was the date that the Commission with
18 respect to the Goldman settlement, was also the date that the
19 Senate was voting on financial regulatory reform?

20 A I became aware of that only late in the afternoon
21 that same day.

22 Q On Thursday?

23 A On Thursday.

24 Q Okay.

25 A When -- I think we had a brief meeting, where -- I

1 think the President was going to give a press conference
2 announcing whatever had happened, the vote or whatever. And
3 we had a brief meeting to just decide, while we should
4 probably wait until the President finishes his press
5 conference before we announce our case. That was the extent
6 of my awareness.

7 Q Was there any discussion at that point about
8 pushing the SEC filing and announcement of Goldman Sachs's
9 settlement to Friday, given perhaps concern about the
10 perception that might result from the previous complaint
11 Congressman Issa made?

12 A Maybe. But it was sort of quickly dismissed and
13 rejected kind of. Maybe it was even -- I only have a hazy
14 recollection. It was maybe more in the line of, this is
15 going to cause more people to just, you know, raise these
16 issues, even though it was obviously -- the timing had
17 nothing to do with each other.

18 Q So you're saying --

19 A But we went ahead.

20 Q -- it would raise more issues if you actually
21 decided to wait because of financial regulatory reform
22 legislation?

23 A And it's just inappropriate, equally inappropriate
24 to do that as it would have been to try and time things.

25 Q Okay. Was there any consideration given just

1 generally -- it's late in the day already on Thursday. You
2 know, the press might be saturated with financial regulatory
3 reform being issued. Maybe it might make sense to wait to
4 Friday to announce the Goldman settlement?

5 A That I don't -- I don't remember that so much. I
6 remember we also ended up getting delayed because of some
7 technical problem with the like web -- whatever web feed we
8 have, that there was a technological problem, which also
9 contributed to a little bit of the delay.

10 Q But was there any connection at all between the
11 fact that the SEC filed and announced its Goldman case on
12 Thursday, July 15, 2010 and that was the day that the Senate
13 voted on financial regulatory reform?

14 A No.

15 Q All right. I'm going to ask you now a series of
16 questions. Do you have any reason to believe that the SEC's
17 action against Goldman Sachs, or the timing of that action,
18 was related or to advance financial regulatory reform?

19 A No reason whatsoever.

20 Q Are you aware of any information indicating that
21 the SEC's action against Goldman Sachs, or the timing of that
22 action, was related or to advance financial regulatory reform
23 legislation?

24 A No.

25 Q Are you aware of any information indicating that

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

4 A No.

5 Q Did you have any communications at all with the
6 White House about financial regulatory reform?

7 A No.

8 Q Are you aware of any information indicating that
9 anyone at the SEC shared any information -- I guess I don't
10 need to ask this, but I will anyway. Are you aware of any
11 information indicating that anyone at the SEC shared any
12 information concerning its Goldman Sachs investigation with
13 the Executive Office of the President, the White House, or
14 any of its employees, prior to the complaint being filed?

15 A No.

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

19 A No.

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

24 A No.

25 Q Are you aware of any information indicating that

1 the SEC coordinated it's action against Goldman Sachs --

2 A Sorry. Prior to it being filed?

3 Q Right.

4 A Yeah. Because we gave them a briefing after it was
5 filed.

6 Q Right. I'm asking prior to filing.

7 A Yeah.

8 Q The answer prior to filing is no?

9 A Is no.

10 Q Okay. Are you aware of any information indicating
11 that the SEC coordinated its action against Goldman Sachs
12 with the Democratic National Committee, the Democratic Senate
13 Campaign Committee, the Democratic Congressional Campaign
14 Committee, or any of their employees?

15 A No.

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

22 A No.

23 Q Have you ever had any communications while at the
24 SEC with the Democratic National Committee, the Democratic
25 Senate Campaign Committee, or the Democratic Congressional

1 Campaign Committee?

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 news media or any
6 journalist, prior to the complaint being filed?

7 A No.

8 Q And with respect to the settlement of Goldman
9 Sachs, are you aware of any information indicating that the
10 SEC coordinated the settlement with Goldman Sachs with either
11 the Executive Office of the President, the White House, its
12 employees, members of Congress or Congressional employees, or
13 the Democratic National Committee, Democratic Senate Campaign
14 Committee, Democratic Congressional Campaign Committee or any
15 of their employees?

16 A No.

17 MR. KOTZ: All right. We are going to just take a
18 little break. We're going to go off the record.

19 (Whereupon a brief break was taken.)

20 BY MR. KOTZ:

21 Q All right. Just one more question, just to
22 clarify. Jim Duffy or whoever came forward with the New York
23 Stock Exchange and raised an issue after Goldman, the Goldman
24 filing of the action. Do you know if anybody got back to
25 Duffy to discuss those issues with him? Did you get back to

1 him?

2 A No. I think the -- I'm sorry. You're talking
3 about when he complained at the filing, not the discussion on
4 the settlement?

5 Q Right.

6 A I'm sure somebody did. I just don't recall who.

7 Q Okay. And did anyone have a conversation with him
8 specifically when it came to the -- or someone else at the
9 New York Stock Exchange -- when it came to the settlement?

10 A No.

11 Q Okay. It was just an internal --

12 A He was on the list of people we thought about
13 whether or not we should notify. But no, we never did.

14 MR. KOTZ: Okay. All right. We're finished our
15 questions. The one thing I would ask, with respect to the
16 questions involved in Goldman, that in order to preserve the
17 integrity of our Goldman investigation, that you not discuss
18 the content of your testimony with anyone.

19 THE WITNESS: Sure.

20 MR. KOTZ: All right. And with that we're off the
21 record.

22 (Whereupon, the examination in OIG-534 was
23 concluded.)

24 * * * * *

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Chapter Break

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)(6),(b)(7)(C)
6

7 Securities and Exchange Commission

8 100 F Street, N.E.

9 Washington, D.C. 20549

10 (b)(6),(b)(7)(C)

11

12 On behalf of the Witness:

13 (b)(6),(b)(7)(C)

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C O N T E N T S

WITNESS:

EXAMINATION

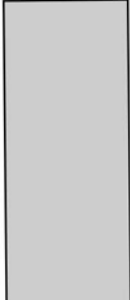
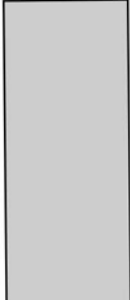
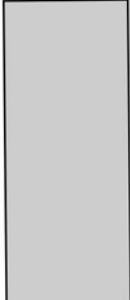
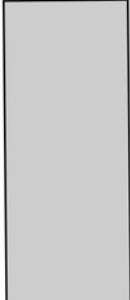
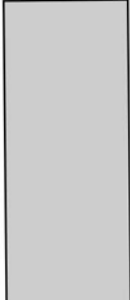


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EXHIBITS:

DESCRIPTION

IDENTIFIED

1	E-Mail,		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  01/26/10	33
5	E-Mail,		to  02/25/10	40

P R O C E E D I N G S

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4

MR. KOTZ: We are on the record at 2:47 p.m. on
July 7, 2010, at the United States Securities and Exchange
Commission.

5

I'm going to swear you in, if that's all right.

6

(b)(6),(b)(7)(C): Do I get a copy of the transcript?

7

8

MR. KOTZ: Sure. Would you please raise your right
hand?

9

Whereupon,

10

(b)(6),(b)(7)(C)

11

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

12

13

EXAMINATION

14

BY MR. KOTZ:

15

16

Q Can you state and spell your full name for the
record?

17

A

(b)(6),(b)(7)(C)

18

Q

(b)(6),(b)(7)(C)

my name is David Kotz. I am the
Inspector General, United States Securities and Exchange
Commission. I have with me my colleagues from the Office of
Inspector General, (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C)

22

23

24

25

This is an investigation by the Office of Inspector
General, Case Number OIG-534. I'm going to ask you certain
questions and you will be providing answers under oath. The
court reporter will record and later transcribe everything

1 that is said. Please provide verbal answers to the
2 questions as a nod of the head or other non-verbal response
3 won't be picked up by the court reporter. Also, so the
4 record will be clear, please let me finish my question before
5 you provide your response; and I will try to let you finish
6 your response before I ask the next question.

7 In addition, it is important that you understand
8 the questions and give accurate answers. If there is
9 anything you don't understand or anything you do not know or
10 not sure about, please let me know; otherwise I will assume
11 that you heard and understood the question.

12 Do you understand those instructions?

13 A I do.

14 Q I will give you the standard perjury warning
15 language. As you can see, your responses and statements
16 given today are provided after you have sworn an oath and
17 will be taken down verbatim by the court reporter.

18 This is an official U.S. Government law enforcement
19 investigation. The claims asserted in this case are serious
20 ones. It is very important you tell me everything you know
21 about the matter at hand and are completely forthcoming and
22 truthful with me.

23 I am formally advising you that your testimony
24 today is subject to the laws of perjury. Providing false or
25 misleading testimony under oath is a serious offense. If

1 the evidence shows the testimony given is false, we may refer
2 it as appropriate.

3 Do you understand those instructions?

4 A I do.

5 Q Okay. Great. Let's start with some background.

6 Could you describe for me your education, beginning with
7 college?

8 A [REDACTED]

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 Q Okay. [REDACTED]

13 [REDACTED]

14 A [REDACTED]

15 Q [REDACTED]

16 A [REDACTED]

17 Q [REDACTED]

18 A [REDACTED]

19 [REDACTED]

20 Q Did you do anything securities related?

21 A No.

22 Q So, that was until about?

23 A [REDACTED]

24 Q Okay. [REDACTED]

25 A [REDACTED]

1 [REDACTED]

2 Q [REDACTED]

3 A [REDACTED]

4 [REDACTED]

5 Q [REDACTED]

6 A I came to the Securities and Exchange Commission

7 in [REDACTED]

8 Q What was your first position with the SEC?

9 A [REDACTED]

10 [REDACTED]

11 Q And what are your duties generally?

12 A To litigate which includes discovery, the
13 trial, both administrative proceedings and District Court
14 proceedings brought by the Securities and Exchange Commission
15 through the Division of Enforcement.

16 Q Have those duties or your position changed over
17 time?

18 A No; but I should say that I have not spent all of
19 the time since [REDACTED] at the SEC.

20 Q Okay. You left the SEC?

21 A I left the SEC in [REDACTED] and worked for [REDACTED]

22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1

[REDACTED]

2

Q

[REDACTED]

3

A

[REDACTED]

4

Q

Okay. So, you came back in [REDACTED]

5

A

No. What did I say? I thought I said, in [REDACTED]

6

Q

I'm sorry. You came back in [REDACTED]

7

A

Right.

8

Q

Okay. So, you've been with the SEC since [REDACTED] and

9

[REDACTED]

10

A

[REDACTED]

11

[REDACTED]

12

Q

So, in terms of the duties as [REDACTED]

13

[REDACTED] both pre and post [REDACTED] they were

14

[REDACTED]

15

A

The same.

16

Q

And who is your current supervisor?

17

A

Mark Adler.

18

Q

What is his title?

19

A

Acting Chief Litigation Counsel, I guess.

20

Q

All right. Let's try to get to some specifics.

21

At some point, did you become involved with an investigation

22

by the SEC into the sale of collateralized debt obligations

23

by Goldman Sachs?

24

A

Yes.

25

Q

And that was referred to as the Abacus

1 investigation?

2 A Yes.

3 Q How come it was referred to as the Abacus
4 investigation?

5 A Because the financial instrument that was the
6 subject of the investigation was called Abacus.

7 Q How was it conveyed to you with respect to this
8 investigation? Was it considered a significant priority,
9 top-ten investigation? Do you remember?

10 A When?

11 Q When you first became involved with it.

12 A I first became involved with it in late July or
13 early August of 2009, when Lou Mejia who at that time was
14 the Chief Litigation, the head of the unit, sent me a very
15 rough, early form, action memo prepared by the staff on the
16 investigation and asked to review it and tell him whether I
17 was interested in participating, which I did. Then I
18 promptly got very involved.

19 It was obvious that it was an important and
20 high-priority case. It didn't need to be stated although at
21 some point during the six months I was on it I'm sure
22 somebody did state that.

23 Q Do you know why your office got involved in the
24 investigation?

25 A Well, increasingly over the years, the trial unit

1 has gotten involved in cases that are deemed to be
2 significant or have significant legal issues that might
3 arrive earlier and earlier in the course of the
4 investigation, the notion being that first we as lawyers who
5 have to litigate cases don't enjoy being presented with an
6 action memo just before or sometimes in the old days even
7 after it had been approved by the Commission.

8 So, when there are issues that might be and
9 questions of how to litigate a case or what kind of evidence
10 we should have before going forward seeking to or whether to
11 even seek authorization from the Commission, whether to make
12 a Wells call, increasingly, over the years I've been here,
13 the trial unit has gotten involved in those situations
14 earlier than in the past.

15 Sometimes that is very valuable, as I believe it
16 was in this case, and other times you can tend to get sucked
17 into an investigation, attend a lot of testimony, and maybe
18 the influence of the trial unit isn't that significant or
19 even that necessary.

20 But at some point, somebody decides that maybe a
21 trial lawyer would be good to get into the case.

22 **Q So, this was pretty early in the process, when you**
23 **got involved?**

24 **A I believe the investigation had been going on for**
25 **over a year. So, actually, it was fairly late in the**

1 process. In fact, when I got in it, the staff, particularly
2 the Assistant Director, seemed to pretty much feel that the
3 investigation was over which shocked me.

4 Q How come?

5 A Because there were obvious holes in the
6 investigation, obvious things that had to be done, or obvious
7 candidates for adding as defendants, possibly. It's all
8 reflected in the e-mail traffic that I think you probably
9 reviewed.

10 Q Okay. So, what was your role supposed to be in
11 connection with the case?

12 A From whose point of view?

13 Q Well, I don't know. How about your point of view?

14 A From my point of view, it was to try to counsel the
15 staff to bring the best, strongest case that they could
16 consistent with what I viewed to be the statutory authority
17 we had.

18 Q And did someone convey at some point a different
19 role?

20 A I think that there was an attitude reflected in
21 certain staff people that the CDO's -- these are collateral
22 default obligations, synthetic swaps and so forth. I've been
23 apart from the language a little bit in the last six months.
24 But there was an attitude: We are the experts in
25 this. It's very complicated. You can't possibly know what

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 [REDACTED]

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

10 A I thought from early on that while it was a very
11 significant case to just sue Goldman Sachs that it was not a
12 case where there was only one low-level vice president
13 involved, [REDACTED] should certainly be subpoenaed to
14 provide investigative testimony which did not happen for
15 months, and that the customer, the lead customer on the short
16 side, John Paulson -- it was his company -- should have also
17 been subpoenaed to give testimony, produce e-mails and so
18 forth. That tooth wasn't as hard to pull as the one on [REDACTED]
19 It was hard to pull nevertheless.

20 I felt that it was in the interest of the
21 Commission and in the interest of our role in enforcing the
22 law to pursue these avenues before we made a recommendation
23 to the Commission.

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

1 A Did I mention [REDACTED]

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

5 A Oh. [REDACTED] is his name.

6 Q [REDACTED]

7 A [REDACTED] I think.

8 Q What was his position?

9 A Well, I understand he's [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 Q Okay. You advocated that [REDACTED] testimony be
17 subpoenaed?

18 A Absolutely.

19 Q And there was reluctance to do that?

20 A Extreme reluctance.

21 Q Who conveyed this reluctance?

22 A [REDACTED] I asked some of the junior staff, the
23 branch chief and staff attorney, and frankly they were afraid
24 to speak candidly.

25 Q Why was that?

1 A I don't know. You have to ask them. But I got
2 repeated: Well, we talked about [REDACTED] in the spring and
3 decided not to do him. You would have to ask [REDACTED] about
4 that.

5 Q Who are these junior-level people?

6 A [REDACTED] who was the [REDACTED] [REDACTED]
7 who was the [REDACTED] and there was also briefly
8 [REDACTED] I want to call her [REDACTED] because I worked with her
9 when she was brand new to the Commission. But her last name
10 is [REDACTED] I think. [REDACTED] [REDACTED]
11 [REDACTED].

12 Q So, at this stage, you were advocating simply that
13 they bring [REDACTED] in for testimony, not specifically that
14 they bring a charge against him; right?

15 A Oh, absolutely. And I also wanted to bring in Mr.
16 Paulson.

17 Q So, what was the reason given for the reluctance to
18 bring [REDACTED] in for testimony?

19 A I remember very clearly being on the 5th floor,
20 outside -- I don't know whether it was [REDACTED] office or
21 [REDACTED] office, out in the hallway. And this is like
22 a couple of months after I had started pushing on this. [REDACTED]
23 tells me: We're not going to do [REDACTED] because we already know
24 what his position is going to be which is that he was too
25 busy. This is just a job he let Tourre do. And we're going

1 to let (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) is going to say he was just too busy
2 and he wasn't involved. So, it would be pointless to go and
3 take his testimony.

4 And I said to (b)(6),(b)(7)(C) Well, how can you know that
5 until you actually take his testimony? And that led to a
6 kind of really appalling example to me where when we finally
7 did take his testimony, after a number of other things we
8 would get into, and let (b)(6),(b)(7)(C) ask most of the questions, and
9 it gets to be near the end of the testimony -- and by the
10 way, these guys were definitely not going to take more than a
11 day of testimony. They were very concerned about getting out
12 of there. I mean, our guys.

13 (b)(6),(b)(7)(C) had not said anything about being too pressed,
14 too busy on other things, anything like that; and so, (b)(6),(b)(7)(C)
15 near 4:30, or something like that, says -- there's a
16 transcript. I'm just paraphrasing. Basically: Were you
17 working on other things, (b)(6),(b)(7)(C) at the time? Well, yeah,
18 I was working on other things. So, really how much time did
19 you really devote to this? And he says: Oh, you know, maybe
20 10 percent. Sometimes more time; sometimes other times.

21 So, I jumped in and said: Well, when were you
22 devoting more than 10 percent? He said: Oh, when I was
23 reviewing the marketing materials and stuff on Abacus.

24 Not only at 10 percent -- and these Goldman guys
25 aren't lying all the time. They presumably work 60, 70 hours

1 a week. You don't need more than six hours a week to know
2 what kind of a scam this was.

3 So, there was this attitude, I think, that I felt.
4 I'm not going to attribute it to them. I'm just going to say
5 what I felt, that the deal was a done deal by the end of
6 July. We know what we're going to do. I don't know whether
7 this was shared by anybody else. I had almost no
8 conversation with Cheryl Scarboro who was the Assistant
9 Director; but the deal is done, you know. We want you to
10 help us put it together and get it out. That's why you're
11 here.

12 By the way, I read the different concentrations,
13 depending on what chapter it was, through books on CDOs, and
14 stuff like that, got up to speed on this stuff which is, by
15 the way, the way the staff went about it. I had this real
16 sense that it was a done deal.

17 Q So, in effect, [REDACTED] in the testimony
18 of [REDACTED] was kind of asking him questions to give him the
19 defense that [REDACTED] thought he was going to have?

20 A I will not attribute motive to anybody but that was
21 the impression I got from what happened.

22 Q Do you have any idea why they would be reluctant to
23 even ask the tough questions of a guy like [REDACTED]

24 A Well, they did ask tough questions. I'm not saying
25 they didn't. I think [REDACTED] and [REDACTED] were not quite as

1 dedicated to the task.

2 Q What about [REDACTED]

3 A [REDACTED] resisted throughout doing [REDACTED] testimony. I
4 resigned from the investigation -- I was so upset with
5 this -- in like December. I had even gotten to Steve Cohen;
6 and if you looked at the e-mails, you've seen that.

7 Q Right.

8 A On the QT, raising my concern about all this.

9 Q How did it go in the end?

10 A Not in an encouraging way. In fairness to him, it
11 was brought to him without really any warning. I don't know
12 what further communications he had.

13 I asked him -- you know, I didn't want to appear to
14 be going over everybody's head but I thought that somehow
15 the -- we weren't even going to take Paulson's -- I
16 forget exactly what the time frame was. I think maybe we had
17 taken Paulson's testimony by then but maybe not.

18 But there was this whole resistance to discussion
19 of possible scheme liability against Paulson & Company. I
20 was totally open about the notion even to the end that there
21 was maybe not enough evidence to sue John Paulson personally;
22 but [REDACTED], [REDACTED] seemed to have a lot of
23 exposure.

24 I don't recall a single serious conversation about
25 scheme liability being applied in this case, all the way up

1 to Khuzami. Most of the focus ended up being on whether to
2 sue (b)(6), (b)(7)(C) and whether it should be aiding and abetting or
3 primary liability.

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

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

15 Q Did you ever get the impression that there was a
16 concern about bringing the case as soon as possible such that
17 perhaps if you started to go down that road and looking at
18 (b)(6), (b)(7)(C) and looking at others it would take time where you had a
19 case against Goldman Sachs; you want to get it out?

20 A Well, I wish I could remember a specific instance
21 where somebody said that. (b)(6), (b)(7)(C) did tell me that this was on
22 a fast track, that it was one of the -- I think there's even
23 an e-mail that says this was a national-something case which
24 meant it was supposed to be on a fast track.

25 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 [REDACTED]

9 A I failed which was why I quit the case, and [REDACTED]
10 [REDACTED] 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 [REDACTED] said he wouldn't take the case until
13 [REDACTED] testimony was taken, and that's what prompted it. I
14 guess since it wasn't [REDACTED] saying "Take [REDACTED] testimony,"
15 that when -- and then, surprising to me, I got called into
16 Adler's 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 since now we're going to take [REDACTED]
20 testimony. And I went on the trip to take [REDACTED] testimony
21 and [REDACTED] 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 Q All right. Well, let's try to go through some
2 things in some order. Let me show you some e-mails.

3 A I'll tell you, yesterday I started to look through
4 the e-mails and got a long way through, the ones I have on my
5 "saved," just to refresh myself. I found it so disturbing
6 though that I stopped.

7 Q Okay.

8 A It's not worth rehashing it, in my mind.

9 Q All right. Well, I don't think we're going to need
10 to show you all of them but we'll show you a few.

11 A I hope not. It's like 300 in there.

12 MR. KOTZ: Let me mark the first one. It's
13 from you to (b)(6),(b)(7)(C) dated 10/1/2009, 1:33 p.m., and we're
14 going to mark it as Exhibit 1.

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

17 BY MR. KOTZ:

18 Q One of the things I wanted to ask you about about
19 this e-mail is: You say about I guess a third of the way
20 down, "The Chairman apparently asked Cheryl a couple days
21 ago 'How is the Goldman case coming?' which prompts a desire
22 for speed, and (b)(6),(b)(7)(C) said the Division, including Khazami,
23 has already signed off on the case as planned."

24 A And he backed off a little on the latter point.

25 Q Right. So, in this time period -- I guess it's

1 October of 2009 -- you already were feeling generally the
2 concern about the case moving along in a swift manner. Is
3 that fair?

4 A I wasn't --

5 Q But some folks around you were?

6 A -- other than as one likes to bring solid,
7 complete cases as soon as possible. But I was told by [REDACTED]
8 what Cheryl had said, and [REDACTED] also communicated the other
9 part of it, and I guess I must have probably said something
10 to [REDACTED] and then he backed off a little, Khuzami already
11 signing off on the case as planned.

12 Q So, at this stage in the process, in October 2009,
13 it was conveyed to you by [REDACTED] that there was concern from
14 the top of the agency about moving this case along?

15 A Correct.

16 Q And then when you, I guess, pointed out there was
17 more work to be done, there was a little bit of backing off
18 on how quickly it was supposed to move?

19 A Yeah. What puzzled me all along was that I pushed
20 and get a lot of push back and then when I tried to just bail
21 out, I was brought back in; and by this time, I had already
22 talked to Steve. I don't know what communication Steve had.
23 I assume you'll find out.

24 Q So, other than this comment you heard from [REDACTED]
25 that Cheryl Scarboro said, had your heard anything further

1 about the Chairman particularly having concerns about the
2 Goldman case?

3 A I would only be speculating. I don't have any
4 specific recollection.

5 Q Okay. What about the Chairman's office?

6 A Actually, I think Steve Cohen did say about how
7 important a case this is but that -- that was obvious.

8 MR. KOTZ: Let me show you another e-mail. We
9 will mark this as Exhibit 2, an e-mail from you to Steve
10 Cohen, Wednesday, November 18, 2009, 12:18 p.m.

11 (Exhibit No. 2 was marked for
12 identification.)

13 BY MR. KOTZ:

14 Q And so, you were communicating directly with
15 Stephen Cohen in this time frame?

16 A Yes.

17 Q Why was that? What was his role in the case?

18 A Well, I felt kind of desperate. You've got to
19 remember, I was here when we sued [REDACTED] when we sued
20 [REDACTED] when we sued [REDACTED] I did the SEC's [REDACTED]
21 [REDACTED] We used to have -- I remember very clearly, [REDACTED]
22 [REDACTED] and [REDACTED] and later [REDACTED] wanting to be
23 aggressive, push the envelope but also some scared, you know,
24 we might be doing too much. The agency was a lot smaller
25 then or at least the Division of Enforcement.

1 I had this concern that because people wanted to
2 get this case out the door that we, A, could use this as a
3 great case for fostering scheme liability -- in other words,
4 it's a missed opportunity -- and courts, several courts, have
5 been inviting us to use scheme liability in ways that we have
6 not.

7 Also, I had a very strong feeling that [REDACTED] before
8 taking his testimony, just based on what we already had in
9 way of e-mail and Tourre's testimony, that [REDACTED] was up to his
10 neck in this; and he, I know, had been [REDACTED]
11 [REDACTED]. Didn't need to take his testimony. And
12 he was brought up the chain. And then the resistance to even
13 taking [REDACTED] testimony. All we're talking about here is
14 taking his testimony.

15 You know, I tried hard not to get paranoid. We've
16 got [REDACTED] who comes straight from [REDACTED] I'm
17 not suggesting anything about it, that I know anything about
18 that. It just seemed to me that this was the first time in
19 my whole career here that we were not following the string.
20 We were not going to take the supervisor of this guy who
21 clearly we were going to sue. Not even take the supervisor's
22 testimony?

23 I mean, the smallest stock-manipulation case, the
24 smallest insider-trading case, the smallest almost anything
25 would go at least a little way up the supervisory chain,

1 interviews, testimony or something. Here we didn't go
2 anywhere; and I thought that this was something that should
3 be raised. It had been raised with Cheryl, and [redacted] and
4 Mejia, and they had said they had talked to the Director and
5 it wasn't going anywhere.

6 Steve Cohen used to work in the trial unit and I
7 thought that this was a contact. He's now in the Chairman's
8 office, and I raised this. So, that's what I did.

9 Q Did anybody articulate ever to you any substantive
10 reason not to go forward along the lines that you had?

11 A The only reasons I heard were those delivered to me
12 by [redacted]

13 Q Which were?

14 A Which were: We already know what he's going to
15 say.

16 We already know he's too busy. This was Tourre's baby.

17 Q I assume you asked him, "How do you already know if
18 you haven't talked to him?"?

19 A I did; yeah.

20 Q What was the answer given to that?

21 A I think that it was just wishy-washy. I don't
22 think he had a good answer.

23 Q So, this e-mail, Exhibit 2, on November 18, 2009,
24 was your effort to go to Steve Cohen. As you say in the
25 e-mail, you have been knocking against so many brick walls to

1 try to get him to understand your concerns?

2 A Well, I believe that it -- I can't specifically
3 recall but let's say a day or two before, I had gone to Steve
4 Cohen's office and talked to him about all this and he didn't
5 have a very firm reaction one way or the other. I can't
6 really describe it. I think he asked for some more
7 information; so, I think that's what I -- that's what
8 prompted this e-mail.

9 Q Okay. And so, shortly after this, the action memo
10 for the Abacus investigation was circulated for review; is
11 that right?

12 A There were various drafts that were circulated at
13 different times.

14 Q And then it was put on the closed Commission's
15 calendar in December; is that right?

16 A Yes. I do remember it calendared and then
17 de-calendared.

18 Q All right. So, I think prior to the time it was
19 placed on the closed Commission calendar the first time was
20 when you withdrew; is that right?

21 A I believe that chronology is correct.

22 MR. KOTZ: Let me show you an e-mail. We will mark
23 it as Exhibit 3. It's an e-mail exchange between you and
24 Steve Cohen, 12/6/2009, 3:26 p.m., and I believe it was
25 placed on the calendar on December 17th. So, a couple of

1 weeks before.

2 (Exhibit No. 3 was marked for
3 identification.)

4 BY MR. KOTZ:

5 Q This is the e-mail where you state on Sunday,
6 December 6, 2009, 9:44 a.m. to Stephen Cohen that you've
7 withdrawn as litigation counsel on Goldman, and you give two
8 reasons?

9 A Mm-hum. Correct. [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 [REDACTED] and decided to send an e-mail
13 out about this matter.

14 Q Now, you reference in this e-mail: "See the
15 highlighted two paragraphs in this review from this morning's
16 NYT." I assume that's the New York Times. Do you remember
17 what that was about?

18 A Where's that? Oh.

19 Q Is that some article about Goldman?

20 A I think so. I remember there was this Christmas
21 Eve article about [REDACTED]

22 Q Oh, yeah?

23 A I remember [REDACTED] and
24 looking at the New York Times and on the front page there
25 was this story about [REDACTED] which sort of really surprised me.

1 But I don't remember what the particular -- maybe if I read
2 the whole e-mail I'd be able to figure it out. You guys must
3 know what the story is. I don't have a direct recollection.

4 Q Yeah. It wasn't attached but we can figure it out.

5 A I failed to attach it? Yeah, I guess I did. Well,
6 he never asked for it; so, I guess he probably saw it, too.

7 Q And then he responds: "I appreciate your giving me
8 full context on your comments. I will review and consider
9 how best to proceed within the bounds of your request." But
10 then after this, isn't it correct, that the matter was still
11 put on the December 17th calendar? Is that right?

12 A I guess so. I remember the e-mail where it was
13 dropped or recalendared.

14 Q Right. But were you ever advised specifically
15 why notwithstanding your concerns and even your decision to
16 withdraw that initially the case was going to move forward?

17 A I don't recall. I think that I felt at this point
18 that it had been resolved to sue Goldman and Tourre and not
19 take people's testimony and therefore the next step would be
20 to calendar it. It wasn't a big surprise.

21 BY [REDACTED]

22 Q Did you have anything specific in mind that you
23 were hoping Steve Cohen could do at this point in time?

24 A Well, my mind was racing then but I thought that,
25 you know -- I had written a couple of memos. I had sort of

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 reflect poorly on the Commission, particularly if you can't
8 even take the guy's testimony. 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 I had seen a draft of the action memo and saw that
18 it was actually, I thought, very misleading with respect to
19 scheme liability. It had pointed to a couple of cases with a
20 trash scheme liability and we had some better cases on scheme
21 liability that we could have cited to the Commissioners that
22 made it more of an issue.

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, [REDACTED]
18 said he wasn't going to litigate the case unless they took
19 [REDACTED] testimony. 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 Cohen that Mark Adler deserves credit for causing this. What
2 did you mean by that?

3 A I think that -- I can't recall. Maybe it was
4 that -- well, I guess probably Adler just supported [REDACTED]
5 and by this time Mejia was gone. So, Adler stood up to the
6 trial unit. That's probably it. I don't have any other
7 explanation.

8 Q Do you know the reaction of [REDACTED] and/or others
9 about this decision?

10 A I have no specific recollection of any reaction.
11 The next thing I remember is, we went up to New York to take
12 [REDACTED] testimony.

13 Q And so, after you found out that the case was
14 withdrawn from the calendar and they were going to take
15 [REDACTED] testimony, you agreed to come back and work on it;
16 is that right?

17 A Only after being told that the front office didn't
18 want me to be off of it because they appreciated how
19 aggressive I had been on the case. It surprised me then and
20 still kind of surprises me.

21 Q Who in the front office? What do you mean? You
22 mean Khuzami's office?

23 A Yes.

24 Q Like Khuzami and Lorin Reisner?

25 A In fact, I think Mark specifically said Lorin and

1 Rob.

2 Q Okay. So, what other steps were taken other than
3 taking [REDACTED] testimony subsequent to the case being
4 withdrawn from the December 17 closed Commission calendar?

5 A Well, after [REDACTED] testimony was taken, there was a
6 lot more serious or at least a lot more meetings and memos
7 about [REDACTED] Lorin asked for several memos, collection of
8 exhibits, a variety of things, all of which I think are
9 reflected in my e-mails; and I collected a lot of that. [REDACTED]
10 [REDACTED] contributed to that.

11 I will say, by the way, reviewing the e-mails,
12 there was a period of time after we took Paulson's testimony
13 that [REDACTED] and [REDACTED] seemed to really develop some
14 enthusiasm for the notion of collecting evidence that sue
15 Paulson and [REDACTED] and expanding the case.

16 They kept coming up with more stuff and they'd send
17 e-mails. It got to the point where [REDACTED] asked to be cut off
18 the e-mail list because he didn't want to be bothered by this
19 sort of stuff, and I can't blame him. I think probably he's
20 got other stuff to do.

21 But they got enthusiastic about it; and [REDACTED] own
22 testimony I think helped pick up steam, and Lorin got more
23 involved, and like I stated, asked for memos, collection of
24 evidence, and seemed to get really involved in it until we
25 reached a final meeting with Khuzami.

1 Q When was that?

2 A The night before the day he decided -- he sent an
3 e-mail around saying we would not sue [REDACTED]

4 Q So, what time frame is this in?

5 A When was the suit? In March?

6 Q April.

7 A April. It must have been in March or so.

8 Q Okay. But before that --

9 A There was no more discussion of suing Paulson &
10 Company on a scheme liability theory, as far as I know. It
11 was all aiding and abetting or --

12 Q But you took Paulson's testimony?

13 A I was there.

14 Q All right.

15 A That was in October, I think.

16 Q Right. It was placed on the calendar in December.
17 It was taken off to take [REDACTED] testimony, and then it was
18 placed on in the calendar in January, as well. Do you recall
19 that?

20 A Vaguely.

21 MR. KOTZ: And there's an e-mail that we have here,
22 dated January 26th, where it talks about "I hear the Chairman
23 wants to file Thursday." So, this was the 26th. Thursday
24 would have been January 28th. I'm going to show you that
25 e-mail.

1 We will mark this as Exhibit 4. It's an e-mail
2 from you to [REDACTED]; "cc," [REDACTED] 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 [REDACTED] 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 [REDACTED] 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 [REDACTED]

15 A I think [REDACTED] 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 calendar, as well?

2 A Specifically, no; but I have no specific
3 recollection of that particular timing. But at some point,
4 there was a concern, particularly by Khuzami, that the staff
5 had not apparently -- later, intentionally. They failed to
6 ask [REDACTED] at ACA or when they interviewed people in Germany
7 at [REDACTED] whether the fact that Paulson took a short position
8 while helping to select the portfolio -- the fact that a
9 short helped to select the portfolio would have made a
10 material difference to them in deciding whether to invest.

11 And I think because there was always a feeling in
12 the front office that the case might -- I never had any doubt
13 about the strength of the case against Goldman. I think it's
14 a great case. But there's always a little skittishness.
15 There was going to be big publicity. They wanted and I
16 think rightly so to get affidavits at least or some kind of
17 under-oath evidence of what the customers felt about that,
18 and that took quite a long time. And I do not know if that
19 was the reason specifically for moving it off the calendar
20 again but it is the one that comes to my mind.

21 BY [REDACTED]

22 Q Do you know whether or not to Wells [REDACTED] was at
23 all relevant to this --

24 A Yeah. You know, now you've refreshed my
25 recollection. It may have been we decided -- they decided

1 finally they ought to Wells (b)(6),(b)(7)(C) That might have been it
2 and the affidavit issue came up later. That would be more
3 consistent with my recollection. Didn't even think about it.

4 BY MR. KOTZ:

5 Q But as of January 26, 2010, there was no case
6 being brought against (b)(6),(b)(7)(C) right?

7 A Well, there was a lot more consideration, pursuing
8 (b)(6),(b)(7)(C) than there had been before.

9 Q Right. But on December 17, 2009, the matter was
10 on the closed Commission calendar and then withdrawn for the
11 specific purpose of taking (b)(6),(b)(7)(C) testimony. Then (b)(6),(b)(7)(C)
12 testimony is taken and a month later it was back on the
13 calendar. As of that point there was not going to be a claim
14 brought against (b)(6),(b)(7)(C) right?

15 A I'm only refreshed by his recollection or his
16 suggestion that it was -- maybe it would help me if I knew.
17 When was (b)(6),(b)(7)(C) Wells'ed?

18 (b)(6),(b)(7)(C) I believe it was shortly after it was
19 pulled from the January 20th calendar.

20 THE WITNESS: I don't know who -- I can't recall.
21 I probably did know at the time, who was instrumental in
22 deciding to Wells (b)(6),(b)(7)(C) I suspect that it was more Reisner's
23 participation. Lorin seemed throughout -- well, I disagree
24 with him on how far we went. He seemed throughout a lot more
25 intensely involved in trying to make the right decision.

1 BY MR. KOTZ:

2 Q So, you believe that the reason it was taken off
3 the calendar in January was also because of (b)(6),(b)(7)(C) to try to
4 build more of a case against (b)(6),(b)(7)(C)

5 A Based on just the dates and the recollection that
6 we did at some point Wells (b)(6),(b)(7)(C) that makes sense to me. I
7 don't have a specific recollection but I think that is why.

8 Q Now, do you remember any discussion about concern
9 that the Senate Permanent Subcommittee on Investigations was
10 going to do a hearing on Goldman?

11 A I sent an e-mail out at one point which I think
12 was just a week or two before -- this stuff was starting to
13 get in the news through every hearing. I sent out an e-mail
14 saying, I think we ought to try. It would be great if we
15 could get this out so the people would know about what's
16 going on. But I'm a low-level guy. I mean, I'd been arguing
17 a lot of stuff. Nobody ever referenced that or anything, to
18 my knowledge.

19 Q Okay. So, what was the point of your e-mail?

20 A I thought this conduct was atrocious and that
21 contrary, I guess, to Mr. Issa, I thought that information
22 would be of use to people who were going to be considering
23 what kind of legislation should be done to regulate the
24 financial services industry, and I thought that it was
25 important that this go out, if it could, consistent with

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. We had very strong evidence that Goldman
5 Sachs behaved fraudulently, in a manner -- and so, in my
6 view and others but in a manner that contributed, maybe
7 didn't cause but contributed to the kind of financial
8 problems the country was facing, and I thought it would be
9 a shame if this whole hearing and all the processes went
10 through and nobody on the Hill knew about it, if we could
11 do it. 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?

23 A That's when he classically, basically said, it
24 depends what selected is, or something like that. He was
25 very skeptical about the notion that the statements in

1 the marketing -- the misstatements in the marketing material
2 that ACA selected the portfolio were in fact misleading.

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
6 Goldman could be held liable if we only named Tourre,
7 whether there was sufficient legal authority to -- under
8 response, superior, to hold Goldman liable for the conduct
9 of Tourre.

10 Q So, do you feel like you resolved his concerns,
11 you and others?

12 A I think we didn't resolve his concerns. He voted
13 against it.

14 Q Did the issue of bringing a case against (b)(6),(b)(7)(C) 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 (b)(6),(b)(7)(C) 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 (b)(6),(b)(7)(C) 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

1 sue [REDACTED] at all, and if we should, whether it should be as
2 primary violator or aiding and abetting; and that went on,
3 back and forth. For a while there, it seemed to me that
4 there was never going to be enough evidence. We collected
5 it, collected it, put it in front of people, put it in front
6 of people.

7 Finally, the night before -- we had a couple of
8 meetings with Khuzami. The night before, he decided not to
9 sue [REDACTED]. The vote was: Lorin wanted to sue for aiding and
10 abetting. [REDACTED] wanted to sue for aiding and abetting. I
11 wanted to sue for principal and/or aiding and abetting in
12 the complaint and we could decide which to present to a jury
13 later. [REDACTED] was against suing [REDACTED] at all. His staff was
14 wishy-washy and didn't want to really say, I think.

15 So, the vote was -- I mean, as Khuzami says, it's
16 not a democracy, he said, but he said he had [REDACTED]
17 next day and he wanted to resolve this but he wasn't ready
18 to resolve it now; he would send an e-mail around.

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 [REDACTED] and Ken Lench,

1 dated 2/25/2010, 2:05 p.m. And so, this is February and you
2 say: "Well, here is the latest from our expert. I'll need
3 to talk to (b)(6),(b)(7)(C) about whether we need to amend to
4 include these subordinates who will do the real work if this
5 is acceptable. Given the time constraints, I think we should
6 proceed at this amount, with the payment taken from the
7 current contract." What did you mean by time constraints?
8 What were the time constraints?

9 A Well, we wanted to get the case out the door.

10 Q Was it by a particular time frame or what do you
11 mean to get the case --

12 A No, no, no. I don't think there was any particular
13 target -- well, I mean -- let's see. Was it off the calendar
14 still by this time?

15 Q Yes. It was taken off the calendar in January.
16 This is a month later, the month after it was taken off the
17 calendar the second time.

18 A And it's not back on the calendar?

19 Q Right.

20 A I think that it was just that, you know, we
21 diddled with this since July and the time to, you know -- how
22 can I say this? To defecate or get off the pot was
23 approaching. Nobody wanted to delay this thing for the sake
24 of delay. I think everybody wanted to get it out the door.
25 We had pretty much exhausted all the issues that I'd been

1 raising. I mean, you know, it was time.

2 This was still like a -- how long before our last
3 meeting with Khuzami, since I'm going on and on. But I
4 felt like, you know, we pretty much exhausted it. Nobody
5 was interested in scheme liability. We'd analyzed the
6 evidence against (b)(6),(b)(7)(C) memos and stuff, which we continued to
7 do, and I thought it was just a question of somebody pulling
8 the handle to get the thing going.

9 Q So, notwithstanding the time constraints, you
10 feel like all the investigative work that needed to be done
11 was done? It was a matter of making the call?

12 A I didn't have any -- there was talk about whether
13 we should Wells (b)(6),(b)(7)(C) at one point.

14 Q Okay.

15 A But I don't think -- nobody really had the desire
16 to do that. You know, (b)(6),(b)(7)(C) It should be going
17 further up the chain if there was evidence.

18 Q So, were there any particular individuals that
19 you didn't subpoena that you felt should have been subpoenaed
20 in this case?

21 A Well, (b)(6),(b)(7)(C) was subpoenaed. (b)(6),(b)(7)(C) had given
22 testimony before I got involved in the case.

23 Q Okay. So, were there any individuals that weren't
24 subpoenaed that you felt should have been subpoenaed?

25 A Not strongly enough like I felt that (b)(6),(b)(7)(C) should

1 have been subpoenaed.

2 Q And what about Wells? Were there any particular
3 individuals that should have been Wells'ed in your view that
4 weren't?

5 A No.

6 Q What about other investigative steps? Were there
7 any specific investigative steps that you felt should have
8 been taken that weren't taken?

9 A Well, I think it was important to get the customers
10 on record as to whether they thought the information that
11 was withheld was material or not.

12 Q And was that done?

13 A Through these affidavits.

14 Q So, that was done?

15 A It was done.

16 Q Okay. But was there anything that wasn't done that
17 you felt should have been done in connection with either
18 making a case against [REDACTED] or some other aspect of the
19 Goldman investigation?

20 A No; I don't think so. Nothing comes to mind.

21 Q All right. So, here's the March 23rd e-mail where
22 Robert Khuzami says, "I'm a no on [REDACTED] And you respond,
23 "I'm out." And [REDACTED] e-mail is marked, "Adler, [REDACTED]
24 is out." What did you mean by "I'm out."?

25 A That was childish of me and impulsive.

1 Q So, you were just frustrated with --

2 A I was just frustrated with the decision; and the
3 next day, actually maybe even later that afternoon -- what
4 time was this? That afternoon? I didn't understand his
5 logic. You know, what particularly troubles somebody who's
6 been at the SEC a long time is the number of times we take
7 extraordinary inferences and apply them to common little
8 people. It still bothers me that we had a lot more than
9 inference here and we didn't do anything with it; and if
10 this were some guy out in the middle of Kansas someplace who
11 heard from his great grandmother that it was the sister of
12 somebody that worked at IBM that was IBM news, we would be
13 applying every influence plus the, you know, inherited duty
14 to some guy. Here we don't even let this guy -- anyway, I'm
15 just venting.

16 What I did the next day was: I went in and said,
17 I'm sorry. I didn't really mean to do that. That was
18 impulsive and it's a great case; still a great case against
19 Goldman, and I want to be part of it still. And I talked to
20 [REDACTED] about it. I had been talking to [REDACTED] about this
21 all along and --

22 Q So, why do you think in the end Khuzami decided
23 against [REDACTED] that it was a high-profile matter and they
24 didn't want to take a chance on a kind of push-the-envelope
25 type of case?

1 A I am not going to ascribe any motive to Mr.
2 Khuzami on the record here.

3 Q Okay. But do you think that that was the view of
4 others, that with this kind of case, with getting so much
5 press, we don't want to take a chance on losing?

6 A That was definitely said. I don't know about the
7 press part but that it was a big case and we didn't -- some
8 notion, you know, how bad we'd look if we lost.

9 Q Who said that?

10 A I think Khuzami did.

11 Q To you?

12 A He said it during this group meeting, at some
13 point; words to that effect.

14 Q When was this meeting?

15 A The night before the decision; and also, I think
16 at a couple of other meetings. But everybody, you know,
17 would feel that way. My feeling was more nothing risked,
18 nothing gained, and this was a good case for scheme
19 liability which -- because the facts were great for scheme
20 liability but that had long been past over.

21 So, you know, I don't -- I take him at his word.

22 I think you can infer it from his e-mail; can't you?

23 Q Right.

24 A The lack of consensus was -- (b)(6), (b)(7) (C) was the only
25 one who was not part of the consensus. "A good case." "An

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 (b)(6),(b)(7)(C) 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. [REDACTED]

4 [REDACTED] 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 Q Other than the e-mail or the suggestion that
2 you made that you discussed earlier about trying to get
3 this information out there before Congress made decisions,
4 did you hear any communication about the financial regulatory
5 reform legislation and perhaps that that legislation would be
6 very good for the SEC?

7 A No.

8 Q At any point in time, did you hear anything about
9 the fact that a high-profile case brought by the SEC against
10 Goldman Sachs might assist in the financial reform
11 legislation being passed?

12 A Just my e-mail is the only thing I remember. I
13 think there was a lot more concern that -- well, [REDACTED]
14 expressed -- I quoted [REDACTED] in one of my e-mails, that Wall
15 Street would laugh at us, which I thought was really wrong
16 for a lot of reasons.

17 Q Why did [REDACTED] think that?

18 A Well, you have to ask him but I think he thought
19 that particularly when it came to the notion of suing
20 Paulson & Company that they -- [REDACTED] once told me, it was
21 just a trade which -- it's just a trade; and I think he
22 thought -- I think it goes back to this interesting notion
23 of when are you so caught up in the ways of Wall Street
24 that you begin to accept a lot of things in Wall Street that
25 maybe you shouldn't accept? And I'm not saying that [REDACTED] is

1 at that point but I saw an e-mail maybe from [REDACTED]
2 who's the guy brought on to point out risks and stuff. I
3 don't know. It's probably just sloppy writing to some extent
4 but he said: Well, Paulson was just acting in his own
5 self-interest. So, no wonder we're not going to sue him.
6 It's proper not to sue him. Whoa. You know, that certainly
7 opens up a lot of mischief.

8 So, I think [REDACTED] wanted to get it out and he
9 expected that there would be a, you know -- a lot of pride
10 people take in their work and [REDACTED] certainly took a lot of
11 pride in suing Goldman Sachs, deservedly so to a great
12 extent.

13 Q [REDACTED] felt that if you went too far and sued other
14 parties that were, you know, kind of tougher cases to make
15 that that would make the SEC look bad?

16 A I think he was afraid that people would say the
17 same as he thought: Well, you know, Paulson just went to
18 Goldman and asked to do a trade. What are you suing him
19 for? They will laugh at you. It didn't carry much weight
20 with me but I guess it was something on his mind.

21 Q Whatever Wall Street's reaction might be?

22 A To suing Paulson.

23 Q And what was your position on suing Paulson?

24 A On the individual, I -- I didn't -- based on what
25 we had at hand, I didn't think we had enough

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

2 Q Right.

3 A I thought that [REDACTED] testimony and the
4 documentation -- there was one that went right to Paulson.
5 Paulson was very good about -- we didn't have many e-mails
6 with Paulson involved in this stuff, John Paulson, and we
7 did have one where [REDACTED] was showing the list and said,
8 here, these are what we've got. I forget the language but it
9 was close.

10 I could concede suing Paulson & Company and
11 [REDACTED] would be enough on our plate with the evidence
12 that we had. There wasn't any point in stretching the
13 evidence to try and nail John Paulson. You know, if he
14 succeeded in isolating himself, so be it. I mean, you could
15 kind of deal with [REDACTED] but I doubt it, but it would
16 have been one possibility later, litigation.

17 But no, I didn't think we had a strong enough case
18 for John Paulson.

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 even sharing any

1 information with the Justice Department.

2 Q What do you mean by that?

3 A Well, a lot of time, we get a big case and -- you
4 know, I mean I'm certainly not convinced that it couldn't be
5 criminal. Maybe it's not criminal. I'm not a criminal
6 attorney. I'm not a criminal prosecutor. But I was
7 surprised that -- a lot of the time, we get big cases like
8 this and we want to share it with the Southern District of
9 New York. They have the FBI. They have other resources that
10 we don't have. They have grand jury subpoenas. I think they
11 decided to keep this one to ourselves.

12 Q Did you hear anything or aware of any information
13 indicating that the SEC coordinated with the Democratic
14 National Committee or Democratic Senate Campaign Committee or
15 any other committee?

16 A Absolutely not.

17 Q What about news media? Did you hear about anybody
18 leaking information about the Goldman case to the news media?

19 A No. I think it was great that the thing didn't
20 leak at all, as far as I know.

21 Q Our office issued an investigative report around
22 the same time and it was released the same day as the Goldman
23 case. Were you aware of that, the Stanford investigation
24 report?

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

1 **Q You didn't hear any discussion about factors in**
2 **when to release the Goldman case vis-a-vis any Office of**
3 **Inspector General report?**

4 A Absolutely not.

5 MR. KOTZ: All right. Why don't we go off the
6 record for a minute or two. Let's just confer and see if we
7 have anything else.

8 (A brief recess was taken.)

9 MR. KOTZ: All right. We have no more questions.
10 The only thing I wanted to ask, and this is very important:
11 In order to preserve the integrity of the investigation, I
12 would request that you not discuss the content of your
13 testimony with anyone. All right?

14 THE WITNESS: Okay.

15 BY MR. KOTZ:

16 **Q All right. Anything else that we missed that you**
17 **think might be relevant?**

18 A To Mr. Issa's inquiry? No.

19 **Q To other related matters?**

20 A No. It's all laid out for you.

21 MR. KOTZ: All right. We're off the record.

22 (Whereupon, at 4:06 p.m., the examination was
23 concluded.)

24 * * * * *

25

CERTIFICATE OF REPORTER

I, (b)(6),(b)(7)(C), hereby certify that the foregoing transcript consisting of 53 pages is a complete, true, and accurate transcript of the proceeding indicated, held on July 7, 2010 at 100 F Street, NE, Washington, D.C., in the matter of OIG-534. I further certify that this proceeding was recorded by me, and that the foregoing transcript has been prepared by me.

(b)(6),(b)(7)(C)

Court Reporter/Transcriber

7/13/10

PROOFREADER'S CERTIFICATE

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In the Matter of: OIG-534
Witness: Witness Number 11
File Number: OIG-534
Date: Wednesday, July 7, 2010
Location: Washington, D.C.

This is to certify that I, (b)(6),(b)(7)(C) (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

(b)(6),(b)(7)(C)

(Proofreader's Name)

7/13/10
(Date)

Chapter Break

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.

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1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, ESQ., Inspector General

5 (b)(6),(b)(7)(C)

6 Securities and Exchange Commission

7 100 F Street, N.E.

8 Washington, D.C. 20549

9 (b)(6),(b)(7)(C)

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11 On behalf of the Witness:

12 CHERYL SCARBORO, Pro Se

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C O N T E N T S

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WITNESS:

EXAMINATION

Cheryl Scarboro

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EXHIBITS:

DESCRIPTION

IDENTIFIED

1	E-Mail, Scarboro to [REDACTED] 10/20/09	12
2	E-Mail, [REDACTED] to Scarboro, 10/22/09	14
3	E-Mail, Scarboro to [REDACTED] 12/04/09	16
4	E-Mail Chain, Cohen and [REDACTED] 01/04/10	19
5	E-Mail Chain, Scarboro and McKown 12/08/09	23
6	E-Mail, Khuzami to [REDACTED] et al.	27
7	E-Mail Chain, Scarboro and [REDACTED] 01/22/10	30
8	E-Mail Chain, Scarboro and [REDACTED] 01/27/10	37
9	E-Mail, [REDACTED] 02/25/10	44
10	E-Mail, [REDACTED] to Scarboro et al. 04/07/10	46
11	E-Mail, [REDACTED] to Scarboro, 04/08/10	47

PROCEEDINGS

MR. KOTZ: We are on the record at 10:03 a.m. on July 8, 2010, at United States Securities and Exchange Commission.

I'm going to swear you in.

Whereupon,

CHERYL SCARBORO

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

EXAMINATION

BY MR. KOTZ:

Q Could you state and spell your full name for the record, please?

A Cheryl Scarboro. C-h-e-r-y-l. S-c-a-r-b-o-r-o.

Q Okay. Miss Scarboro, my name is David Kotz. I am the Inspector General of the United States Securities and Exchange Commission, and I have with me (b)(6),(b)(7)(C) from the Office of Inspector General.

This is an investigation by the Office of Inspector General, Case Number OIG-534. I'm going to ask you certain questions and you will be providing answers under oath. The court reporter will record and later transcribe everything that is said. Please therefore provide verbal answers to the questions as a nod of the head or other non-verbal response won't be picked up by the court reporter. Also, so the

1 record will be clear, please let me finish my question before
2 you provide your response, and I will try to let you finish
3 your response before I ask the next question.

4 In addition, it is important that you understand
5 the questions and give accurate answers. If there is
6 anything you don't understand or anything you do not know or
7 not sure about, please let me know; otherwise, I will assume
8 that you heard and understood the question.

9 Do you understand those instructions?

10 A Yes.

11 Q All right. Let me give you the perjury warning.
12 As you can see, your responses and statements
13 given today are provided after you have sworn an oath and
14 will be taken down verbatim by the court reporter.

15 This is an official U.S. Government law enforcement
16 investigation. The claims asserted in this case are serious
17 ones. It is very important you tell me everything you know
18 about the matter at hand and are completely forthcoming and
19 truthful with me.

20 I am formally advising you that your testimony
21 today is subject to laws of perjury. Providing false or
22 misleading testimony under oath is a very serious offense.
23 If the evidence shows that the testimony you have given is
24 false, we may refer it as appropriate.

25 Do you understand those instructions?

1 A Yes.

2 Q Great. All right. Why don't we start with some
3 background. Could you describe for me your education,
4 beginning with college?

5 A [REDACTED]

6 [REDACTED]

7 '89.

8 Q Okay. [REDACTED]

9 [REDACTED]

10 A [REDACTED]

11 Q [REDACTED]

12 [REDACTED]

13 A [REDACTED]

14 [REDACTED]

15 Q [REDACTED]

16 A [REDACTED]

17 Q [REDACTED]

18 A [REDACTED] I joined the
19 Enforcement Division.

20 Q Of the SEC?

21 A Yes.

22 Q [REDACTED]

23 [REDACTED]

24 A [REDACTED]

25 Q Did you do any securities related work?

1 A (b)(6),(b)(7)(C)

2 Q All right. So, in 1992, you joined the SEC. What
3 was your first position?

4 A Staff Attorney.

5 Q How long were you a staff attorney?

6 A I worked as a staff attorney until -- I believe it
7 was ninety -- 1996, at which point I went to work as counsel
8 to Chairman Arthur Levitt and did that until 1998, at which
9 point I joined the Enforcement Division again as a Branch
10 Chief. I did that for a short period of time. I cannot
11 recall the date. Became a Deputy Assistant Director and then
12 became an Assistant Director in probably around
13 two-thousand -- I have to think about that. Right around
14 2001, approximately.

15 Q Okay. And then what was your next job?

16 A I became an Associate Director in 2006 and then
17 currently Chief of the Foreign Corrupt Practices Act Unit.
18 It is a position I just started in January.

19 Q You started that in January 2010?

20 A Yes.

21 Q All right. Going back, I just want to know kind
22 of generally the duties and responsibilities you had in each
23 position. So, beginning as a staff attorney, what were you
24 doing then?

25 A Investigating potential violations of the

1 securities laws.

2 Q Okay. What about when you worked for Mr. Levitt?

3 A Providing him advice on enforcement related
4 matters.

5 Q Okay. And then as a Branch Chief and Deputy
6 Assistant Director and then Assistant Director?

7 A Supervising staff conducting investigations.

8 Q And as Associate Director?

9 A Same thing.

10 Q Okay. Just more staff?

11 A Right.

12 Q Now, in your position as of January 2010, what are
13 your duties with respect to being chief of that unit?

14 A Developing a program to investigate potential
15 violations of the FCPA, supervising a staff conducting
16 investigations.

17 Q So, your focus entirely is FCPA now?

18 A I still have other investigations that were ones
19 that are, I guess, legacy investigations from when I was an
20 associate and I'm still managing to some degree but it's
21 primarily FCPA; right.

22 Q So, who do you currently report to?

23 A Lorin Reisner and Rob Khuzami.

24 Q Is one of them your official supervisor that like
25 does your evaluation or whatever?

1 A I think they do them together.

2 Q Okay. All right. So, you've got two bosses?

3 A Right.

4 Q Okay. At some point in time, did you become
5 involved in an investigation by the SEC to the sale of
6 collateralized debt obligations by Goldman Sachs?

7 A Yes.

8 Q When was that, just generally?

9 A When it began. I was the Associate Director in
10 charge of that investigation, some years ago.

11 Q So, that was 2008?

12 A That sounds right.

13 Q This investigation was referred to as the Abacus
14 investigation; is that right?

15 A Yes.

16 Q How come?

17 A Abacus was the name of the product; and so, that
18 was the name of the investigation.

19 Q So, you started just as the investigation was
20 beginning? So, you were on it from the beginning? Is that
21 right? Or did you come in after it had already started?

22 A Come in in what way? I don't understand.

23 Q Well, you're working on different matters. So, did
24 you come in to start working on the Goldman Abacus matter
25 after there was already some investigation or it was started

1 with you involved?

2 A I had been an Associate, was an Associate Director
3 from 2006 up until 2010. That investigation was opened by
4 members of my staff in 2008. So, it was an investigation
5 under my supervision from the beginning.

6 Q Did you ever understand that this investigation
7 known as Abacus was considered a national priority or a
8 top-ten investigation for the SEC?

9 A Yes.

10 Q Okay. In what way was that conveyed to you? How
11 did you know that?

12 A At some point, Rob Khuzami had asked for all senior
13 officers to designate matters that were within their
14 supervision that appeared to be a priority for whatever
15 reason, and that is one of the ones that I designated as a
16 priority investigation.

17 Q Okay. How many investigations did you designate as
18 a priority, approximately?

19 A Maybe six or eight.

20 Q Okay. So, it was one of six or eight?

21 A I think that's right.

22 Q Was there any priority level within those or it
23 was just six or eight that were about the same?

24 A No distinction.

25 Q And what about this top-ten investigation for the

1 SEC? Did you hear that?

2 A That wouldn't have been my decision as to how that
3 top-ten list was created. I'm not even sure I've seen the
4 list that had the ten for the whole division.

5 Q But there is some kind of list out there?

6 A I don't know.

7 Q Have you heard the phrase somewhere before, top-ten
8 investigations for the SEC?

9 A Not for the SEC. I know that sometimes associates
10 will decide that they want to put together a list of their
11 top-ten priority matters. I'm not aware of anything for the
12 entire division.

13 Q All right.

14 MR. KOTZ: Let me show you some documents. I
15 don't think we kind of need to go into all the details of
16 the investigation. There are just certain areas. So, I'm
17 going to show you some e-mails and hopefully that will gender
18 some questions.

19 The first e-mail I'm going to mark as Exhibit 1.
20 It's dated 10/20/2009, 12:45 p.m. It's an e-mail from you
21 to [REDACTED]

22 BY MR. KOTZ:

23 Q Is that [REDACTED]

24 A Mm-hmm.

25 Q And [REDACTED].

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

3 THE WITNESS: Mm-hmm.

4 BY MR. KOTZ:

5 Q Okay. So, at the bottom of the e-mail string
6 there's an e-mail from [REDACTED] Tuesday, October 20, 2009,
7 to [REDACTED] with a copy to you and George Canellos
8 that said: "Cheryl has asked that I work with you to
9 schedule a meeting with Rob and Lorin for the week of October
10 26. Purpose of the meeting would be to discuss potential
11 theories of liability for the structurer, Goldman Sachs, and
12 a hedge fund, Paulson & Company, in Abacus CDO."

13 So, this took place 10/2009. From what our records
14 show, the Goldman investigation was opened in August 2008.
15 So, it had been going on for some time before this?

16 A Mm-hmm.

17 Q So, was this some kind of meeting to update Rob
18 Khuzami and Lorin Reisner on the progress of the
19 investigation? Is that what this is all about?

20 A I think that's probably right.

21 Q Was that done on an ongoing basis or was it done
22 like every month, every three months or just when there was a
23 point in time in the investigation where it made sense?

24 A A point in the investigation where it made sense to
25 do it.

1 Q And do you know what point you guys were at with
2 respect to this meeting? It says the "purpose of the meeting
3 will be to discuss potential theories of liability."

4 A Mm-hmm.

5 Q So, it sounds like you were at least at the point
6 where you were contemplating different theories of liability.

7 A Right.

8 Q So, do you know what was discussed in this meeting
9 with Rob and Lorin?

10 A We discussed the facts of the case and possible
11 legal theories.

12 Q Was there discussion about who to potentially bring
13 charges against?

14 A I would assume that that was part of the
15 discussion.

16 Q Do you remember any particular suggestion or
17 statements made by either Rob or Lorin in terms of the
18 direction of the case?

19 A Nothing specific; no.

20 Q Was there discussion about whose testimony should
21 be taken; or by that point, had you taken all the testimony
22 that you needed and you were just discussing kind of what you
23 found?

24 A I cannot recall specifically what was discussed at
25 this meeting as it related to whose testimony to take.

1 Q At this point in time when you were meeting with
2 Rob and Lorin, did you know if the Chairman's office was
3 aware of how the investigation was going?

4 A I don't know.

5 Q Did you have any discussion with anybody in the
6 Chairman's office about the investigation?

7 A I did not.

8 Q Okay. All right. Let me show you the next
9 document.

10 MR. KOTZ: We will mark this as Exhibit 2.

11 (Exhibit No. 2 was marked for
12 identification.)

13 BY MR. KOTZ:

14 Q This is an e-mail from [REDACTED] to you,
15 10/22/2009, 7:58 p.m. So, this is just a couple of days
16 after the Exhibit 1 e-mail?

17 A Right.

18 Q This is a very short e-mail. It says, "Abacus
19 vote changed today. Now 5-0 thumbs down." What does that
20 mean? What does that refer to?

21 A This refers to the relationship that staff had
22 with the trial lawyer on the case and whether they wanted to
23 continue working with him and I'd had a discussion with [REDACTED]
24 about that relationship and how things were going and he'd
25 indicated to me that several of the staff members didn't like

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 [REDACTED]

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

11 A These are [REDACTED] [REDACTED] and [REDACTED]

12 [REDACTED] 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 [REDACTED] 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 Q All right. Our records show that not too long
2 after this there was an action memo circulated for the
3 Abacus investigation in about November and then it was put
4 on the closed Commission calendar for December 17.

5 A Mm-hmm.

6 Q Okay. Let me show you an e-mail that might help
7 give you a little bit of context.

8 MR. KOTZ: I'm going to mark the next document as
9 Exhibit 3.

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

12 BY MR. KOTZ:

13 Q This is dated 12/4/2009, 5:35 p.m., an e-mail from
14 you to (b)(6),(b)(7)(C)

15 A Mm-hmm.

16 Q This talks about the action memo (b)(6),(b)(7)(C) sends
17 to you: "Attached is revised draft action memo." He says,
18 "We sending this up today?" He says, "Call me."

19 A Mm-hmm.

20 Q Our information shows that it was then removed
21 from the Commission calendar.

22 A Right.

23 Q Do you know why that was?

24 A It's hard for me to keep the chronology straight
25 but there were -- there were conversations about whether we

1 should wait to put this up, until after we had taken the
2 testimony of -- I think at this point it was Mr. Paulson.
3 I think that's where we were at this point, and debate with
4 the trial unit and the staff about whether that needed to
5 take place before this recommendation went up or after. I
6 think that's what this is about.

7 Q Okay. So, initially there was a decision to go
8 forward and that's why it was put on the calendar?

9 A Initially, I think we were going to put -- go
10 forward with this and then at some -- right. But I -- I
11 cannot -- there were a couple of times that this happened.
12 So, I think I'm right, that this had to do with taking
13 Paulson's testimony beforehand.

14 Q All right. Let me ask you what somebody else who
15 was involved said and just get your reaction to that, that
16 there was an issue perhaps, as well, related to taking the
17 testimony of a man named [REDACTED]

18 A I think that came later.

19 Q Okay. And at this time, point in time, [REDACTED]
20 withdrew as litigation counsel. Do you remember that?

21 A He didn't withdraw. I think he attempted to
22 withdraw or asked to be taken off and he was not taken off
23 this matter at that point.

24 Q Okay. So, how come he wasn't taken off? Wasn't
25 [REDACTED] who they [REDACTED]

1 A They're just the [REDACTED] They're not the
2 final say as to who the trial lawyer is. They were just
3 indicating their displeasure to me about working with him.

4 Q Oh, I see. So, who made that decision I guess not
5 to accept [REDACTED] request to withdraw?

6 A I do not know the specifics. I think you'd have
7 to talk to his supervisors. Rob and Lorin --

8 Q It wasn't you?

9 A No. I don't supervise [REDACTED]

10 Q Did you weigh in on that at all?

11 A I wasn't asked my opinion as to whether he should
12 be allowed to withdraw; but I think over some period of time,
13 I had conversations with people to let them know, as they
14 already knew and didn't need me to tell them, that he was a
15 difficult personality to work with. He has plenty of
16 strengths but it was a difficult relationship.

17 Q So, you would have preferred that he did withdraw?

18 A I didn't have an opinion about that one way or the
19 other.

20 Q It was clear the [REDACTED] would have
21 preferred he withdrew, right, since they [REDACTED]

22 [REDACTED] Is that fair to say?

23 A You'd have to ask them but I assume that's what --
24 one conclusion you could reach.

25 Q Okay. And also, it was indicated to us that he was

1 arguing very much in favor of taking [] testimony and
2 that he was getting pushed back from [] and others
3 about that. What do you remember about that?

4 A I don't think it was quite that simple. []
5 was of the opinion that we should charge []
6 and others on the staff didn't think there was sufficient
7 evidence to charge [] and had already been through his
8 documents and had talked to others at the firm and gotten
9 from all of that evidence a sense that there wasn't enough to
10 charge [] were not opposed to speaking to him but did
11 not think that was going to change anything as it related to
12 decision as to whether to charge him.

13 There was a disagreement as to the timing of
14 talking to him, taking the deposition later, perhaps adding
15 him as a defendant if facts changed, going ahead with the
16 initial recommendation, working that out later, or doing all
17 of that at the same time; and I think that was really the
18 gist of it.

19 Q Okay. Let me show you this one.

20 MR. KOTZ: So, we will mark the next document as
21 Exhibit 4.

22 (Exhibit No. 4 was marked for
23 identification.)

24 BY MR. KOTZ:

25 Q This is an e-mail exchange between Stephen Cohen

1 and (b)(6),(b)(7)(C) 1/4/2010, 7:16 p.m. On the second page
2 there's an e-mail from (b)(6),(b)(7)(C) Tuesday, December 8,
3 2009.

4 A Mm-hmm.

5 Q It says, "In consultation with the trial unit, it
6 was determined that staff will take testimony from (b)(6),(b)(7)(C)
7 (b)(6),(b)(7)(C) prior to making
8 a recommendation to the Commission."

9 A Mm-hmm.

10 Q Does this refresh your recollection that the issue
11 related to the time it was taken off the calendar in December
12 actually related to taking (b)(6),(b)(7)(C) testimony?

13 A It appears to be about (b)(6),(b)(7)(C) at this time. Yes.

14 Q So, what was articulated to us was there might have
15 been a disagreement about whether there was enough
16 information to charge (b)(6),(b)(7)(C) but why not take his testimony?

17 A Mm-hmm.

18 Q You can only gain from taking his testimony; and
19 yet, there was some concern expressed that there were folks,
20 chiefly (b)(6),(b)(7)(C) who argued against taking (b)(6),(b)(7)(C)
21 testimony. What would be a reason not to take (b)(6),(b)(7)(C)
22 testimony even if you hadn't decided whether to bring an
23 action against him?

24 A You're asking me to speculate as to what a reason
25 would be. I can't speculate as to that. All I can say is,

1 I don't -- I think the real issue here was a timing
2 one and also whether, uh -- whether it was the staff's
3 opinion that -- that there was sufficient evidence based on
4 what they had gathered to, uh -- to charge him at that point.
5 I don't think there was any discussion about not taking (b)(6),(b)(7)(C)
6 (b)(6),(b)(7)(C) testimony or not ever talking to him. It was just a
7 matter of when, whether to do it at the time before the
8 recommendation went up or to talk to him later.

9 Q Okay. And what would be the kind of pros and cons
10 of talking to him before or after the recommendation went up?

11 A I believe the evidence that the staff had gathered
12 indicated that (b)(6),(b)(7)(C) was not adequately involved in this
13 particular transaction. It was Mr. Tourre, Tourre's
14 transaction, and it was primarily based on that that they
15 thought that it wasn't -- they weren't going to gain anything
16 by adding that additional step of taking (b)(6),(b)(7)(C) testimony
17 at that point before actually bringing their charges against
18 Mr. Tourre and Goldman. But I wouldn't want to read anything
19 into it and say anyone thought it was a bad idea to talk to
20 him. It was just a matter of whether that was going to
21 change the facts as to the strength of the evidence against
22 him.

23 Q And did you weigh in on that issue?

24 A I recall having discussions with the staff about
25 this, and Lorin and Rob and others about that, and we weighed

1 the pros and cons as to what to do when (b)(6),(b)(7)(C) expressed
2 his concern about talking to (b)(6),(b)(7)(C) and at that point,
3 after those conversations and all the pros and cons, we
4 determined that we should talk to him before going forward,
5 and that's what we did.

6 Q And so, that was the determination to take it off
7 the calendar?

8 A Right.

9 Q Was that your opinion in the context of these
10 discussions that you had with others? Did you express a
11 particular opinion yourself?

12 A I cannot recall what I said one way or the other
13 back then but I wasn't, you know -- as I recall, we were all
14 supportive of taking (b)(6),(b)(7)(C) testimony and that's what
15 happened.

16 Q You said before, the bigger issue was a timing one.
17 Was there some concern about trying to bring this case,
18 bring the recommendation to the Commission as soon as
19 possible?

20 A No, I don't mean timing in that way. What I mean
21 is, at some point in an investigation when you've got
22 sufficient evidence to charge an entity, you may decide to
23 make a decision later as to charging individuals. That
24 happens quite a bit in our cases; and in some instances where
25 you've already taken the testimony of everyone else and

1 gathered all the documents and got a sense as to who was
2 most culpable or most likely involved, you might make a
3 decision to just go with what you have at that point and then
4 follow up later.

5 It wasn't a matter of when Goldman was going to be
6 filed. It was a matter of: Do we wait until we've talked to
7 all these other people and figured out all these other
8 potential later defendants to go ahead with the case that we
9 have against Goldman or do we go ahead now? It's a common
10 question in a lot of our investigations. Nothing unusual
11 about that.

12 Q And the decision at that point was made, is it not
13 correct, that you would take (b)(6),(b)(7) testimony and make
14 decision about all of them at the same time?

15 A We decided to do that.

16 Q Okay. Let me show you another document.

17 MR. KOTZ: I'm going to mark this as Exhibit 5.

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

20 BY MR. KOTZ:

21 Q This is an e-mail exchange between you and Joan
22 McKown, 12/8/2009, 10:58 a.m.

23 A Mm-hmm.

24 Q Okay. And so, you e-mail Joan McKown. You say:

25 "I got your message. This matter will not be on the calendar

1 for December 17. We will not discuss it at today's 2B
2 meeting. I anticipate we will be ready to put this on the
3 calendar in mid-January."

4 A Mm-hmm.

5 Q I don't know that I need to show you this but just
6 so you have the full context, there's an e-mail that says,
7 "At Cheryl's request, we pulled this recommendation from
8 today's 2B and scheduled [REDACTED] testimony for January 7th."

9 So, what I'm trying to get at is, why did you
10 think that it would be ready to put on the calendar in
11 mid-January? What I'm inferring is that it seemed like the
12 thing ou needed to do was take [REDACTED] testimony, and you
13 scheduled [REDACTED] testimony for January 7th. You figured that
14 some time fter [REDACTED] testimony you would be ready.

15 A Mm-hmm.

16 Q Does that make sense?

17 A Right.

18 Q So, really there was only one act that needed to be
19 done, taking [REDACTED] testimony, and once you took that you
20 would be in a position to put it back on the calendar?

21 A Uh --

22 Q Or was there other investigative work that was
23 going to be done?

24 A At this point, I assume that I thought that once we
25 had taken his testimony that we would probably be ready at

1 that -- right after that. But as things unfolded, we found
2 more that we felt we should do after talking to --

3 Q Right. I'm only talking about this stage. So,
4 did you sit in on (b)(6),(b)(7)(C) testimony?

5 A No.

6 Q But you heard back.

7 A I did.

8 Q All right. You were in a situation where there
9 was this difference of opinion about (b)(6),(b)(7)(C) and then the
10 decision was made to take his testimony. So, what feedback
11 did you get from taking his testimony?

12 A I don't remember the specifics.

13 Q Was it generally, oh, it sounds like there's
14 information that we have a case against him or it was kind of
15 what we thought, or what? Somewhere in the middle?

16 A I can't remember specifically. I think it was
17 somewhere in the middle. There were some things that we
18 determined merited following up on but I think -- I just
19 can't remember specifically.

20 Q Was there a feeling generally that there was a
21 better chance of a case against (b)(6),(b)(7)(C) after his testimony,
22 worse chance or about the same as what they thought?

23 A I do not recall specifically what he said in his
24 testimony. I do recall that at some point a decision was
25 made, after his testimony was taken, to have a Wells meeting

1 with him and that that was done at some point later. I
2 cannot recall specifically what facts were gleaned from this
3 and what arguments were --

4 Q All right. But what about the general impression?
5 You know, they were going to go into this testimony and the
6 question was, is there really a valid claim against him?
7 Some thought you didn't even need to take his testimony, and
8 then you take his testimony. So, was the impression from
9 that, oh, we were right; there's nothing here? Or was the
10 impression, oh, there may be something that we have to follow
11 up on? Or was the impression, oh, wow, we've got him?

12 A As I said, I cannot recall. Sorry.

13 Q Okay. All right. Then our information show that
14 the case was put on the calendar again in January; actually,
15 January 28th.

16 A Mm-hmm.

17 Q Do you remember that generally?

18 A I remember it was put on the calendar again. I
19 can't tell you the date.

20 Q Okay. All right. Let me show you another e-mail.
21 Oh, I'm sorry. So, back to Exhibit 4, there's an e-mail
22 exchange between [REDACTED] Rob Khuzami, Lorin Reisner and
23 you in the middle of the page, Monday, January 4, 2010,
24 6:18 p.m.: "Steve Cohen called to say he will instruct the
25 Office of the Secretary to place this matter on the

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 [REDACTED] 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. [REDACTED]
19 [REDACTED] 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 [REDACTED] on

1 Friday, January 15, 2010 at 10:44 a.m. where he says:
2 "According to outside counsel, Sullivan & Cromwell, Goldman
3 has provided copies to the Senate of all documents produced
4 to the SEC pursuant to a me-too request. Today we learned
5 that Goldman is considering providing copies of our
6 investigative transcripts."

7 Do you know what that was in connection with, that
8 documents were being provided to the Senate?

9 A I don't recall specifically what the -- I don't
10 recall specifically. I do recall that there was -- there
11 was something. There was some Senate inquiry relating to
12 special products but I can't --

13 Q Perhaps the Senate Permanent Subcommittee on
14 Investigations?

15 A That could be it.

16 Q And then Rob Khuzami says: "I thought about this
17 after our meeting last night, and the inquiry may be one
18 additional reason to proceed with the case and Wells (b)(6),(b)(7)(C) on
19 parallel tracks, assuming that is the result we reach with
20 Egol." Do you know what he meant by that?

21 A I think what he meant is to go ahead with our case
22 against Goldman and Tourre and continue the process with (b)(6), (b)(7)(C)
23 and see if we wanted to amend at some point down the road.

24 Q What did he mean when he said "the inquiry may be
25 one additional reason." What would the effect of the inquiry

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 (b)(6),(b)(7)(C) 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 that misconduct. They knew about it. It wasn't just the
2 reporters that knew about it but the staff had actually been
3 investigating this and they found this. I think that's what
4 was going on here. I'm just trying to remember the dates.

5 Q Okay. All right. Let me show you another
6 document.

7 MR. KOTZ: I'm going to mark this Exhibit 7.
8 (Exhibit No. 7 was marked for
9 identification.)

10 BY MR. KOTZ:

11 Q This is dated 1/22/2010, 6:09 p.m. It's an
12 e-mail exchange between you and [REDACTED] All right?

13 A Mm-hmm.

14 Q So, it talks a little bit about filing. In the
15 middle of the page, you say: "I would prefer not to file on
16 a Friday. I suggest Monday, Feb 1."

17 A Mm-hmm.

18 Q And then [REDACTED] says: "I realize that's the
19 approach we have taken in the past. But my sense is we
20 really are on a 24-7 news cycle nowadays. Look at how much
21 attention Gretchen's" -- I guess that New York Times --
22 "article got and it ran on Xmas eve." And you say: "I
23 disagree."

24 A That's right. Gretchen's New York Times
25 article is the one that I was thinking about.

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 Friday?

2 A It was.

3 Q So, how come? Do you know?

4 A Don't know.

5 Q Because that was the one day that kind of in the
6 past the agency had never filed?

7 A No, not --

8 Q Or generally there was the approach not to file so
9 much on Friday?

10 A Like I said, personal preference of mine, not
11 something -- you'll find plenty of cases that are filed on
12 Fridays.

13 Q Were you surprised that the Goldman case at the end
14 of the day was filed on a Friday?

15 A No.

16 Q And it did get plenty of coverage?

17 A It got plenty of coverage. It didn't matter.

18 Q So, I guess at least in that case, it didn't
19 matter?

20 A It didn't matter at all.

21 Q Hard to imagine it could have gotten any more
22 coverage on a Thursday?

23 A Right.

24 Q Okay. The approach that Rob Khuzami was talking
25 about in the previous e-mail, where he said, "This may be

1 one additional reason to proceed with the case and Wells
2 [REDACTED] on parallel tracks," that is not the approach that was
3 eventually used; is that right?

4 A No. I think [REDACTED] was Wells'ed before the case was
5 filed. Right.

6 Q And so, do you know why not? I mean, Rob Khuzami
7 at least at this point is suggesting that the inquiry may be
8 an additional reason to proceed that way but then it didn't
9 proceed that way.

10 A I can't remember; and just as background that might
11 be somewhat helpful, at some point along this path [REDACTED]
12 [REDACTED] the Foreign Corrupt Practices Act Unit.

13 Q Okay.

14 A Lorin and Rob were heavily involved in this matter
15 and I told them that I thought that if they didn't mind, I
16 would still come to meetings as I could and be somewhat
17 involved but I didn't -- I thought at some point, I wasn't
18 necessarily adding a huge amount of value. I was trying to
19 interview Assistant Directors for positions and do a lot of
20 other work to get the unit up and running, attending a lot of
21 meetings.

22 So, I did not at some point in January, February,
23 do as much with Abacus as I had before; and so, I was not,
24 for example, at the [REDACTED] Wells meeting. I went to Lorin's
25 office and told him I had something else and thought they

1 certainly were fine without me.

2 And so, my memory on some of these things from
3 January on I -- I just was not as heavily involved in a lot
4 of this.

5 Q Okay. All right. Well, we'll keep that in mind.
6 And just if this sounds familiar or not, our information
7 shows that this inquiry that the Senate Permanent
8 Subcommittee on Investigations was doing at that point in
9 time was eventually pushed off.

10 A Mm-hmm.

11 Q Do you remember that that happened?

12 A I vaguely recall that.

13 Q And that may have been a reason why Rob Khuzami
14 was saying, "the inquiry may be one additional reason to
15 proceed on separate tracks."

16 A Mm-hmm.

17 Q But that was no longer an issue. Does that sound
18 familiar?

19 A I -- I don't -- I don't remember anything specific
20 about that.

21 Q All right. Do you remember at some point there was
22 a meeting between Commissioner Parades and the Enforcement
23 staff working on the Abacus investigation?

24 A Yes.

25 Q Did you attend that meeting?

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?

13 A I do recall him asking -- he wanted some specifics
14 about the misrepresentations. He wanted more detail about
15 charging the entity for the conduct of individuals, you know,
16 holding the entity liable for conduct of Mr. Tourre alone;
17 questions about whether there was anything false or
18 misleading about what IKB had been told orally and in the
19 written material. Just a whole host of questions. 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 Q About any concerns about the case? Did you get the
2 impression that he might not be in favor of every aspect of
3 the case?

4 A We ended it with -- we ended it with him asking for
5 some further written material. I think we were supposed to
6 write up a list of the statements that had been made. I
7 don't think he gave any indication he just made up his mind
8 as to what he was going to do; but he definitely indicated
9 that he had some concerns about the case, and wouldn't have
10 said necessarily at that point that he was necessarily in
11 favor. But he didn't say that he was or wasn't at that
12 point, how he was going to vote.

13 Q Was there concern during the course of the
14 investigation that the Commission might not accept the case?

15 A I don't -- I don't recall any conversations one
16 way or the other. I think everyone recognized it was a
17 difficult case and that it had issues that people would want
18 to talk about and that there were some risks but I don't
19 recall any specific conversations about that specifically.

20 Q Okay. Let me show you another e-mail. It's an
21 e-mail exchange between you and (b)(6),(b)(7)(C) 1/27/2010, 12:25
22 p.m.

23 MR. KOTZ: We'll mark it as Exhibit 8.

24 (Exhibit No. 8 was marked for
25 identification.)

1 BY MR. KOTZ:

2 Q All right. There's an e-mail from (b)(6),(b)(7)(C) to
3 you and Kenneth Lench, Wednesday, January 27, 11:24. "Lorin
4 is available right now through 12:00 noon to discuss whether
5 or not to pull the recommendation from tomorrow's calendar,
6 which he is inclined to do."

7 So, this is the second time it was put on the
8 calendar and pulled?

9 A Mm-hmm.

10 Q Do you know why it was pulled the second time?

11 A I can't recall specifically why it was pulled that
12 time; no.

13 Q I mean, you understand kind of our situation. We
14 are doing this investigation of whether there were any timing
15 concerns with the ultimate filing of the Goldman case. So,
16 what we find is: It was put up and then put back; and put up
17 and then put back. I mean, is that unusual that it would go
18 up on the calendar and then be pulled back twice?

19 A What do you mean, timing concerns? I don't
20 understand what you mean.

21 Q Well, I was explaining that our investigation is
22 look at why the SEC chose to file its Goldman action at the
23 time that it did.

24 A Right.

25 Q There's an allegation that it was done for an

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 as it related to (b)(6),(b)(7)
(C)
12 (b)(6),(b)(7) whether to resolve it completely with him at the same
(C)
13 time or go forward with a recommendation that might result
14 in amending the complaint down the road to add him. 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)(6),(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** (b)(6),(b)(7)
(C)

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 (b)(6),(b)(7)(C) 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** (b)(6),(b)(7)
(C)

17 A Why did the -- because I think in conversations
18 with Lorin and Rob and the rest of the team, it was
19 determined that there were some sufficient issues, that even
20 though there was significant risks that there were
21 significant enough issues that it merited Wells'ing him and
22 getting a response.

23 **Q So, that was to try to see if a case could be**
24 **brought against** (b)(6),(b)(7)
(C)

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

1 where you think you do -- you -- you -- you do have a case.
2 You think you could make a case. In this one, I think that
3 everyone recognized that there were some potential weaknesses
4 or litigation risks as it related to [REDACTED] but there was
5 enough there that the staff determined that there was at
6 least, you know -- there was enough there to merit going
7 forward with the Wells.

8 Q Okay. So, is this kind of how the process went,
9 initially the decision was towards not taking [REDACTED]
10 testimony; then after it was put on the calendar, the
11 decision was to take [REDACTED] testimony; then after [REDACTED]
12 testimony was taken initially there was movement in the
13 direction of not Wells'ing [REDACTED] but then after it was on
14 the calendar the second time, the decision was to Wells
15 [REDACTED] Is that kind of how it went?

16 A I'm not sure it was all that clear-cut; no. I
17 think what -- part of the backdrop here is [REDACTED] and
18 the trial unit having -- [REDACTED] having one view and the
19 investigative staff having another view as to where we were
20 and whether we had consensus as to whether to go forward; and
21 I think that there were -- I think that was part of what
22 you're seeing in terms of -- I mean, the staff decides when
23 to put something on the calendar, not the trial unit; and I
24 don't know how adequate the conversations were with the trial
25 unit about -- I mean, I'm sure if you would ask [REDACTED]

1 he would say, well, we shouldn't have calendared it at all
2 until I got, you know, what I wanted which was a Wells from
3 (b)(6),(b)(7)(C) and suing him and whatever else. I'm sure that's what
4 he would say.

5 I think the staff was operating under a different
6 assumption which is that: They had already run that
7 to ground and there wasn't anything there. Let's just go
8 forward. Well, we've all agreed. Well, I think (b)(6),(b)(7)(C) view
9 was we hadn't all agreed; and he went and made sure that
10 that voice was heard and that Lorin and Rob and everyone
11 heard him out on his view of timing. And in the midst of all
12 of that, I think this was already on the calendar and had to
13 be pulled to accommodate that view.

14 So, I think there was just some back-and-forth that
15 didn't have anything to do with decisions being made and then
16 reddecided. I think there had been not the kind of consensus
17 that you would like there to be.

18 Q Did you have a particular opinion on whether to
19 Wells (b)(6),(b)(7)(C) or not?

20 A I don't think anyone was of the view that you
21 should not talk to him. I think that the view was: Look.
22 There's a longshot with him. We have a great case already.
23 Let's just go forward with our great case. If you want to
24 see if you can gather up further evidence and amend your case
25 and bring him in later, that's fine. But why should we hold

1 this up when we see no reason to do that? I think that was
2 the difference of opinion. It wasn't a matter --

3 Q And what was your personal --

4 A I took -- I did not have a strong opinion one way
5 or the other because I viewed it as a case where we
6 would -- we would -- we would get the evidence as to [REDACTED]

7 [REDACTED]

8 I looked through what the staff had pulled
9 together; I understood what [REDACTED] arguments were, and you
10 know, I thought it could go either way very easily. It
11 wasn't really -- you know, it really was one of those
12 instances where I had trouble seeing a good case against
13 [REDACTED] based on what I understood in terms of his role and what
14 he actually knew and was doing in relation to Mr. Tourre's
15 deal.

16 So, you know, even though I could see it going
17 either way, I thought that based on everything I knew, it
18 looked unlikely that you would be able to make a good case
19 against him and that you would just be muddying the waters
20 because the case against Goldman itself was going to be
21 challenging enough without stretching to that point.

22 So, I think that out of an abundance of being as
23 thorough and careful as possible, we rethought that and said,
24 let's just do it all in one fell swoop and take our time and
25 get it right as opposed to rushing to put this on, and that's

1 what we did.

2 Q Okay. But at the end of the day, a determination
3 was made not to bring a case against [REDACTED]

4 A And I think that you could say that it was vetted
5 thoroughly and thought through carefully and that everyone,
6 you know, took their time to figure out whether we, you know,
7 had a case against him; and so, that needed to happen. So, I
8 think in the end, it was probably a good thing to at least
9 say that we worked hard and thought hard about it before
10 making an ultimate call.

11 Q Okay. Did you have a particular opinion on the
12 ultimate question of whether to charge [REDACTED]

13 A Did I have an opinion? I think I just said, I
14 didn't -- I didn't necessarily think that we had a good
15 enough basis to charge him at the end and I think that we
16 made the right decision in not doing it.

17 Q Okay.

18 MR. KOTZ: I'm going to show you the next e-mail
19 which is Exhibit 9.

20 (Exhibit No. 9 was marked for
21 identification.)

22 BY MR. KOTZ:

23 Q This is an e-mail from [REDACTED] to [REDACTED]
24 Kenneth Lench with a "cc" to you and a couple of other
25 people, dated 2/25/2010, 2:05 p.m.

1 A Mm-hmm.

2 Q Okay. So, in this e-mail that (b)(6),(b)(7)(C) sent he
3 says, among other things: "I'll need to talk to (b)(6),(b)(7)(C)
4 about whether we need to amend to include these subordinates
5 who will do the real work if this is acceptable. Given the
6 time constraints, I think we should proceed at this amount,
7 with the payment taken from the current contract." He's, I
8 guess, talking about some issue with an expert?

9 A Mm-hmm.

10 Q Do you know what he was referring to when he
11 mentioned the time constraints?

12 A Probably since we were going to be filing it and he
13 wouldn't have a whole lot of -- I don't know. I assume it's
14 because we're getting ready to file the case and he wanted to
15 have the issues with the expert worked out. I don't know of
16 anything other than that.

17 Q What were the issues with the expert?

18 A I have no idea. I'm sure (b)(6),(b)(7)(C) knows. I don't know.

19 Q Okay. I'm going to show you the next document.

20 This is dated 4/7/2010.

21 A Mm-hmm.

22 Q This is going further in time.

23 MR. KOTZ: We're going to mark it as Exhibit 10.

24 (Exhibit No. 10 was marked for
25 identification.)

1 BY MR. KOTZ:

2 Q It's an e-mail from [REDACTED] to you, Lorin
3 Reisner and Kenneth Lench, 10:40 a.m. And so, [REDACTED] is
4 responding to an e-mail from [REDACTED] Now, who is
5 [REDACTED]

6 A She [REDACTED] Rob and Lorin.

7 Q But at this time, she was working in the Senate,
8 right, on detail? Were you aware of that?

9 A Yes. She moved over there. She's on a detail.

10 Q And so, [REDACTED] informs Tim Henseler and
11 [REDACTED] about the Senate's Permanent Subcommittee on
12 Investigations hearing that was taking place on April 27th.

13 A Mm-hmm.

14 Q And [REDACTED] says: "Thoughts/comments? Keep in
15 mind that we are shooting to file" -- I think he means "our"
16 instead of "out" -- "litigated action against Goldman and
17 Tourre relating to Abacus on or about April 14."

18 So, was there some discussion or consideration to
19 try to get the case filed before the hearing?

20 A Not with me. I don't know anything about that.

21 Q So, do you know what [REDACTED] is referring to?
22 "Thoughts/comments?"

23 A No.

24 Q Did you have any thoughts/comments in response to
25 this?

1 A I don't recall having any. No.

2 Q Do you remember any concerns about some information
3 that would be revealed in the Senate's Permanent Subcommittee
4 on Investigations hearing that would impact the case?

5 A I don't remember anything like that.

6 Q Did you have any communication with [REDACTED]

7 [REDACTED]

8 A No. About this? No.

9 Q Anybody else in the Senate?

10 A No.

11 Q All right. Let me show you the next one. All
12 right.

13 MR. KOTZ: Exhibit 11, an e-mail from [REDACTED] to
14 a variety of folks. You're copied on it, dated 4/8/2010,
15 6:47 p.m.

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

18 BY MR. KOTZ:

19 Q So, it looks like he's sending the draft complaint,
20 press release and litigation release. And he says:
21 "Assuming Commission approval, we'd like to fedex a signed
22 original complaint to [REDACTED] in New York City that
23 evening for filing either the afternoon of Wednesday, April
24 14, or the morning of Thursday, April 15."

25 A Mm-hmm.

1 Q Yet in the end it was filed on the 16th.

2 A Mm-hmm.

3 Q Do you have any idea why?

4 A No, I don't.

5 Q Were you involved at all at this stage in the
6 process of determinations of when to file?

7 A No.

8 Q Do you know who was? I mean, obviously [REDACTED] Do
9 you know anyone else?

10 A No.

11 Q Do you know if there was any kind of last-minute
12 holdup or last-minute issue that arose that made it
13 impossible for the Commission to file the case when they
14 wanted to?

15 A I don't know.

16 Q Do you remember a meeting that Commissioner Walter
17 asked for shortly before the case was filed?

18 A No.

19 Q You didn't attend that meeting?

20 A No.

21 Q Do you remember hearing about any disagreements
22 within the Commission about the case at that stage in the
23 process, in April when it was about to be filed?

24 A No.

25 Q Do you know if anyone at the SEC informed Goldman

1 Sachs that the SEC intended to file an action against it?

2 A I don't know.

3 Q Is it normal procedure to inform an entity that
4 you're about to file a case?

5 A Normal procedure?

6 Q I mean, does the Enforcement Division generally
7 before they file a case inform the entity this is going to
8 happen, in your experience?

9 A I think it depends on the facts and circumstances
10 of the matter.

11 Q Well, what would it depend on? Is there not a
12 general policy to give a company a heads-up or is it --

13 A It depends on the case, the type of case, I
14 suppose. I mean, I can't say that's always going to happen.
15 For instance, if it's an offering fraud and you're about to
16 freeze money or something like that, I'm certain you wouldn't
17 tell those parties that you were about to file an action.
18 You know, I -- I -- so, I wouldn't say that that's something
19 that happens in every case.

20 Q But it happens often?

21 A It does.

22 Q And in this type of case, is there a particular
23 reason, because of the facts of the Goldman case, why the SEC
24 wouldn't tell Goldman in advance?

25 A I don't know.

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 you. What does it mean? What does it mean? What does it
2 mean, just in general layman terms for somebody who is not
3 familiar as you are with, you know, securities? What does
4 it mean that the options expire?

5 A It means that the options expire, are worthless.

6 Q I'm sorry.

7 A The options expire. Worthless. Strike price
8 hasn't been met as of that date. I don't understand your
9 question beyond that though.

10 Q Okay. And so, does filing a case by the SEC
11 against a publicly traded company on the third Friday of a
12 month have a bigger impact because of the expiration of the
13 options than if it filed it on another date?

14 A I would only be speculating. I do not know. That's
15 never been a factor that I've considered in any of the
16 actions that I've filed.

17 Q You are aware that there was an impact on the stock
18 price of Goldman Sachs and in fact the entire market when the
19 SEC filed its case?

20 A Right.

21 Q Do you think that the SEC should care about that?
22 Should they give consideration to the effect of the market?
23 Is that something that is proper or appropriate for the SEC
24 to be concerned about; do you think?

25 A I don't have an opinion about that.

1 Q You don't have an opinion either way?

2 A No.

3 Q Are you aware of any discussions or communications
4 prior to the complaint filed against Goldman Sachs about the
5 effect on the market?

6 A I do not know of any.

7 Q Do you think it's appropriate for the SEC to give
8 advance notice to a company before it files a case? Do you
9 think it's a good idea?

10 A I think that where appropriate that it is; but I
11 can't speak more generally than that.

12 Q What do you mean where appropriate it is? Why is
13 it where appropriate?

14 A I'm not -- I'm not -- I don't set that policy. So,
15 I'm not --

16 Q Oh, I understand. I'm just asking, in your view.
17 You say, where appropriate it is. What do you mean?

18 A In general, I have given advance notice where I've
19 deemed that to be feasible and appropriate.

20 Q What's the purpose of giving advance notice? Just
21 as a courtesy?

22 A That's right.

23 Q Do you think the Goldman case was a case where it
24 was appropriate to give advance notice?

25 A I don't have a -- I can't answer that. I don't

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.

1 Q Are you aware of any discussions or communications
2 concerning the effect of the SEC's filing of the complaint
3 against Goldman Sachs on media coverage of the Office of
4 Inspector General report of investigation concerning
5 Stanford?

6 A I am not.

7 MR. KOTZ: All right. Why don't we take a break.
8 Let's go off the record.

9 (A brief recess was taken.)

10 MR. KOTZ: On the record.

11 BY MR. KOTZ:

12 Q One more question. At any point in time did you
13 get any feedback directly or indirectly from the Chairman's
14 office about timing of the Goldman Sachs filing?

15 A Did I get any feedback?

16 Q In other words, was it ever conveyed to you either
17 directly or indirectly from the Chairman's office anything
18 about the timing of the Goldman Sachs investigation, it
19 should be filed earlier, later, whatever?

20 A No.

21 Q All right. Is there anything else that we haven't
22 covered that you think might be relevant to questions that
23 were asked?

24 A No.

25 Q Okay. The one thing I would ask you, and this is

1 very important: In order to preserve the integrity in the
2 investigation, and I think it's very important for the agency
3 that this investigation have integrity, I would ask you not
4 to discuss the content of your testimony with anyone.

5 A Okay.

6 MR. KOTZ: Okay.

7 THE WITNESS: Am I privy to a copy of the
8 transcript?

9 MR. KOTZ: Sure. We'll absolutely get you a copy
10 of the transcript.

11 THE WITNESS: All right.

12 MR. KOTZ: Off the record.

13 (Whereupon, at 11:15 a.m., the examination was
14 concluded.)

15 * * * * *

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CERTIFICATE OF REPORTER

I, [REDACTED] hereby certify that the foregoing transcript consisting of 60 pages is a complete, true, and accurate transcript of the proceeding indicated, held on July 8, 2010 at 100 F Street, NE, Washington, D.C., in the matter of OIG-534. I further certify that this proceeding was recorded by me, and that the foregoing transcript has been prepared by me.

[REDACTED]
Court Reporter/Transcriber

7/13/10

PROOFREADER'S CERTIFICATE

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In the Matter of: OIG-534
Witness: Witness Number 12
File Number: OIG-534
Date: Thursday, July 8, 2010
Location: Washington, D.C.

This is to certify that I, (b)(6),(b)(7)(C) (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

(b)(6),(b)(7)(C)

7/13/10

(Proofreader's Name)

(Date)

Chapter Break

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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

CC 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:

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5 (b)(6),(b)(7)(C)

6 Securities and Exchange Commission

7 Office of Inspector General

8 100 F Street, N.E.

9 Washington, D.C. 20002

10 (b)(6),(b)(7)(C)

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WITNESS

EXAMINATION

(b)(6),(b)(7)(C)

4

EXHIBITS:

DESCRIPTION

IDENTIFIED

E-mail, 12/08/09, (b)(6),(b)(7)(C)

18

E-mail, 12/22/09

26

E-mail, 01/07/10

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E-mail, 01/15/10

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E-mail, 01/22/10

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E-mail, 01/25/10

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E-mail, 01/28/10

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E-mail, 02/25/10

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E-mail, 04/13/10

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E-mail, 04/14/10

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E-mail, 04/14/10

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E-mail, 04/15/10, 3:29 p.m.

59

E-mail 04/15/10, 6:33 p.m.

59

E-mail, 04/16/10, 9:23 a.m.

60

E-mail, 04/16/10, 9:50 a.m.

62

E-mail, 04/20/10

64

SEC administrative regulation 7/31/2005

70

P R O C E E D I N G S

1
2 MR. KOTZ: All right. We are on the record at 9:32
3 a.m. on July 13, 2010 at the United States Securities and
4 Exchange Commission. I'm going to swear you in. Could you
5 please raise your right hand?

6 Whereupon,

7 (b)(6),(b)(7)(C)

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

EXAMINATION

10
11 Q Could you state and spell your full name for the
12 record?

13 A (b)(6),(b)(7)(C)

14 (b)(6),(b)(7)(C)

15 Q All right. (b)(6),(b)(7)(C) my name is David Kotz, I'm
16 the Inspector General of the United States Securities and
17 Exchange Commission. I have with me (b)(6),(b)(7)(C) from the
18 Office of the Inspector General.

19 This is an investigation by the Office of the
20 Inspector General, Case No. OIG-534. I'm going to ask you
21 certain questions and you'll be providing answers under oath.

22 The court reporter will record and later transcribe
23 everything that is said. Please therefore provide verbal
24 answers to the questions, as a nod of the head or a nonverbal
25 response won't be picked up by the court reporter. Also, so

1 the record will be clear, please let me finish my question
2 before you provide your response, and I'll try to let you
3 finish your response before I ask the next question.

4 In addition, it is important you understand the
5 questions and give accurate answers. If there is anything
6 you don't understand or anything you do not know or are not
7 sure about, please let me know. Otherwise, I will assume
8 that you heard and understood the question. Do you
9 understand those instructions?

10 A Yes.

11 Q Okay. Let me give you the perjury warning. As you
12 can see, your responses to statements given today are
13 provided after you have sworn an oath and will be taken down
14 verbatim by the court reporter. This is an official U.S.
15 Government law enforcement investigation. The claims
16 asserted in this case are serious ones. It is very important
17 you tell me everything about the matter at hand and are
18 complete, forthcoming and truthful with me.

19 I am formally advising you today that your
20 testimony is subject to the laws of perjury. Providing false
21 or misleading testimony under oath is a very serious offense.
22 If the evidence shows the testimony you have given is false
23 we may refer it as appropriate. Do you understand those
24 instructions?

25 A I do.

1 Q All right. Let's start with a little bit of
2 background. Could you describe for me your education
3 beginning with college?

4 A (b)(6),(b)(7)(C)

5 (b)(6),(b)(7)(C)
6
7
8

9 Q Okay. (b)(6),(b)(7)(C)

10 A (b)(6),(b)(7)(C)

11 Q Okay. (b)(6),(b)(7)(C)

12 (b)(6),(b)(7)(C)

13 A (b)(6),(b)(7)(C)

14 Q All right. (b)(6),(b)(7)(C)

15 (b)(6),(b)(7)(C)

16 A (b)(6),(b)(7)(C)

17 Q (b)(6),(b)(7)(C)

18 A (b)(6),(b)(7)(C)

19 (b)(6),(b)(7)(C)

20 Q (b)(6),(b)(7)(C)

21 A (b)(6),(b)(7)(C)

22 Q Okay. (b)(6),(b)(7)(C)

23 (b)(6),(b)(7)(C)

24 A (b)(6),(b)(7)(C)

25 (b)(6),(b)(7)(C)

1

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3

4

Q Okay.

5

A Came here.

6

Q Okay. So that was around

7

A That was -- I think it was is

8

the best of my recollection.

9

Q Okay. What was your first position with the SEC?

10

A I think it's call

11

Q Okay. And how long did you serve in that position?

12

A Approximately

13

Q Okay. And that was

14

A That was.

15

Q Okay. What were your main duties and

16

responsibilities?

17

A As a

18

Q Yeah.

19

A Conduct investigations.

20

Q Who was your supervisor during that period of time?

21

A

22

Q And so what happened after your two-and-a-half year

23

stint as a

24

A I became

25

Q Okay. And so that was

1 A Sometime, best of my recollection sometime in that
2 timeframe.

3 Q Okay. And [REDACTED] how many people did
4 you supervise?

5 A I think officially it was [REDACTED]

6 Q They were [REDACTED]

7 A Yes.

8 Q And what were your general duties and
9 responsibilities [REDACTED]

10 A I think supervise and assist staff attorneys in
11 conducting their investigations.

12 Q Okay. And you were [REDACTED] also in the
13 Washington office?

14 A That is correct.

15 Q Okay. What was your next position?

16 A (Laughter.) Back to [REDACTED]

17 Q Okay. And that was as a result of this recent
18 reorganization?

19 A That is correct.

20 Q Okay. And when did that occur?

21 A You guys probably know better than I do; sometimes
22 relatively recently, I believe probably when they announced
23 the restructuring officially, which may have been a month or
24 so ago.

25 Q Okay. So sometime in 2010, okay. And did you

1 **spend some time in New York?**

2 A I did.

3 **Q When was that?**

4 A There were points in time I was in New York from --
5 really, I'm in New York all the time, but if you're referring
6 to spent some time in New York working with the U.S.
7 Attorney's office on a detail up there, that was -- I spent
8 periodic time up there really during the entire time I was
9 detailed up there. I spent the better part of a summer up
10 there, the summer we indicted, which -- I want to say it was
11 2007, but I'm not sure that is actually correct. I'd have to
12 go back and look at the indictment.

13 And then when we were gearing up for trial, which
14 was -- the trial started March -- originally scheduled to
15 start March 15, but I think started March -- I think it was
16 21st, the following week, I began going up to New York on a
17 regular basis; really at the end of the prior year, so at the
18 end of 2009. I was up there generally a few days a week into
19 the beginning part of 2010 where it sort of became more
20 frequent, and then I went up there for good, I think it was
21 early maybe to mid-March of 2010.

22 When I say 'for good,' I was up there from that
23 point in time really through the end of the trial, which was
24 through the end of April.

25 **Q April 2010?**

1 A Yes.

2 Q And now you're back in Washington full-time?

3 A I am.

4 Q Okay. So what were the dates of your detail?

5 A Again, I'm not -- when you say 'dates of detail' I
6 was detailed to the Southern District sometime I believe back
7 in '07.

8 Q Okay.

9 A And that was in connection with the indictment,
10 indicting [REDACTED] as part of one of the cases I had
11 worked on here. That detail extended, and I believe actually
12 officially ended sometime, I believe, maybe at the end of May
13 of 2010.

14 Q Okay.

15 A So that's the official length of the detail. The
16 amount of time that I was in New York actually working on
17 that matter as opposed to other matters really varied on
18 accordance with sort of the demands of sort of each job,
19 frankly.

20 Of course, as you get closer to trial, the demands
21 there take precedent over everything else just because that's
22 not flexible and everything else is somewhat flexible.

23 Q And so when you were in New York you were working
24 out of what office?

25 A The U.S. Attorney's Office in the Southern District

1 of New York.

2 Q Okay. Did you work at all out of the SEC office
3 there?

4 A I did not.

5 Q Okay. All right. And who is your current
6 supervisor?

7 A Technically that would be [REDACTED]

8 Q Okay.

9 A But I think practically right now all of my cases
10 are still what we're referring to as legacy cases, so I'm I
11 think more practically reporting to [REDACTED] and Ken Lench
12 just because everything that I have in my, for lack of a
13 better word, portfolio of cases, are all structured products
14 cases.

15 Q Okay. And in the time period between, say,
16 December 2009 and April 2010, who were you reporting to?

17 A That would have been [REDACTED]

18 Q All right. Did you become, at some point, aware of
19 or involved with an investigation by the SEC into the sale of
20 collateralized debt obligations by Goldman Sachs?

21 A If you're referring to, by Goldman Sachs more
22 generally, I think yes. There is one investigation that I am
23 aware of that I was involved with that looks at the sale of
24 numerous Goldman Sachs collateralized debt obligations. That
25 investigation is [REDACTED] entitled In Re: [REDACTED]

1 [REDACTED] There is a more
2 specific Goldman Sachs investigation that is related to the
3 marketing and sale of one particular Goldman Sachs CDO,
4 [REDACTED] I believe that's In Re: Abacus 2007 AC1 CDO, I think
5 is what it's called.

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 [REDACTED] 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 A We were investigating an entirely different matter.
21 We were looking at some issues at [REDACTED]
22 structuring, marketing and sales. And in the course of the
23 [REDACTED] investigation we began to learn a lot about -- a say
24 'a lot,' I think it's all relative; learn about the CDO
25 markets and structured products, and I think we began to ask

1 the question, how was it that a lot of the products that were
2 causing all the problems in the financial markets created.

3 So we began with [REDACTED] because we had, for lack
4 of a better word, [REDACTED]
5 [REDACTED] with the Department of Justice that
6 thought they knew some things about [REDACTED] business
7 there. In the course of doing that, we collected a lot of
8 documents from various firms that [REDACTED] worked with, and
9 those were generally other -- generally collateral managers,
10 which is one aspect of the market, hedge funds and then
11 [REDACTED] itself.

12 And in the course of reviewing those documents --
13 we did collect documents from one firm that was [REDACTED]
14 [REDACTED] I think was the name of the firm. I came across
15 an e-mail that suggested a fact pattern that might warrant
16 investigation, pulled a few more e-mails that were related to
17 that e-mail, kind of following up down the chain of
18 investigation and collected a handful, maybe there, four, I
19 forget exactly, six or seven documents that began to lay out
20 a fact pattern that we thought -- or that I thought warranted
21 further investigation.

22 I remember binder-clipping those documents
23 together, walking them into [REDACTED] office and say, 'You know,
24 this looks interesting.' And it was -- the fact pattern we
25 saw, which was and initially began with one -- with an

1 underwriter or arranger -- arranger is the proper word --
2 selling this product at the same time someone else was
3 shorting the product. And misrepresentation was made in the
4 context of sort of that sort of arrangement.

5 We had stumbled across and [REDACTED] recognized the
6 possibility that that existed. And I think these documents
7 that I collected from the [REDACTED] production suggested that may
8 have gone on, and in looking at the offering material
9 suggested there may have been some problems or some
10 statements in the offering materials that may warrant
11 investigation.

12 So I walked those into [REDACTED] office, and [REDACTED] was
13 like, 'This does look interesting; we should investigate it.'
14 And that's sort of when it started.

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 don't have any firsthand knowledge of this, but I seem to
2 recall there being cases that we had to send periodic
3 updates -- I don't remember if it was weekly or every other
4 week, every month, I forget what the frequency was -- that we
5 had to update the front office as to the status of the
6 investigation on a regular basis. And when you say 'national
7 priority cases,' I sort of associate that phrase with any
8 case that was on that list, so any case that I was asked to
9 write a weekly or biweekly or whatever it was description
10 for.

11 So I did understand that it was one of the more
12 high profile cases at some point in time. And I'll caveat
13 that. That, I think, came relatively late in the day or
14 later in the day, I think probably sometime after -- I mean
15 we began this investigation when Chairman Cox and Linda
16 Thompson were here, and I think it began sometime after the
17 transition to the new administration.

18 Q Okay. Yes, what was the timeframe when you found
19 the e-mail and walked it into [REDACTED] office?

20 A Specifically, I don't know. I believe it was
21 probably sometime in the middle of 2008.

22 Q Okay. And it was officially opened in August 2008?

23 A That would actually be -- yeah, that sounds right.

24 Q Okay. And so who worked on it in that timeframe,
25 so in 2008 and 2009?

1 A 2008, we -- when I walked into (b)(6),(b)(7)(C) office, we --
2 he knew that (b)(6),(b)(7)(C)
3 (b)(6),(b)(7)(C), needed a case. And (b)(6),(b)(7)(C) didn't
4 officially report to me; she wasn't in my group, but things
5 were sort of very dynamic in the two branches that (b)(6),(b)(7)(C)
6 supervised, so if there was someone that needed work and work
7 was available, that person would generally get the work,
8 whether it was (b)(6),(b)(7)(C) or myself that was supervising them. It
9 really didn't matter from my perspective, (b)(6),(b)(7)(C) perspective
10 or really anybody else's perspective.

11 So I began working on it primarily with (b)(6),(b)(7)(C)
12 through the point in time. And then (b)(6),(b)(7)(C) arrived,
13 and I think he also began helping on (b)(6),(b)(7)(C) And then when
14 (b)(6),(b)(7)(C) I think (b)(6),(b)(7)(C) took over the
15 day-to-day responsibilities for (b)(6),(b)(7)(C)

16 Q And when was that?

17 A Wow. That I don't specifically remember; I know
18 she was here -- she was here July of -- let's see; hold on.
19 Probably the middle of '09, but I don't specifically remember
20 when she went.

21 Q And you said you -- when did you start having to do
22 those regular updates on this Abacus case? Was that right
23 away?

24 A Right away on the case?

25 Q Yeah, so it was opened in August of 2008.

1 A Yeah. No, I mean I think it began at some point in
2 time I think after the transition to the new administration.
3 I think we were looking at this matter, my recollection is,
4 while Linda Thompson was still director of enforcement. I
5 think that this new priority case, if that's what we're going
6 to call it, sort of update on a regular basis, I think that
7 began sometime after the administration change.

8 Q So after -- came in, or --

9 A After Rob came in, I believe.

10 Q And at any point in time did you become aware, the
11 front office, the chairman's office becoming aware of the
12 Abacus investigation?

13 A I know that they were aware of it, and the exact
14 nature or -- by which they became aware of it, the only thing
15 that I can specifically recall is -- I know I mean obviously
16 it had to be calendared, and I think there were a couple
17 times I think we calendared it once and then we pulled it
18 once. And I know in connection with that there were some
19 questions about why it was pulled and the like that came from
20 the chairman's office, I believe, not questions that I
21 actually fielded myself,.

22 Q Okay.

23 A And then obviously through that whole process,
24 obviously every commissioner is involved in some sense.

25 Q Okay. But I mean other than through the calendar

1 process did you become aware of anyone in the chairman's
2 office or the commissioners having a specific interest in
3 this case?

4 A I'm sure they were aware of it. I don't really --
5 my interaction with the chairman's office in any respect, I
6 think I've actually only had one interaction with that, and
7 it was on a totally different subject, so -- but I understand
8 that they were aware of the case.

9 Q Okay. And so you mentioned calendaring it, and so
10 in December of 2009 our records show it was put on the
11 calendar for December 17. Do you remember that?

12 A That sounds right.

13 Q Okay.

14 MR. KOTZ: Let me show you a document. All right
15 I'm going to show you a document. We're going to mark the
16 first document as Exhibit No. 1. This is an e-mail from (b)(6),
17 (b)(7)(C) to Mark Adler, (b)(6), (b)(7)(C) with a copy to you and
18 several others, 12/8/2009, 11:46 a.m.

19 And so in this e-mail it talks about how at
20 Cheryl's request we pulled this recommendation from today's
21 2-B and scheduled (b)(6), (b)(7)(C) testimony for January 7.

22 (Exhibit No. 1 was marked for
23 identification.)

24 THE WITNESS: Okay.

25 BY MR. KOTZ:

1 Q So my question is what do you remember about, a,
2 first putting it on the calendar, and then having it pulled?

3 A Well, I know that -- my recollection is that
4 Goldman was wellsed in July of 2009. I was [REDACTED]
5 [REDACTED] when they wellsed them.

6 And at that point in time we had the assigned
7 litigation staff to the case. There was [REDACTED] who I
8 had never met, but I remember him.

9 Q This was after they wellsed?

10 A This was back in July, so a flurry of e-mails
11 asking all kinds of questions [REDACTED] in July and early
12 August. And as part of that process there was one issue that
13 I think came up in investigating this that I think we
14 struggled mightily with, which was what about Paulson? What
15 about the other half of this transaction? Is there any way
16 to hold them liable or potentially with the theory of
17 liability for them that would work, frankly.

18 Did they do anything wrong, I think was a question
19 that we tried very hard to answer, and I think the conclusion
20 we came to really by July was it's going to be difficult to
21 see that they did anything legally wrong. Morally wrong,
22 ethically wrong, we can argue that, but legally wrong? We
23 thought it would be difficult.

24 When [REDACTED] came in he was very vocal and
25 adamant about revisiting that particular issue and really

1 beginning in probably August, really through the later part
2 of the year, we spent sort of time reinvestigating the
3 Paulson issue and a lot of time, frankly, vetting that issue
4 amongst ourselves, the front office. We took John Paulson's
5 testimony.

6 And that took up a lot of time for a lot of time
7 between August and the end of the year to address that. You
8 know, our litigator wanted to, which never happens here,
9 pursue a more aggressive case than the staff thought really
10 was justified in the circumstances. So -- and you know --

11 Q When you say August to the end of the year you're
12 talking about 2009?

13 A 2009, yeah, through 2009.

14 Q Okay.

15 A So I think that everyone finally got comfortable,
16 if that's the right word, probably a bit strong. But [REDACTED] had
17 had his -- he had had the opportunity to make his case, do
18 the research, we had done the extra investigative work. And
19 at that point in time we thought, 'Okay, we've done the next
20 piece, it's time to put it in the calendar.'

21 And I think there were two things that happened,
22 and I may be getting them confused as to sort of exactly
23 what, which one was -- what the timing is. And this may have
24 even been pulled twice; I don't remember specifically.

25 Q Yes. Our records show it was pulled twice. And

1 just to clarify so that your recollection is clear, it looks
2 like this first time was pulled was in order to take (b)(6),(b)(7)(C)
3 testimony.

4 A That's correct, yeah. And then there was a second
5 time it was pulled, I think.

6 Q To wells (b)(6),(b)(7)(C)

7 A And there was one other little issue, but I'll let
8 you guys know about that.

9 Q Okay.

10 A So We had, also this period, there were wells
11 meetings, right? Wells meetings with Goldman Sachs, wells
12 meetings with Fabrice Tourre.

13 Q Right.

14 A And I think in one of Fabrice Tourre's wells
15 meetings, (b)(6),(b)(7)(C)

16 (b)(6),(b)(7)(C)
17
18
19

20 So I think that came up and there was an idea, I
21 think, initially of does it make sense to bring whatever case
22 we may think is warranted to bring now and then potentially
23 amend to add (b)(6),(b)(7)(C) or does it make more sense just to take
24 (b)(6),(b)(7)(C) testimony, wells him and then bring the case sort of
25 the right way at that point in time with whatever is decided?

1 And I think that was the thought process that happened there
2 and happened here, was really -- at least my recollection is
3 that the decision was made that if we're going to take a case
4 before the Commission and we think there is a possibility
5 that one person may be added to that case, let's just do the
6 case right and add that person and bring the case all at
7 once.

8 And if we don't, if it sets us back a little bit,
9 it sets us back a little bit. But to do it right, let's make
10 sure we do that.

11 Q And so what I don't understand is how come this
12 issue wasn't resolved prior to putting it on the calendar? I
13 mean it sounds like it was internal discussions about how to
14 proceed. It doesn't sound like there was anything that came
15 from the Commission that caused this decision to initially
16 put on the calendar, then to take it back.

17 A Yeah, I don't think so.

18 Q So why wouldn't you just work that all out and then
19 decide whether to go on the calendar rather than put it on
20 the calendar and then withdraw it?

21 A I'm going to caveat that I had no part in the
22 decision to actually calendar at this point in time or
23 withdraw it from the calendar at this point in time. I think
24 I'll say two things about that. One, I was aware that it
25 happened, and generally speaking that had to do with the

1 [redacted] and I think that the timing and decision of whether to
2 include him or not to include him -- this was also when I was
3 beginning to sort of transition myself mentally to work on my
4 trial case and spending more time there, so to some extent I
5 was a little bit distracted.

6 The investigative work was largely done except for
7 taking [redacted] testimony, which I did participate in, but I
8 don't really have any understand of -- other than it having
9 to do with [redacted] and my recollection sort of bringing one case
10 as opposed to two cases, sort of what the decision-making
11 process beyond that was.

12 Q Okay. Do you remember Steve Cohen from the
13 chairman's office getting involved, [redacted] going to Steve
14 Cohen and suggesting that [redacted] testimony be taken?

15 A That I was not aware of. [redacted] was very adamant and
16 would -- wherever he would find, I mean generally speaking,
17 wherever he would find an ear, he would go there and try --
18 and talk to that person, so it doesn't surprise me, but I was
19 not aware that [redacted] went to Steve Cohen.

20 Q And just to be clear, you're not aware that there
21 was any factor in the decision to withdraw the case from the
22 calendar other than related to internal discussions within
23 enforcement of the strategy or approach to taking the case?

24 A That's my recollection of what the issue was, but I
25 think I mentioned there was one more time when the case was

1 pulled. The two are running together to me because I think
2 they happened relatively soon thereafter.

3 Q Right, there was once in January.

4 A The other time where I think the case was pulled,
5 the -- I mean we had really two victims in this case, one of
6 which was a pretty compelling victim, IKB, the other of which
7 was arguably less compelling, which you could say is ACA/ABN
8 AMRO.

9 When we went over to IKB years ago, back probably
10 in '08 and talked to them, I think it was actually December
11 of '08, we didn't take testimony from them just because of
12 the way in which -- it's difficult to take testimony from
13 witnesses in Germany without -- you need something from the
14 consul's office there and [REDACTED] gets very concerned, so we
15 went over there and just did it informally.

16 We talked to these people and got a sense of the
17 way in which they did things, the type of things that
18 mattered, and got a comfort for whether or not things would
19 have mattered to them. Never actually got an answer on the
20 record or on paper or anything that said, 'this would have
21 mattered to us and these are the things that are important;
22 this is how we would have done things differently.'

23 At some point in time, that -- not having that
24 evidence, especially because it was our most important
25 witness and some evidence of materiality, at some point in

1 time, that began to raise concerns amongst various members of
2 the team, and I think it was litigators as well as -- we
3 looked back and we said, 'Well, that is a problem because if
4 we don't get that evidence at trial, if this case goes to
5 trial, that could make for a very difficult case, so we need
6 to find a way to get that evidence in some sort of hopefully
7 admissible form before bringing this case.'

8 And at that point in time, I think (b)(6),(b)(7)(C) really
9 spearheaded it because, again, I'm beginning to transition
10 out of the office. Getting Affidavits from, actually various
11 witnesses, we got affidavits from (b)(6),(b)(7)(C) as well because we had
12 never posed the hypothetical question to them, but really
13 getting affidavits from people at (b)(6),(b)(7)(C) saying, 'If you had
14 known x, y and z, how would that have affected your
15 decision-making process in investing in this particular CDO?'

16 And that process took a little bit of time, and my
17 recollection is that (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) did go over there and they
18 met with a number of people over there and worked with their
19 counsel for a while to get affidavits and the like, delaying
20 the case or pulling the case or something -- the timing as
21 well, and I don't know if it was also part of this
22 decision-making process, but I know that that held things up
23 as well, probably after this point in time.

24 MR. KOTZ: Let me show you another e-mail. We're
25 going to mark this as Exhibit No. 2. This is an e-mail from

1 you to [REDACTED] and [REDACTED] 12/22/2009, 1:40 p.m.

2 And the e-mail string starts with some e-mail
3 communication with John Nestor about an article and then John
4 Nestor sends an e-mail to John Walsh with a question about
5 the article. John Walsh responds, copied to George Canellos.

6 And then [REDACTED] sends it to Cheryl Scarborough and [REDACTED]

7 [REDACTED] And then [REDACTED] sends it to you and [REDACTED]

8 [REDACTED] and you respond, "Bag, bag, bag. Cat."

9 And so take a minute to read the whole string and
10 then if you could, explain to me what that means.

11 (Exhibit No. 2 was marked for
12 identification.)

13 THE WITNESS: I don't know if this -- I know there
14 was -- a New York Times article came out, I don't know if
15 this is it or not, that mentioned Abacus and the Hudson CDOs.
16 I don't know if this is the time or not, but --

17 BY MR. KOTZ:

18 Q That came out on the 24th.

19 A Okay. Okay. And I don't know if this is just --

20 Q That may have been what this person was working on
21 at the time.

22 A Okay.

23 Q I mean this person is communicating with Nestor
24 saying, 'I'm working on a story about x,' and I think that
25 led to the story that you refer to. But before they wrote

1 the story, I guess the SEC got wind of the fact that they
2 were working on it, and then this was passed around.

3 A Yeah. And the sweep that I believe is being
4 referred to here, although I am a little unclear because
5 there are actually two sweeps that occur, and I don't know
6 which one they're referring to.

7 There was a sweep that Nero did, that I recall had
8 gotten some publicity. They went out and they -- it was
9 related to the [REDACTED] case. The inspection team saw some
10 activities at [REDACTED] that gave them pause. So they went out and
11 they sent requests to numerous collateral managers and
12 basically hedge funds in the industry, and it was basically
13 designed to look for cross-trading and trading where the
14 off-market prices or other potential conflicts of interest
15 happened.

16 And so that was one sweep, and there was a second
17 sweep that we had done, and we had done this -- it must have
18 been eight months earlier, nine months earlier, and that was
19 the [REDACTED] investigation, which we had sent subpoenas to -- I
20 want to say upwards of 20 subpoenas to [REDACTED]
21 [REDACTED] Goldman Sachs, I mean really every major
22 investment bank, [REDACTED] I mean, you name
23 them, we sent them. Hedge funds, we sent them, and numerous
24 collateral managers we sent subpoenas.

25 And it had been about nine months, and then -- and

1 we had never heard anything about that investigation. It had
2 never -- no one had ever disclosed it in any public filings.
3 We were getting documents from every firm on the street and
4 there had never been any disclosures in anything. So when it
5 says, "After talking to Nero it sounds like it might be
6 yours," I think I was a little surprised because it had been
7 a long time that this thing had been out there. I mean it
8 had been months that it had been out there, and I was like,
9 'okay, the cat is out of the bag, so now people know this
10 thing exists; we'll see what happens.'

11 Q Oh, so that's what you meant by 'bag, bag, bag,
12 cat'?

13 A Yeah.

14 Q Okay. Were there any communications between
15 anybody at the SEC and anyone in the media about the Abacus
16 case?

17 A Not that I am aware of, I mean other than obviously
18 it looks like John Nestor. And I occasionally, in fact, I a
19 couple times when I was in New York, those Wall Street
20 Journal people are persistent. They have called me on
21 occasions, and I think I've always said -- I think the name
22 now is [REDACTED] but as far as I know, no one has ever
23 commented to them on a case. But I think we have all
24 received numerous calls from those guys.

25 Q You were mentioning before [REDACTED] was

1 expressing the view strongly that [REDACTED] testimony should be
2 taken. Do you remember at some point that he actually
3 withdrew as litigation counsel?

4 A I think I had heard that he tried to withdraw.
5 (Laughter.) I think, my recollection is that was when,
6 again, I was up in New York. I think I heard that he tried
7 to withdraw. I mean the thing with [REDACTED] is, if [REDACTED] it's
8 tough to sort of know where he's coming from, where he's
9 coming out. He's a passionate person, so when I heard that
10 he withdrew and then was back on the case, I wasn't really
11 sure what to make of that, but I knew he withdrew and then
12 was back on the case some point in time shortly thereafter.

13 Q Okay.

14 A And I think he even came in my office joking about
15 it in some sense, like, 'I tried to withdraw myself and they
16 wouldn't let me.' Sorry. We have this [REDACTED] voice that
17 we use a lot.

18 (Laughter.)

19 But that's -- yes, so I was in some sense aware
20 that something like that happened.

21 Q Okay. All right. Let me show you another document
22 that I'm going to mark --

23 A Do you guys want these back or should I just --

24 Q You can just leave them there.

25 A Okay.

1 MR. KOTZ: We'll mark this as Exhibit No. 3, and
2 this is an e-mail exchange between Steve Cohen and [REDACTED]
3 [REDACTED] 1/7/2010, 7:16 p.m. I don't know whether you
4 necessarily saw these, but it talks about the matter was
5 withdrawn from the December 17 closed meeting, which I guess
6 you were CC'ed on that.

7 (Exhibit No. 3 was marked for
8 identification.)

9 THE WITNESS: Yes, CC'ed on the bottom one.

10 BY MR. KOTZ:

11 Q Right. And then [REDACTED] on Monday, January 4,
12 "We'll be resending this recommendation on Friday, January
13 8." Then there is some communication about Steve Cohen
14 instructing the office of the secretary to place the matter
15 on the calendar for January 14.

16 Rob Khuzami says the 14th is a bit aggressive,
17 let's stick with the 21st. And then it seems like that's
18 what the resolution is. And so after reading this is your
19 recollection that really the only issue at that time seemed
20 to be taking [REDACTED] testimony as -- it was scheduled for
21 December 17, then [REDACTED] testimony was taken and, you know,
22 in relatively short order it was put back on the calendar?

23 A Mm-hmm.

24 Q Is that right? Is that your recollection that it
25 was pretty much that issue to take [REDACTED] testimony and then

1 **make a decision?**

2 A I think so, with the caveat, again, there is this
3 affidavit from [REDACTED] issue, that, again, I don't know where
4 that fits into the timeline. That was an issue that came up
5 at some point in time. But I do remember, once the decision
6 was made to take [REDACTED] testimony that we try to do that
7 on a relatively quick basis. I think the timeline for that,
8 we wanted to do it relatively quickly.

9 Q **And so you sat in on [REDACTED] testimony?**

10 A I did.

11 Q **And so what were your impressions from that?**

12 A I thought [REDACTED] was an impressive guy, smart
13 guy.

14 Q **What about in terms of the case, the potential case**
15 **against him?**

16 A My recollection of the potential case against [REDACTED]
17 [REDACTED] I think the issue became, at least for me in terms of
18 my thought process, two things. I think technically he was
19 in the same level as Fabrice Tourre although practically
20 speaking [REDACTED] but I think all of the
21 documentary evidence that we have seen in this case,
22 documents and other things, really point to this being sort
23 of Fabrice Tourre's deal. And Mr. Tourre, for being in
24 charge of the AFRAM documents, you know, [REDACTED] did look at
25 them, but Tourre had a much closer association with them.

1 And I think one thing too that set them, perhaps,
2 apart, in my mind as well, is I think one of the allegations
3 in the complaint was that Fabrice Tourre misled a CA into
4 believing that Paulson was going to purchase the equity on
5 this particular deal, and there was no evidence that [REDACTED]
6 was aware of that, had any involvement in making those
7 representations, supported them or anything along those
8 lines, so I think for those reasons I -- I mean I think that
9 you could make an aggressive case against [REDACTED]
10 unquestionably, but I think the balance of the equities, in
11 the interest of what the best case to bring is, I understand
12 and I can support the justification for not including him as
13 part of the charges.

14 Q Okay. So after [REDACTED] testimony, you had kind of
15 come to the conclusion that the case should just go forward
16 without bringing a claim against [REDACTED]

17 A I don't think it was immediate. I mean I think we
18 needed to go sort of sit down and -- I mean I think one thing
19 at least, me as [REDACTED] and, I think, [REDACTED] as [REDACTED]
20 would think even to the extent that I have had involvements
21 with that and Lorin, everyone kind of talks things through
22 and conveys their opinions and pros and cons, and it's just
23 sort of always been a very open dialogue as to what is the
24 appropriate strategy we should make.

25 So it wasn't the kind of thing where I left

1 testimony and said, you know what, we can't sue (b)(6),(b)(7)(C)
2 not the right thing to do. We went back, looked at all the
3 evidence, we pulled the documents and we thought about it in
4 a reasoned manner, and I think that conclusion was come to, I
5 don't know if it was a week later, two weeks later.

6 There was actually -- there had to be, also, I
7 think, a decision to wells him then, and a wells meeting. So
8 that's also going to draw the process out a little bit. And
9 you can come to some conclusions or have some sort of way
10 that you're leaning in your mind, I think I always want to
11 keep an open mind and see what the wells submissions --

12 Q Right. But at this point it was being placed back
13 on the calendar in January.

14 A Yeah, and I think --

15 Q So this was before any wellsing.

16 A It is. I think, if I remember correctly --

17 Q It says, (b)(6),(b)(7)(C) agreed that it made sense to file
18 against Goldman and Tourre and then amend, if the evidence
19 supports, charging (b)(6),(b)(7)(C) So it looks like the decision was
20 made to go forward with the case that you guys had and then
21 maybe have an open mind on (b)(6),(b)(7)(C)

22 A That may -- again, there was some debate about
23 whether or not to bring it as one case, if (b)(6),(b)(7)(C) was included,
24 for (b)(6),(b)(7)(C) and Goldman, or two cases, Tourre, Goldman and then
25 maybe add (b)(6),(b)(7)(C) Whether or not this is, that sort of second

1 option is still something that is possible right now, I don't
2 know.

3 Yeah, I don't know.

4 Q All right. Let me ask you more about the [REDACTED]
5 testimony. Who asked most of the questions for the SEC?

6 A My recollection is that [REDACTED] was the one
7 that was in charge of --

8 Q Okay. Was [REDACTED] also asking questions?

9 A [REDACTED] was there. [REDACTED] is typically pretty active in
10 questions, so [REDACTED] would have asked some questions, yeah.

11 Q Okay. And so you know, it's kind of been described
12 to us in a couple of different ways. One description of it
13 was that [REDACTED] was always against the possibility of a
14 case against [REDACTED] and that his theory was that [REDACTED] was
15 involved in a whole bunch of other matters and really didn't
16 spend a significant amount of time on this relevant matter at
17 all.

18 A Mm-hmm.

19 Q And in the questioning [REDACTED] didn't say that, and so
20 [REDACTED] kind of made efforts to draw that out of him. What do
21 you recall about that testimony with respect to that issue?

22 A Without reading it, I don't think that I could -- I
23 don't have any specific recollection of that issue. I do
24 remember some questions about the other deals that he may
25 have been working on at the time. I think he mentioned --

1 this is stretching the bounds, but I'm surprised I remember
2 this, that he may have been working on a deal with, I'm going
3 to say, a firm called [REDACTED] that went nowhere.

4 So I do remember some discussions about what [REDACTED]
5 [REDACTED] was doing at that point in time, and I think the [REDACTED]
6 [REDACTED] deal may stick out to me because I remember seeing
7 that deal in documents and trying to educate myself as to
8 sort of what this deal was because we wanted to make sure we
9 understood everything that was going on in this Abacus
10 series.

11 But as far as anything more specific than that, I
12 don't --

13 Q So there is -- there could be a claim out there
14 that [REDACTED] had it in his mind set not to bring a claim against
15 [REDACTED] and so even when [REDACTED] didn't say the things that would
16 lead to that conclusion, he kind of pushed [REDACTED] to get [REDACTED]
17 to say the things that [REDACTED] wanted him to say in order to be
18 able to conclude not to bring a case? Is that a fair
19 characterization of what happened?

20 A I mean I don't think so.

21 Q Okay.

22 A And, you know, I will say that, you know, we spent
23 a lot of time looking at the evidence, and I think that there
24 are certain charging decisions that certain people may not
25 disagree with, and my recollection is [REDACTED] was there as

1 well, and he may have been pushing a little bit. And there
2 may have been some back and forth; [REDACTED] and [REDACTED] didn't get
3 along the best of any two people out there. You probably
4 know that.

5 But I don't -- I've known [REDACTED] for long enough to
6 know that if there was a case out there, and he generally
7 believed there was a case out there against [REDACTED], I mean
8 the case would have been brought or at least he would have
9 done everything that he could to try and bring that case.

10 MR. KOTZ: Let me show you the next document. This
11 is an e-mail dated 1/15/2001, 10:51 a.m. from Robert Khuzami,
12 Cheryl Scarborough with a copy to you and [REDACTED]

13 (Exhibit No. 4 was marked for
14 identification.)

15 THE WITNESS: Did you say 2001 or 2010?

16 BY MR. KOTZ:

17 Q I'm sorry; 2010.

18 A Okay.

19 Q And so it's in response to an e-mail from [REDACTED]
20 saying, "According to outside counsel Sullivan & Cromwell,
21 Goldman has provided copies to the Senate of all documents
22 produced to the SEC pursuant to a need to request. Today we
23 learned that Goldman is considering providing copies of our
24 investigative transcripts."

25 And then Robert Khuzami responds, "I thought about

1 this after our meeting last night. In the inquiry, maybe one
2 additional reason to proceed with the case and wells (b)(6),(b)(7)(C) on
3 parallel tracks, assuming that is the result we reach with
4 (b)(6),(b)(7)(C)" Do you remember what Robert Khuzami was referring to
5 in this e-mail?

6 A Do you mean the parallel tracks?

7 Q Right.

8 A That, I think -- my understanding of this or
9 reading of this e-mail would be -- yes, this is the 15th, I
10 think I would have been at this meeting, most likely. Again,
11 I think there was some decision about whether or not to wait
12 on a decision on (b)(6),(b)(7)(C) or there was a decision -- would again
13 bring the Fabrice Tourre-Goldman case if that was what the
14 Commission approved, and then if it was later determined that
15 that case against (b)(6),(b)(7)(C) was warranted, then we could
16 amend the complaint or do some way to bring charges against
17 him. I think amending the complaint would have been the
18 approach probably taken.

19 But my understanding of this or reading of this is
20 that it relates to sort of that decision-making process.

21 Q Right. And so at this point in time, there was
22 this question about whether to go with the case you have now
23 and also continue with (b)(6),(b)(7)(C) or to wait and definitively
24 determine what you want to do with (b)(6),(b)(7)(C) and bring the whole
25 case together. And it looks like Robert Khuzami is saying

1 here to go with the parallel tracks at the moment. Is that
2 right?

3 A I mean that -- I don't know what Rob -- I mean
4 that's how I would understand and read this e-mail, and I'm
5 not sure I think that it was a decision that he would make,
6 but in terms of the discussion that's one point, maybe, to
7 put on the one side.

8 Q Right. And when he says, 'and the inquiry, maybe
9 one additional reason to proceed with the case and wells (b)(6),(b)
10 on parallel tracks,' do you understand what inquiry he was (7)(C)
11 talking about?

12 A I'm just making an assumption here, but in reading
13 this I would assume that it's just referring to sort of
14 whatever the Senate has done with regards to the need to
15 request.

16 Q Right. And do you remember that the Senate's
17 permanent subcommittee on investigations was doing its own
18 investigation of Goldman Sachs?

19 A I remember them doing a lot of things.

20 Q Could that have been the inquiry that is referred
21 to in this e-mail?

22 A It's certainly possible. I'll be honest. I
23 confuse -- I know that the Senate, there's all kinds of
24 people over there doing all kinds of things, and again, I'm
25 transitioning out here, so I had trouble keeping up with who

1 over there was doing what.

2 Q And what did you understand the concern to be about
3 the inquiry, whatever the inquiry was on the Senate side?
4 Why would that be an additional reason to proceed with the
5 case and wells (b)(6),(b)(7)(C) on parallel tracks?

6 A See, I don't know. I don't know.

7 Q Was there any discussion about the fact that the
8 SEC could kind of get ahead of the story in some ways if they
9 brought a case against Goldman, then the SEC would get the
10 credit for bringing that important case; if they waited the
11 permanent subcommittee might already start all this
12 discussion and then by the time the SEC got around to
13 bringing the case it was maybe more of an afterthought?

14 A I was not involved in any discussions like that,
15 and I don't recall ever -- any meetings I ever attended, that
16 type of an issue coming up. But I will say personally, you
17 know, I think the idea was, I think this case -- I wanted to
18 get it finished. I want to get every case finished.

19 Q And was there a sense that you had been working on
20 this case for some time and you wanted to get credit for
21 bringing it? I mean obviously there are things going on in
22 the SEC, some bad press, and so this would be an opportunity
23 to have the SEC put its best face forward.

24 A It certainly would not have been a -- I mean, for
25 me, personally, again, this is not a decision that I have any

1 sort of bearing, way, shape or form over, but you know, I
2 certainly think that -- you know, I was [REDACTED] on
3 the case. I think that the case was an interesting case, a
4 different case, an important case. And as, for all of those
5 reasons, I kind of like to see a case, if it's approved by
6 the Commission and supported, go out the door.

7 As far as timing or anything, you know, that's not
8 something I have any control over and really wouldn't have
9 been, frankly, that concerned with. Although I will admit
10 that if we spend time building a case and all of a sudden
11 someone takes our documents and I don't know what else these
12 guys can get. All of a sudden, Congress doesn't methodically
13 do things, stands up and starts yelling about something we've
14 been investigating for a year? Yeah, I might get a little
15 upset about that, but it certainly wasn't anything that had
16 crossed my mind at the time, and this is not a discussion
17 that I was a part of.

18 MR. KOTZ: Let me show you another document. We'll
19 mark this as Exhibit No. 5. And this is an e-mail exchange
20 between Cheryl Scarborough and [REDACTED] dated 1/22/2010,
21 6:09 p.m.

22 So there is some back and forth about the case, and
23 then there is discussion about filing it in the
24 January-February timeframe. Cheryl Scarborough says, "I
25 would prefer not to file on a Friday. I suggest Monday,

1 February 1." [REDACTED] responds, "I realize that's the
2 approach we have taken in the past. My sense is we're really
3 on a 24/7 news cycle nowadays. Look how much attention
4 Gretchen's NYT," New York Times, "article got when it ran on
5 Christmas Eve." And Cheryl Scarborough says, "Disagree."

6 Do you have any awareness about this debate about
7 whether to file a case on a Friday or not?

8 (Exhibit No. 5 was marked for
9 identification.)

10 THE WITNESS: I have heard in the past that
11 generally speaking kind of everyone here has been reluctant
12 to file a case on a Friday.

13 Q How come?

14 A I think given what is typically dealt with here,
15 it's business communications, business news, people at work,
16 people reading about whatever it is on the weekends, just
17 typically I believe coverage on weekends has been lower than
18 it is during the week, and I think that my read of this would
19 be the preference against filing on Friday would just be sort
20 of that, what I believe has been an institutional bias
21 against filing on Fridays at least in my five years
22 experience here. People just generally have sort of been
23 leery of filing on Fridays.

24 Q Because they feel like they'll get better press
25 coverage if they file on any other day?

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 (b)(6), (b)(7)(C) 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 (b)(6), (b)(7)(C) 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?

12 A I remember that -- I want to say that he thought
13 that some of it turned on the meaning of the word 'selected,'
14 how much of the case turned on the meaning of the word
15 'selected.' I remember he asked a question that I answered,
16 which was why does it matter who selected the portfolio.

17 I remember being -- probably a half hour, 40 minute
18 meeting. [REDACTED] Ken Lench, [REDACTED], me, [REDACTED], [REDACTED]
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?**

2 A My reading of him was that he may have been -- I
3 think his biggest concern to the -- I'm just kind of reading
4 into it, may have been why hold Goldman Sachs liable and not
5 just Fabrice Tourre. Is there enough here to hold both of
6 them liable as opposed to just Mr. Tourre? And I was just
7 kind of reading, reading him.

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 about whether it's going to be approved.

2 Q Right.

3 A But I think you often get a sense in going through
4 the process of whether or not you stand the likelihood of
5 being approved. Cases get vetted, you know, well above my
6 level, probably with commissioners or their aides on a
7 regular basis, so I'm always -- I mean I have not been
8 involved in such discussions, but through the commenting
9 process and the questions you get a sense, I think, of --

10 Q And what was the sense? The sense that there
11 wasn't a great concern that there would be a problem? I mean
12 was this something that people focused on?

13 A I mean I don't think that anyone takes a case
14 before the Commission when they don't think they have a
15 reasonable likelihood, in fact, I would say
16 better-than-reasonable likelihood of it being approved
17 because -- I don't go to many commission meetings because I
18 spend my time doing investigations as opposed to sitting in
19 commission meetings, but I don't recall any commission
20 meeting I have ever gone to, something being voted down by
21 the Commission.

22 Maybe it's happened, if it has happened recently
23 I'm not aware of it. So I think that if something, if the
24 front office and people that are above my head make the
25 decision to take it to the Commission there is -- I mean they

1 have to think there is a pretty good reasonable likelihood of
2 success in that.

3 Q And so were there any decisions made in the case
4 that related to how it would be voted on at the Commission
5 level?

6 A I'm not sure I understand.

7 Q In other words, you have at least one person, one
8 commissioner who is expressing some skepticism about a
9 particular matter. I mean I guess it's possible that as you
10 go through the case you could make decisions based on whether
11 you think, you know, it's going to be approved. So were
12 there any decisions that were made about who to charge or
13 what to do in the case that were based upon trying to ensure
14 that it would get approved at the end of the day by the
15 Commission? Was that a factor at all?

16 A I mean I don't think so, and let me just qualify
17 that a little bit. I think that, as staff, myself and people
18 that I have worked with and worked for me, we have tried to
19 do, in every case I have worked on, is build the case and
20 recommend the case that we believe is supported by the facts
21 and the evidence. And I am not aware of any instance in any
22 case that I have worked on where we have made any effort to
23 do anything, you know, evidentiary-wise or otherwise other
24 than just present the facts as they are and let the
25 Commission decide.

1 I think that the question, the issue would become
2 if there was a case where it wouldn't, we don't think it
3 would be approved, well, then I think the reason that we
4 would think it would -- I would think it wouldn't be approved
5 is because the facts and the evidence don't support a
6 charging decision.

7 MR. KOTZ: Let me show you the next document.
8 We're going to mark it as Exhibit No. 7. This is an e-mail
9 exchange. It starts off between [REDACTED] and you, [REDACTED]
10 [REDACTED] and [REDACTED] 1/28/2010, 3:56 p.m.

11 And [REDACTED] sends out I guess a summary of the
12 case, and then [REDACTED] responds asking you to take a look
13 at the memo or actually to provide the memo.

14 (Exhibit No. 7 was marked for
15 identification.)

16 THE WITNESS: Yep.

17 BY MR. KOTZ:

18 Q And you say, "Here is the memo. We pulled to give
19 time to wells another potential D. [REDACTED] And so, do you
20 remember which D, I assume you mean defendant, you were
21 referring to?

22 A Yeah. My recollection is this would be the
23 decision on [REDACTED]

24 Q Okay.

25 A And [REDACTED] is in our [REDACTED] and they are

1 working on another case involving (b)(6),(b)(7)(C) and a company called
2 (b)(6),(b)(7)(C) and we have just been trying to share our
3 knowledge with them and help them in their investigations, so
4 that's --

5 Q And so at this point in time the decision was made
6 not to go into parallel tracks, right?

7 A I mean that's -- that is my recollection, yes, that
8 I think that someone decided that it was better to bring sort
9 of one case as opposed to sue and then amend.

10 Q And were you aware that the inquiry that was
11 referenced previously in Robert Khuzami's e-mail, the
12 permanent subcommittee on investigations, at that point had
13 actually decided not to go forward at that time, and their
14 hearings were pushed off?

15 A No.

16 Q Okay. But you weren't involved, per se, in the
17 decision not to operate on parallel tracks?

18 A No.

19 Q Okay.

20 A I mean and I'll take that back again and just say
21 that I don't specifically recall any meeting where my input
22 or advice was sought on that, but there was, in the course of
23 these discussions, and it was a pretty open fluid
24 communications, about what do you think we should do and the
25 like, but I don't remember any specific involvement in sort

1 of that particular tactical decision.

2 MR. KOTZ: Next we'll go to this one.

3 Next e-mail I'm going to show you we're going to
4 mark as Exhibit No.8. It's an e-mail from [REDACTED] to [REDACTED]
5 [REDACTED] and Ken Lench, with a copy to you and several others,
6 2/25/1010, 2:05 p.m.

7 And so there is some back and forth with [REDACTED]
8 about this issue related to an expert.

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

11 THE WITNESS: Yep.

12 BY MR. KOTZ:

13 Q Do you remember what that issue with the expert
14 was?

15 A I believe I do. I'm not certain, but I believe I
16 do. I think that in the context of speaking with, I want to
17 say David Becker, maybe; maybe somebody else, he had said the
18 case would be -- I think my recollection is that he supported
19 the case but he said the case would be really, really strong
20 or something along those lines, if we could show how much
21 worse the bonds performed than the eligible universe they
22 could have selected from, whatever that was.

23 And at that point in time we talked about bringing
24 on an expert to try and perform such an analysis. [REDACTED]
25 is a guy who I think was at the [REDACTED]

1 (b)(6),(b)(7)(C)

2 (b)(6),(b)(7)(C)

3 (b)(6),(b)(7)(C) And my recollection is that (b)(6),
4 (b)(7)(C) was
5 tasked with trying to find someone to run an analysis on the
6 bonds or that type of analysis through and really this in
7 text program would be the program that you would use to sort
8 and kind of work with those bonds.

8 Q Okay. And so in this e-mail that (b)(6),(b)(7)(C) sends
9 out on 2/25/2010 at 2:05 p.m., he says, 'Given the time
10 constraints, I think we should proceed at this amount with
11 the payment taken from the current contract.' Do you know
12 what he was referring to when he referenced time constraints?

13 A I mean I can only speculate. You know, I don't
14 know if the case had been -- actually, the case, I guess,
15 obviously hadn't been filed. I don't know if there was an
16 attempt to try and get this done before filing the case,
17 which certainly would have made for a stronger case on paper
18 or whether this related to the litigation aspects.

19 Obviously if you want to file a case, getting an
20 expert -- and this analysis is not something that can be done
21 simply, but exactly as you're referring to? I don't know.

22 Q Did you understand that generally there was sort of
23 time constraints, it was important for this case to be
24 finalized and brought as soon as possible?

25 A As soon as possible might be a bit of an

1 overstatement, but I did understand that there was an effort
2 to conclude our work so we could file a case.

3 **Q And what was the reason for that, per se?**

4 A You know, I'm not sure that I was ever explicitly
5 given a reason sort of why it was important, but I think
6 that, you know, in one sense, I mean the cases, I mean we
7 wellsed Goldman Sachs in July of the previous year, so it
8 would have been a wells submission sitting out there and a
9 case basically for seven months. And other than the (b)(6),(b)(7)(C)
10 issue, the exact same case was there seven months later.

11 You know, from my perspective, the Commission
12 hadn't brought in any cases in this particular area. It was
13 a case that was there, frankly, almost ready to go and it --
14 I mean in that sense there -- I mean I was even trying to get
15 this thing out the door.

16 **Q Did you have any sense from anyone above you that**
17 **the Commission would look good if this case was brought and**
18 **we want to set up this scenario where the Commission looks**
19 **good as soon as we can?**

20 A It's phrased in that way, no. I mean no one ever
21 phrased it to me in that way.

22 **Q But was that kind of out there implicitly or**
23 **indirectly?**

24 A Well, you know, I mean I think working on a case,
25 if you put together what you think is a good case, it's going

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 (b)(6),(b)(7)(C) 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. (b)(6),(b)(7)(C) 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 Q Right, but it's against Goldman Sachs.

2 A It is against Goldman Sachs.

3 Q So there was an expectation that this case would
4 make the Commission look good because it was bringing a case
5 against Goldman Sachs?

6 A I wouldn't phrase it that way. I mean I think that
7 there is an expectation that it's a good case. I mean, you
8 know, I have never -- I mean I guess now I kind of recognize
9 the world does, but in terms of doing my work, I've never
10 really thought of Goldman Sachs as different than, you know,
11 frankly at that point in time, than (b)(6),(b)(7)(C)
12 (b)(6),(b)(7)(C) right? I wasn't versed enough in the industry, in
13 the investment banking industry to really separate one from
14 another.

15 When we began looking at this case, there was, you
16 know, there was no effort to look for a case against Goldman
17 Sachs. It just happened to be the case that I stumbled upon
18 in looking through e-mails. So the idea to bring a case
19 against Goldman Sachs, if that had any bearing or made the
20 Commission look good because it was Goldman as opposed to
21 somebody else, that's not something that I had ever heard or
22 at least ever recall hearing anyone say or of anyone
23 thinking.

24 Q But it's fair to say that there was kind of
25 anticipation or some potential excitement about bringing this

1 case within the Commission?

2 A Within the Commission, I don't know. Certainly
3 within my group there was. I mean again, we were --

4 Q Even above you, like Rob and Lorin's level?

5 A All I remember seeing them do was their job, which
6 was to get the cases that are ready to go filed. You know,
7 them express excitement -- you know, I did not see that. I
8 mean maybe amongst themselves, amongst others, but in the
9 meetings that I was at I wouldn't phrase it as excitement. I
10 would phrase it as -- I mean they went through and they sort
11 of helped us and we helped them make sure the Commission
12 brought the right case that should be brought. And that's
13 all that I can recall them ever --

14 MR. KOTZ: Let me show you the next document and
15 start talking about kind of the mechanics of the filing,
16 which it looks like you were involved with.

17 There is an e-mail exchange between you and [REDACTED]
18 [REDACTED] 4/13/2010, 11:03 p.m., which we're going to mark as
19 Exhibit No. 9.

20 (Exhibit No. 9 was marked for
21 identification.)

22 THE WITNESS: Okay.

23 BY MR. KOTZ:

24 Q And so do you recall that in April of 2010 the case
25 was about to be filed?

1 A I do remember that, yes.

2 Q Okay. And so Lorin Reisner is emailing [REDACTED] and
3 [REDACTED] e-mails you, "FYI. Let's discuss filing mechanics
4 tomorrow." So this is 4/13?

5 A Yep.

6 Q Okay. And so lower down in the e-mail exchange
7 there is an e-mail from [REDACTED] Thursday, April 8, where
8 it says, "Assuming commission approval, we'd like to FedEx
9 the signed original complaint to [REDACTED] in New York
10 city that evening for filing either the afternoon of
11 Wednesday, April 14 or morning of Thursday, April 15." Do
12 you see that?

13 A Yes, I do.

14 Q And so you were the guy who was in New York city,
15 so you were the guy who was actually going to ensure that it
16 was filed?

17 A I was [REDACTED]

18 Q Okay. And so what do you remember about that? It
19 looks initially like they were shooting for either the
20 afternoon of Wednesday, April 14 or Thursday, April 15. And
21 then on the 13th, he says, "Let's discuss filing mechanics
22 tomorrow."

23 A Yes.

24 Q So what do you recall happening? It didn't get
25 filed on Wednesday or Thursday.

1 A My recollection of this was that there was some
2 talk of sending a paralegal up to file it at some point in
3 time. And at this point in time, I'm -- I mean I was aware
4 there was a commission meeting. I didn't participate either
5 in person or by phone.

6 I think I may have called the evening of the
7 Commission approval just to see what happened. I probably
8 did that, but I don't specifically remember it. But at some
9 point in time I said, 'Look, if you guys need someone to file
10 this case, don't send a paralegal up on the train;' train
11 ticket and everything else, and a day out of work. I'm [REDACTED]
12 [REDACTED] so if you guys can FedEx the
13 package to me, I'll walk it down in the morning, stamp it and
14 PDF you guys a copy back before I go into court the next
15 morning.

16 Q Okay. Well, let me show you the whole chain so you
17 can have all the context.

18 A Okay.

19 MR. KOTZ: So the next document we're going to mark
20 as Exhibit No. 10. This is an e-mail from [REDACTED] to you,
21 4/14/2010, 2:19 p.m., so it's the next day.

22 (Exhibit No. 10 was marked for
23 identification.)

24 THE WITNESS: Okay.

25 BY MR. KOTZ:

1 Q And you know, there is an e-mail from [REDACTED]
 2 to [REDACTED] When can you file? How early in the day?"
 3 [REDACTED] says, "as soon as the Southern District Clerk's
 4 Office opens tomorrow morning."

5 A Yep.

6 Q And then [REDACTED] says to you, [REDACTED] The plan is to
 7 e-mail you a complaint coversheet and summons late tonight or
 8 early tomorrow morning with the expectation you would sign
 9 them on my behalf and then file the action as soon as the
 10 clerk's office opens." And so this is 4/14, so initially
 11 they said, "Assuming commission approval, we'd like to have
 12 it filed either the afternoon of the 14th or Monday (sic)
 13 morning of the 15th , and it looks like there was commission
 14 approval. And so [REDACTED] plan is to e-mail you the complaint
 15 either late on the 14th, which was Wednesday, or early on the
 16 15th, which is Thursday.

17 A Yep.

18 Q All right? So let me show you the next one.

19 A Keep the numbered set together or do you want to --

20 Q It doesn't matter. You might want to just have
 21 those in front of you just -- I just want to make sure you
 22 have all of this in front of you.

23 A Sure.

24 (Exhibit No. 11 was marked for
 25 identification.)

1 MR. KOTZ: So the next exhibit we're going to mark
2 is Exhibit No. 11 from Ken Lench to [REDACTED] 4/14/2010,
3 10:09 p.m. [REDACTED] sends out a complaint on
4 Wednesday, April 14, "As an FYI, I understand the current
5 plan is to file on Friday morning." And then [REDACTED] says, "Are
6 you concerned we will lose press by filing Friday?" Maybe
7 that's the point, given the litigation risk."

8 And so somehow it went from either Wednesday or
9 Thursday to Friday. Do you know what happened there?

10 A I don't specifically, but I do understand that
11 there was a lot of editing of the complaint going on here. I
12 think it's evidenced by Lorin's thoughtful comments and
13 [REDACTED] fact check. So the understanding that I have, and
14 again, it's based off sort of after-the-fact conversations of
15 some late nights around this point in time, that any delay
16 was likely caused by sort of noodling of or editing the
17 complaint that was actually going to be filed.

18 Q Even after the Commission had approved it?

19 A I think so.

20 MR. KOTZ: Let me show you the next document.

21 We're going to mark it as Exhibit No. 12, an e-mail exchange
22 between you and [REDACTED] 4/15/2010, 3:29 p.m. And so it
23 starts with you saying, "What's the scoop with the filing
24 materials? When should I expect them?" [REDACTED]

25 [REDACTED] And then [REDACTED] says, "We'll e-mail you the

1 filing materials late today. We need you to file at 8:30
2 a.m. tomorrow morning."

3 (Exhibit No. 12 was marked for
4 identification.)

5 MR. KOTZ: And you say, "Sure, I can get it done
6 then. I just need the papers tonight if possible." And then
7 let me show you the next document, which we're going to mark
8 as Exhibit No. 13, and that is between you and [REDACTED]
9 4/15/2010, 6:33 p.m., so they send out the final version of
10 the complaint. You ask, "Is this good to go?" [REDACTED] says,
11 "Yes, but you need to shoot to file this bad boy at 9:30 a.m.
12 sharp. I know this sounds crazy, but it's true." And you
13 respond, "9:30 or 8:30?" And then [REDACTED] says, "Sorry, dude;
14 9:30."

15 Do you remember why it was so critical that it be
16 filed at 9:30 a.m. sharp?

17 (Exhibit No. 13 was marked for
18 identification.)

19 THE WITNESS: I don't. My recollection is there
20 was some kind of a schedule that was -- that existed for a
21 press conference, perhaps.

22 BY MR. KOTZ:

23 Q Could it be a press conference? And so you wanted
24 to file it right before the press conference? Was that the
25 idea?

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 (b)(6),(b)(7)(C)
9 (b)(6),(b)(7)(C) 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 (b)(6),(b)(7)(C)
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 [REDACTED] and in court and obviously [REDACTED]

5 [REDACTED] so that was why I said, "If you can get it to me

6 tonight," if it's possible because [REDACTED]

7 [REDACTED]

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 [REDACTED] not [REDACTED] I signed them for

13 [REDACTED] 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 [REDACTED] And I was like, 'No.'

19 'Who are you?' [REDACTED] She said, 'You

20 didn't sign this. You're not [REDACTED] This can't be

21 filed this way.'

22 So I said, 'Okay.' So I went back upstairs and I

23 called [REDACTED] 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 [REDACTED] 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. [REDACTED] 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 [REDACTED] 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, [REDACTED] 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 [REDACTED] and [REDACTED] 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 [REDACTED] 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 [REDACTED]

19 [REDACTED]

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 Q Were you aware of whether Goldman Sachs was
2 notified prior to the filing of the complaint that it was
3 going to be filed?

4 A Other than a wells notice, which I think they got,
5 it was July 28, 2009, I am not aware of any -- and in the
6 wells meetings they had where they came in, I think, on at
7 least two occasions and then Rick Klapper, who was counsel
8 for -- I think co-counsel at one point in time [REDACTED]
9 Fabrice Tourre [REDACTED] Other than those
10 meetings, there were probably four total, I'm not aware of
11 any additional communications with Goldman Sachs other than
12 communications about routine -- routine communications about
13 requests we'd made, so where is this additional information?

14 Q But based on past practice and your experience at
15 the SEC, doesn't the SEC usually give advanced notice to a
16 publically traded company that the SEC is planning to file an
17 action?

18 A Believe it or not, I've actually never had to file
19 an unsettled complaint, so it's never happened to me before.
20 This is the first time. Every other case I've worked on
21 we've only filed settled complaints where you sort of
22 negotiate the language of the complaint. So in so far as a
23 case like this where it was not a settled action and to my
24 knowledge there had been no, at least that I'm aware of,
25 settlement overtures, this is the first time, and I really

1 have nothing to compare it to.

2 Q Okay. But are you aware of any particular decision
3 made in this case not to provide notice?

4 A I am not.

5 Q Okay. Do you know if the SEC informed the New York
6 Stock Exchange that it intended to file the complaint against
7 Goldman Sachs prior to the filing of the complaint?

8 A I do not know about if they did or if they didn't.

9 Q Do you know if generally the SEC would inform the
10 New York Stock Exchange about a complaint?

11 A Yeah, I would have no idea.

12 Q Okay. What about the decision whether to file a
13 complaint against a publically traded company during the
14 exchange's trading hours? Do you know if generally the SEC
15 has a policy on that and what occurred in this case?

16 A If they have a policy, I have never heard of it,
17 never been aware of it, and I just -- thinking courthouse
18 hours, that might be kind of tough to avoid, but --

19 Q What about the concept of the third Friday of each
20 month having significance for the expiration of options?

21 A I am aware of options expiration dating.

22 Q Okay. What does that mean that there's options
23 expiring?

24 A My recollection is that, you know, options can be
25 various periods, and the third, I guess it's the third

1 Friday. I didn't recall what specific day it was, but that
2 the third Friday of the month is the day where maybe those
3 periodic monthly options, is the date in which sort of the
4 period to exercise them is up, so maybe the last day you can
5 do that.

6 Q And were you aware of any communication about or
7 generally whether the SEC has a practice of filing an action
8 against a publically traded company on the third Friday of a
9 month?

10 A I am not.

11 Q Are you aware of any discussions or communications
12 prior to filing the complaint against Goldman Sachs on April
13 16 regarding the effect of the filing of the complaint on
14 media coverage in general?

15 A No.

16 MR. KOTZ: Why don't we take a minute or two and
17 see what else we have? We'll go off the record.

18 (A brief recess was taken.)

19 MR. KOTZ: We are back on the record.

20 Okay. I just wanted to show you one more document
21 and ask you about it. We're going to mark it as Exhibit No.
22 17. It's SEC administrative regulations July 31, 2005, and I
23 guess it's on the intranet. We're going to show you this and
24 turn your attention to page 612.

25 As you can see on page 612, under 15(c) it says

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

1 essentially defendants are supposed to get notice?

2 A And I don't know if Goldman Sachs did or did not
3 get notice. Am I surprised that defendants should get
4 notice? Frankly, it seems like a good policy idea to me.

5 Q You weren't aware that that policy existed in
6 general?

7 A I wasn't aware generally that that -- that there
8 was a written policy that described that. No, I was not.

9 Q And you weren't aware that there was even a general
10 policy that defendants should be notified in every case where
11 they file an action, right?

12 A I was not. Again, it's not a situation where I
13 have ever sort of been responsible for.

14 Q Okay.

15 A So I have never had the opportunity or the need to
16 sort of research such a provision.

17 BY (b)(6),(b)(7)(C)

18 Q You had mentioned earlier that there may have been
19 questions from the chairman's office as to why the Abacus
20 matter had gotten pulled either in December or in January.
21 Can you recall anything more specific about any questions
22 that were asked?

23 A I don't recall saying that there were questions by
24 the chairman's office.

25 Q From the chairman's office.

1 A -- from the chairman's office. I don't recall,
2 frankly, that would be something I think they would probably
3 know before I would know it was pulled. So I don't recall
4 ever -- if I said so, then I must have been referring to
5 something, but I don't recall saying sort of that -- anything
6 even remotely like that.

7 The people that I remember you would -- discussing
8 sort of reasons it was pulled for was [REDACTED] obviously
9 from [REDACTED] asked what happened. Other people
10 asked what happened as well, just kind of around the
11 Commission and said why did you guys pull it. I'm sure I
12 said the same thing.

13 Q I think the context of this really what we're
14 asking is, were you aware of any communications with the
15 chairman's office about the Abacus matter. And I think maybe
16 again, I just misremember your answer as oh, well there may
17 have been questions from the chairman's office about why it
18 was pulled.

19 A Oh, yeah, I don't know about why it was pulled. I
20 think there were probably -- I think the chairman's office
21 generally was aware of all the cases that were on the high
22 priority, that's what we're going to call it, list of cases.
23 And I think to the extent that I said anything about my
24 knowledge of the chairman's office, I just think one would
25 assume that if those were the high priority enforcement

1 cases, they were the kind of cases that the chairman's office
2 and probably other commissioners would be aware of as well.

3 I imagine they get some kind of a report or
4 something. This is all me imagining they do because I have
5 never seen such a thing, but it would make sense.

6 MR. KOTZ: All right. We're done, unless there is
7 something else that is relevant to the matters we have
8 discussed that we missed that you can think of.

9 THE WITNESS: Yeah, not that I can think of.

10 MR. KOTZ: Okay. Then the only last thing is, and
11 this is very important, I would ask you, in order to preserve
12 the integrity of our investigation, that you not discuss the
13 content of your testimony with anybody.

14 THE WITNESS: Sure. Understood.

15 MR. KOTZ: All right. We are off the record.

16 (Whereupon, at 11:11 a.m., the examination was
17 concluded.)

18 * * * * *

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REPORTER'S CERTIFICATE

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I, (b)(6),(b)(7)(C) reporter, hereby certify that the foregoing transcript of 74 pages is a complete, true and accurate transcript of the testimony indicated, held on July 13, 2010, at 9:32 a.m. in the matter of: OIG-534.

I further certify that this proceeding was recorded by me, and that the foregoing transcript has been prepared under my direction.

Date:

7/19/10
(b)(6),(b)(7)(C)

Official Reporter:

Diversified Reporting Services, Inc.

PROOFREADER'S CERTIFICATE

In the Matter of: OIG-534
Witness: Witness Number 13
File Number: OIG-534
Date: Tuesday, July 13, 2010
Location: Washington, D.C.

This is to certify that I, (b)(6),(b)(7)(C) (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

(b)(6),(b)(7)(C)

7/19/10

(Proofreader's Name)

(Date)

Chapter Break

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)(6),(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)(6),(b)(7)(C)

13

14 National Treasury Employees Union

15 1750 H Street, N.W.

16 Washington, D.C. 20006

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C O N T E N T S

WITNESS

(b)(6),(b)(7)(C),(b)(7)(D)

EXAMINATION

10

EXHIBITS:

DESCRIPTION

IDENTIFIED

1

Notice of rights

6

2

Confidentiality and non-disclosure

6

3

4/13/10 (b)(6),(b)(7)(C) e-mail to (b)(6),(b)(7)(C)

24

4

4/13/10 (b)(6),(b)(7)(C) e-mail to (b)(6),(b)(7)(C)

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P R O C E E D I N G S

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Whereupon,

(b)(6),(b)(7)(C),(b)(7)(D)

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

MR. KOTZ: My name is David Kotz. I'm the
Inspector General of the United States Securities and
Exchange Commission, and I have with me my colleague from the
Office of Inspector General, (b)(6),(b)(7)(C) And would your
representatives like to identify themselves?

(b)(6),(b)(7)(C) Sure. My name is (b)(6),(b)(7)(C)
I'm the national counsel at the National Treasury Employees
Union. We're here as the exclusive representative, and
in our bargaining unit, and here with me is my
colleague, (b)(6),(b)(7)(C) also with the National Treasury
Employees Union. She's assisting counsel.

And I would like to make one statement or two on
the record, if you don't mind, about why we're here and --
and our issue with the -- with the warrant.

MR. KOTZ: All right. Let me read the instructions
first.

(b)(6),(b)(7)(C): Okay.

MR. KOTZ: This is an investigation by the Office
of Inspector General, Case Number OIG-534. I'm going to ask
you certain questions, and you'll have to provide answers

1 under oath. A court reporter will record and later
2 transcribe everything that is said. Please, therefore,
3 provide verbal answers to the questions, as a nod of the head
4 or other non-verbal response won't be picked up by the court
5 reporter.

6 Also, so the record will be clear, please let me
7 finish my question before you provide your response, and I'll
8 try to let you finish your response before I ask the next
9 question.

10 In addition, it is important you understand the
11 questions and give accurate answers. If there's anything you
12 don't understand or anything you do not know or are not sure
13 about, please let me know. Otherwise, I will assume that you
14 heard and understood the question.

15 Do you understand those instructions?

16 THE WITNESS: Yes.

17 MR. KOTZ: Okay. I'm going to give you the perjury
18 warning.

19 AS you can see, responses and statements given
20 today are provided after you've sworn an oath and will be
21 taken down verbatim by the court reporter. This is an
22 official U.S. Government law enforcement investigation. The
23 claims asserted in this case are serious ones. It is very
24 important you tell me everything you know about the matter at
25 hand and are completely forthcoming and truthful with me.

1 I'm formally advising you that your testimony today
2 is subject to the laws of perjury. Providing false or
3 misleading testimony under oath is a serious offense. If the
4 evidence shows the testimony you have given is false, we may
5 refer it as appropriate.

6 Do you understand those instructions?

7 THE WITNESS: Yes.

8 MR. KOTZ: Okay. So let's get to that now. Why
9 don't we first put into the record the notice of rights.
10 We're going to mark this as Exhibit 1. It says U.S.
11 Securities and Exchange Commission, Office of Inspector
12 General, Notice of Rights.

13 (Exhibit No. 1 was marked for
14 identification.)

15 And could you just confirm, (b)(6), (b)(7)(C), (b)(7)(D) that this is
16 your signature on Exhibit 1?

17 THE WITNESS: Yes.

18 MR. KOTZ: Okay. And then just one second and then
19 I'll let you do it.

20 And then let's put these confidentiality and non-
21 Disclosure agreements in, and these were signed by (b)(6), (b)(7)(C)
22 (b)(6), (b)(7)(C) and (b)(6), (b)(7)(C) I think we'll put them both in as
23 Exhibit 2.

24 (Exhibit No. 2 was marked for
25 identification.)

25 And could you two please just confirm that this is

1 your signatures on these two documents?

2 (b)(6),(b)(7)(C): It is.

3 (b)(6),(b)(7)(C): Yes.

4 MR. KOTZ: Okay. And now you wanted to say
5 something?

6 (b)(6),(b)(7)(C): Yes. I would like to make a
7 statement for the record, both as to what NTEU's role here is
8 as the exclusive representative and also a statement about
9 the -- the notice of rights that (b)(6),(b)(7)(C),(b)(7)(D) has signed.

10 First of all, NTEU is here as the exclusive
11 representative, and our role in this interview, this
12 investigatory interview, is defined by the Weingarten case.
13 So our role here is to clarify the questions, if -- if
14 there's any help needed there, clarify (b)(6),(b)(7)(C),(b)(7)(D) answers,
15 and to take breaks when we need them. That's my job.

16 Now, if I could just make a statement for the
17 record about the notice of rights that (b)(6),(b)(7)(C),(b)(7)(D) has signed.

18 I've spoken to (b)(6),(b)(7)(C) on the phone a couple of
19 days ago about the issue we have with this, and then also Mr.
20 Kotz just before we started.

21 The notice of rights to (b)(6),(b)(7)(C),(b)(7)(D) acknowledges that
22 the matter under investigation may involve violations of law
23 that could result in criminal prosecution of responsible
24 individuals. Now (b)(6),(b)(7)(C) signed that, but I have advised
25 that what we normally see here is a Kalkines warning,

1 K-a-l-k-i-n-e-s, which would immunize (b)(6),(b)(7)(C),(b)(7)(D) from any
2 criminal prosecution.

3 What we have here is (b)(6),(b)(7)(C),(b)(7)(D) acknowledgement of
4 the possibility of criminal prosecution. (b)(6),(b)(7)(C),(b)(7)(D) also under an
5 obligation as an employee of the -- of the SEC to -- to
6 answer these questions. So the issue here is that (b)(6),(b)(7)(C),(b)(7)(D) is
7 both under notice that (b)(6),(b)(7)(C),(b)(7)(D) potentially liable for criminal
8 prosecution, and (b)(6),(b)(7)(C),(b)(7)(D) also here under an obligation to
9 answer questions, thus putting (b)(6),(b)(7)(C),(b)(7)(D) Fifth Amendment right
10 against self-incrimination under pressure.

11 So with that objection, (b)(6),(b)(7)(C),(b)(7)(D) has signed the
12 agreement, but I just wanted to state the objection of the
13 union on the record to the failure to provide Kalkines
14 warnings. That's it.

15 MR. KOTZ: Okay. Let me just say for the record
16 that we actually had not intended to give (b)(6),(b)(7)(C),(b)(7)(D) a notice
17 of rights, but I understand that you suggested it. So, you
18 know, in my view, this is sort of a situation where this
19 issue would never have come up if you hadn't suggested it,
20 and now that you've suggested it, you're objecting to it.

21 But be that as it may, are you willing to go
22 forward?

23 THE WITNESS: Yes.

24 (b)(6),(b)(7)(C): And let me just say one statement
25 further. The notice of rights and the -- the acknowledgement

1 in writing of -- of the circumstances under which the witness
2 is in an investigatory interview is specified by the NTEU
3 contract with the Securities and Exchange Commission. So --
4 and as -- (b)(6),(b)(7)(C),(b)(7)(D)

5 MR. KOTZ: Right.

6 (b)(6),(b)(7)(C): -- the representative of the SEC,
7 you are bound by that contract. So.

8 MR. KOTZ: Right. But that only applies in certain
9 situations which I'm not sure (b)(6),(b)(7)(C),(b)(7)(D) would be applicable
10 to, which is why we didn't intend to give it to (b)(6),(b)(7)(C),(b)(7)(D)

11 But why don't we just go forward?

12 THE WITNESS: Before -- before we get going --

13 MR. KOTZ: Yes?

14 THE WITNESS: -- I wanted to raise something. I
15 wanted to know if there's a possibility that my name could be
16 withheld in any future report that's generated, and I just
17 wanted to put that on the record, and also wanted to ask
18 whether I would be able to get a copy of the transcript of
19 this proceeding.

20 MR. KOTZ: Okay. You'll certainly get a copy of
21 the transcript of the proceeding.

22 Our reports are internal. So we will issue a
23 report internally, probably to the Chairman. With an
24 internal report, we generally don't take names off. I assume
25 your concern is mostly if the report leaves the agency.

1 THE WITNESS: Yes.

2 MR. KOTZ: Okay. With respect to that, that isn't
3 our decision, the Office of Inspector General, about how the
4 document is going to be released to the public, if at all,
5 but what we can do is let the folks who make that decision
6 know of your request to have your name out of it.

7 THE WITNESS: I would appreciate that.

8 MR. KOTZ: Okay.

9 (b)(6),(b)(7)(C): And who is it who makes that
10 decision?

11 MR. KOTZ: The Chairman of the SEC. I mean, you
12 know, there are other people involved, but essentially, at
13 the end of the day, it's the Chairman. So we don't issue any
14 reports outside of the SEC. The agency itself may choose to
15 send it to Congress, produce it in FOIA, you know, put it on
16 their website, whatever they choose to do, but we don't do
17 that.

18 (b)(6),(b)(7)(C): So -- so you -- you never
19 independently decide to release a report?

20 MR. KOTZ: Not an investigative report, no.

21 (b)(6),(b)(7)(C): Okay.

22 EXAMINATION

23 BY MR. KOTZ:

24 Q Okay. Let's start with education, if we could.
25 Could you describe your education, beginning with college,

1 please?

2 A I attended (b)(6),(b)(7)(C),(b)(7)(D)

3

4

5 Q Okay. And what -- what did you study at

6 A I (b)(6),(b)(7)(C),(b)(7)(D)

7

8 Q Okay. What was your first job after

9 school?

10 A I came to the Commission.

11 Q What was your first position with the Commission?

12 A Staff attorney.

13 Q Okay. And who was your first supervisor?

14 A (b)(6),(b)(7)(C),(b)(7)(D) was my branch chief.

15 Q Okay. How long did you work for

16 A About two -- year and a half, two years.

17 Q Okay. And what were your duties, generally, as a
18 staff attorney?

19 A To investigate potential violations of the federal
20 securities laws.

21 Q Okay. And those are the same duties you have
22 today?

23 A Yes.

24 Q Okay. After (b)(6),(b)(7)(C),(b)(7)(D) who was your next
25 supervisor?

1 A

2 Q How do you spell that, (b)(6),(b)(7)(C)

3 A (b)(6),(b)(7)(C)

4 Q Okay. And how long was he your branch chief?

5 A Approximately (b)(6),(b)(7)(C)

6 Q Okay. So that's till about (b)(6),(b)(7)(C)

7 A (b)(6),(b)(7)(C)

8 Q Okay. And then who was your branch chief after
9 that?

10 A (b)(6),(b)(7)(C)

11 Q (b)(6),(b)(7)(C) And is that individual still your
12 branch chief, or has there been any changes?

13 A No. Once we were reorganized -- "we" being the
14 Enforcement Division -- she's no longer my branch chief.

15 Q Okay.

16 A There are no branch chiefs.

17 Q Right. So who's your supervisor now?

18 A (b)(6),(b)(7)(C)

19 Q Okay. And how long has he been your supervisor?

20 A Well, he was my assistant director for, I think,
21 maybe since (b)(6),(b)(7)(C) whenever (b)(6),(b)(7)(C) was promoted to
22 associate. So he was my assistant director. So he's been my
23 supervisor approximately three, four years.

24 Q Okay. And have your duties or your position at the
25 SEC changed over time?

1 A No.

2 Q Okay.

3 A I mean, I've been a staff attorney the entire time
4 I've been here. So.

5 Q And the duties are generally the same?

6 A Yes.

7 Q Okay. All right. There was a period of time when
8 you (b)(6),(b)(7)(C) is that right?

9 A Yes.

10 Q When was that?

11 A I think it was (b)(6),(b)(7)(C) is when I officially

12 (b)(6),(b)(7)(C)
13
14

15 Q Okay. So

16 A Yes.

17 Q Okay. All right. Did there come a time where you
18 became aware of the existence of an investigation by the SEC
19 into the sale of collateralized debt obligations by Goldman
20 Sachs?

21 A Yes.

22 Q Okay. When did you first become aware or become
23 involved in that investigation?

24 A June 2008.

25 Q Okay. And how did that come about?

1 A I was in my office. I think (b)(6),(b)(7)(C) called me and
2 said, "Hey, can you come down?" I went to his office and he
3 explained to me that -- that there was -- there was a CDO
4 that may be problematic in terms of the marketing and -- and
5 I came down and from then on, I was assigned to the case.

6 Q Okay. So was that --

7 (b)(6),(b)(7)(C) : If she could just clarify what a CDO
8 is for the record, so that it's -- it's --

9 THE WITNESS: It's a collateralized debt
10 obligation.

11 BY MR. KOTZ:

12 Q Okay. And so was that the beginning of the
13 investigation? Did you become involved from the beginning,
14 or was there already investigatory work that occurred before?

15 A No. That was at the very beginning.

16 Q Okay. Who did you work with on this investigation?

17 A I worked with -- with (b)(6),(b)(7)(C) who was the
18 (b)(6),(b)(7)(C), and the way we did it is, although (b)(6),(b)(7)(C) was my
19 actual org code (b)(6),(b)(7)(C) we often worked in other -- for
20 other branch chiefs. In this case, there was only two (b)(6),(b)(7)(C)
21 (b)(6),(b)(7)(C). So I worked for (b)(6),(b)(7)(C), and he was (b)(6),(b)(7)(C)
22 and (b)(6),(b)(7)(C) was another (b)(6),(b)(7)(C) who worked on the
23 case, as well.

24 Q Okay. That case was referred to as the Abacus
25 investigation?

1 A Yes.

2 Q Okay. Did you ever understand this investigation
3 to be considered sort of a national priority investigation
4 for the SEC?

5 A I came to that understanding well after the
6 investigation started. I think maybe some time in the summer
7 of 2009 I was told that it had become part of a handful of
8 investigations that were -- were designated -- I don't
9 remember the words that were used, but national priority,
10 something along those lines.

11 Q And what was the effect of that?

12 A The effect of that is that we had to report kind of
13 on a regular basis what the status of the investigation was.

14 Q And so you worked on this investigation from June
15 2008

16 A Yes.

17 Q And was it the only investigation you were working
18 on?

19 A It was my primary investigation during that period.
20 I was -- I did have other investigations.

21 Q Okay.

22 A But if you looked at in terms of the time, a lot of
23 that was probably the lion's share of my time was -- was
24 working on this.

25 Q Okay. And could you just generally describe the

1 type of investigatory work that was done during that period?

2 A What period?

3 Q So between June 2008 (b)(6),(b)(7)(C) just
4 generally.

5 A Generally, I drafted subpoenas, reviewed e-mails,
6 prepared documents for testimony, took the testimony of
7 approximately maybe 18 witnesses, you know? I think
8 that's -- I mean, that's the substantive -- substance of what
9 I did.

10 Q Okay. Do you recall any particular disagreements
11 among the enforcement staff that worked on the case as to any
12 aspects of the investigation?

13 A Well, I mean, I think the -- the -- the agreement
14 that stands -- the disagreement that stands out for me is --
15 occurred in the summer of 2009, when -- I mean, as you
16 probably know, once we sort of kind of get towards the end of
17 investigation, we involve the trial unit, and because, you
18 know, we might go to -- go to -- actually go to court, right?
19 So we involve them --

20 Q Right.

21 A -- and when the trial unit was involved, there some
22 -- there was some heated debate in terms of potential
23 charging decisions and whether additional parties should be
24 considered to be charged and --

25 Q Okay.

1 A -- so that's -- that's the -- the disagreement that
2 sort of stands out in my mind.

3 Q Okay. And -- and was that related mostly to
4 charging, first name, [REDACTED] or what -- who were the
5 individuals that there were discussions about whether to
6 charge or not?

7 A The individuals that I recall were [REDACTED]
8 primarily. I think he was the main person. You know, I
9 think there may have been some discussion of maybe even John
10 Paulson, but I don't really think that was really -- I don't
11 -- I don't really want to get into what other people thought.
12 Those are the -- [REDACTED] the main person.

13 Q And -- and what was the nature of the disagreement?

14 A From my understanding, [REDACTED]
15 Fabrice Tourre, who was someone that we could all agree on
16 that should be charged, and his name appears on several e-
17 mails that he may have -- he may have known of some of the
18 misrepresentations that -- that we were concerned about, and
19 so he should be -- he should be charged, or at least
20 considered charging him.

21 Q And was there discussion about whether to even take
22 [REDACTED] testimony?

23 A I think there definitely was, and I know that it
24 was -- that the trial unit, [REDACTED] specifically -- and
25 when I say trial unit, he was really the only person that we

1 were dealing with in the trial unit, that I -- to my
2 knowledge, in terms of the substance of the case.

3 (b)(6),(b)(7)(C) wondered if we had taken (b)(6),(b)(7)(C)
4 (b)(6),(b)(7)(C) testimony, and we said we hadn't, and so at some
5 point it's my understanding that his testimony was taken, but
6 when I was there, there had been no date, and I don't think
7 it had been scheduled, and I think it was just discussed, to
8 my recollection.

9 Q Do you know what the argument was in -- in favor of
10 the decision not to take (b)(6),(b)(7)(C) testimony?

11 A I think the concern was that he was not as close to
12 the -- to the facts of this transaction, although he was on
13 e-mails (b)(6),(b)(7)(C) I think that he -- I
14 don't think he had as much of a role in the preparation of
15 the offering documents as -- as maybe Fabrice Tourre, but I
16 don't really remember the specifics of why the decision was,
17 and I think they did take his testimony. (b)(6),(b)(7)(C)

18 (b)(6),(b)(7)(C) So I wasn't -- I don't know ultimately what
19 discussions went down as to why to not charge him.

20 Q When you were working on the case, did you have an
21 opinion on this disagreement about (b)(6),(b)(7)(C)

22 A I think my inclination was to not charge him, but I
23 honestly, as I sit here today, I don't remember what I was
24 thinking at that time.

25 Q Okay. And you mentioned that at some point in

1 time, you learned it was considered some kind of priority and
2 you had to report on it.

3 Did you ever have an understanding that the
4 Chairman's office was aware of or interested in the Abacus
5 investigation?

6 A No. When I -- no, I did not have a -- have a
7 specific recollection of that. I -- from what I was -- my
8 understanding was that we had to report to Rob Kuzame, our
9 director, about the status of the case. So I'm not sure
10 where that information went after that.

11 Q (b)(6),(b)(7)(C) were -- were they at the stage
12 of drafting an action memo to circulate for review to
13 eventually put on the calendar? Because I think that
14 occurred in November, (b)(6),(b)(7)(C)

15 (b)(6),(b)(7)(C)

16 A As I sit here today, I believe that we did have a
17 draft action memo. I know that I did not -- I did not write
18 the action memo. So I can't really tell you exactly when it
19 was written. I have a recollection of there being an action
20 memo drafted, and I think it was (b)(6),(b)(7)(C) who drafted it.

21 Q Okay. So did you have an understanding that when
22 (b)(6),(b)(7)(C) the case was ready or close to
23 ready for -- to be put on the calendar?

24 A Yes.

25 Q Okay.

1 A (b)(6),(b)(7)(C) -- I thought that the case was in a
2 position that we could make a recommendation to the
3 Commission.

4 Q Okay. And with respect to that time period, the
5 recommendation would not have included charging (b)(6),(b)(7)(C)
6 right?

7 A That's correct.

8 Q Okay. Or Mr. Paulson?

9 A Yeah. And I -- yeah.

10 Q Okay. Now, did you learn that the Abacus matter
11 was placed on the Commission calendar and then withdrawn?

12 A I did learn that.

13 Q Okay. Do you know why that occurred?

14 A I believe that occurred as a result of the conflict
15 between the investigative staff and the trial unit, and how I
16 know that is I would periodically check my e-mails (b)(6),(b)(7)(C)
17 (b)(6),(b)(7)(C) and I think I got an e-mail from the
18 secretary's office -- I was one of several people -- that
19 said this matter is being pulled from the calendar due to
20 issues raised with the trial unit, or something along those
21 lines.

22 Q Right.

23 A And I remember thinking, okay, well, that's
24 interesting, but I did not have any contact with anyone. I
25 didn't pick up the phone and say, oh, my goodness, what

1 happened, like I didn't -- I just -- I said -- I just sort of
2 said, oh, well, that's interesting.

3 Q Okay. Did you learn at any point that (b)(6),(b)(7)(C)
4 had withdrawn as litigation counsel for the investigation?

5 A You mean technically withdrawn with the court,
6 or -- (b)(6),(b)(7)(C)

7 Q Internally. Just stated that he was going to
8 withdraw or -- (b)(6),(b)(7)(C)

9 A No -- well, actually, I do remember now at some
10 point hearing that he had decided he wanted to be off the
11 case, and I actually wouldn't have remembered that until you
12 just said that, till you mentioned that.

13 Q Did you have an understanding of why?

14 A I assumed it was because him and (b)(6),(b)(7)(C) did not get
15 along terribly well.

16 Q Okay. But, I mean, you didn't have a conversation
17 with him about any of that?

18 A No, I did not have any conversation with him and --
19 and from what I recall, he's -- he was off the case, but then
20 he was back on it. So I didn't -- it was sort of one of
21 those things where, you know, you kind of feel like when your
22 parents are fighting, like you're kind of like, you know, I
23 have no idea what was going on, I just wanted it to stop,
24 just kind of wanted to do my job, and I didn't really get in
25 the weeds in it. So I didn't, you know, really talk to (b)(6),(b)(7)(C)

1 about it and I didn't talk to (b)(6), (b)(7)(C) about it. I just was like,
2 okay, well, I'm low enough on this chain that they'll tell me
3 what I need to do.

4 (b)(6), (b)(7)(C): Above your pay grade?

5 (b)(6), (b)(7)(C): Yes.

6 (b)(6), (b)(7)(C): That classic answer?

7 THE WITNESS: Exactly.

8 BY MR. KOTZ:

9 Q Okay. And then did you learn that later on, the
10 case was then put on the January Commission calendar and then
11 withdrawn from that?

12 A I honestly don't remember that.

13 Q Okay. So when

14 I -- did you check to see what the status of
15 the case was because you would be potentially working on it

16 (b)(6), (b)(7)(C) How'd that work?

17 A I did not.

18 Q Okay.

19 A I showed up. I -- (b)(6), (b)(7)(C)

20 (b)(6), (b)(7)(C)

21 So I had just randomly decided that week. I had no
22 idea of what was going on that week.

23 Q Okay.

24 (b)(6), (b)(7)(C), (b) and did you then learn that the case was still ongoing?

25 A Yes, I did, and I learned that we were on the

1 calendar for April 14th.

2 Q Okay. And were you surprised that the case was
3 just about to be calendared, even though (b)(6),(b)(7)(C) it
4 seemed like it was ready to go or close to --

5 A Well --

6 Q -- ready to go?

7 (b)(6),(b)(7)(C): Answer his question.

8 THE WITNESS: -- I don't think I was surprised at
9 that point because I had checked my e-mail at some point and,
10 you know, I think I probably knew it was going to be on the
11 calendar around then because I had checked my e-mail.

12 Overall, you know, I did think, "Wow," you know, "I
13 thought this case would have been filed (b)(6),(b)(7)(C)

14 (b)(6),(b)(7)(C) So I did have that thought.

15 Q And so what role, if any, did you play in the case
16 when you (b)(6),(b)(7)(C) It was, you know,
17 about to be filed.

18 A I -- I attended the closed Commission meeting
19 authorizing --

20 Q Okay.

21 A -- the case on the April 14th. I -- the case was
22 filed the 16th. I mean, I think I didn't really even have a
23 role in, I don't think, preparing for the filing. I think
24 the first -- one of the first things I think I did was -- was
25 -- was sort of figure -- do some research and try to figure

1 out how we should actually serve the defendants.

2 Q Okay.

3 A You know, sort of figuring out, okay, where's
4 Goldman Sachs' address, like who's their -- you know, who's
5 their agent for accepting service. Same for Fabrice Tourre;
6 he was in London. And sort of trying to figure out -- that
7 out. And then I think ultimately that Goldman and Tourre
8 agreed to just accept service, you know, via FedEx or
9 however. So -- or we e-mailed. I'm not -- I wasn't even the
10 person that sent it to them, but that's what I remember the
11 first things I kind of did.

12 Q All right. Let me show you a document. I'm going
13 to mark this document as Exhibit 3. It's an e-mail exchange
14 between Elisse Walter and (b)(6),(b)(7)(C) dated
15 4/13/2010, 2:51 p.m.

16 (Exhibit No. 3 was marked for
17 identification.)

18 And this document references a meeting with
19 Commissioner Walter. There's an e-mail from (b)(6),(b)(7)(C)
20 (b)(6),(b)(7)(C) to you and several others.

21 Do you remember? Did you attend that meeting?

22 A Yes, I -- this does refresh my recollection. I did
23 attend a meeting, I guess it was the day before we filed,
24 and -- (b)(6),(b)(7)(C)

25 Q Do you remember anything about that meeting

1 particularly?

2 A You know, no, I -- I really don't. I didn't even
3 remember the meeting until you -- you know, until you -- till
4 you mentioned this, until you showed me this exhibit.

5 I -- I remember I was there. I believe I was there
6 with [REDACTED] and [REDACTED] and Ken Lynch.

7 Q Do you remember if there was any discussion about
8 the timing of the filing of the Goldman case?

9 A Not at all. I -- I don't -- I don't have -- let me
10 say this. I don't remember any discussion about the timing
11 of this case, of the filing of this case, at all.

12 Q Okay. Specifically, you don't remember that
13 occurring in that meeting with Commissioner Walter?

14 A Definitely. I don't remember.

15 Q Do -- do you remember -- do you remember any
16 reference in the meeting with Commissioner Walter to the
17 financial reform legislation?

18 A No.

19 Q Okay.

20 [REDACTED]: Just to clarify, are you saying that
21 you don't remember or you remember that it did not occur? If
22 you get the distinction -- if that helps.

23 A I -- I don't -- I remember that it didn't occur,
24 that there was no discussion about the time, about the case
25 and the financial reform.

1 Q Okay. All right. Great. Let me show you another
2 document we're going to mark as Exhibit 4. It's an e-mail
3 exchange between a couple others and (b)(6),(b)(7)(C)
4 4/13/2010, 9:21 p.m.

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

7 And in this e-mail exchange, the first e-mail from
8 (b)(6),(b)(7)(C) says, "Just curious. Did we ever hear back
9 whether we intend to file tomorrow after the meeting or
10 Thursday morning? Thanks, (b)(6),(b)(7)(C)" and then the response,
11 which you can see you're copied on, "No word either way
12 today. I think staff's preference, i.e.
13 is still Thursday morning, but will let you know if we are
14 instructed otherwise."

15 Do you remember discussions about when to file?

16 A I think I remember a brief discussion outside, you
17 know, once -- because it was sort of a big deal. We got
18 approval for the case and so we were outside the -- the
19 Closed Commission Room and so there was discussion about when
20 we should file and I think -- I don't think we had come to a
21 decision whether we should file Thursday or Friday.

22 Q And what were the -- what were the considerations
23 in terms of filing Thursday or Friday? According to this,
24 the preference of you, (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) was Thursday
25 morning.

1 A I think, as I sit here today, what I remember
2 thinking at the time was that, you know, there seemed to have
3 been -- you know, I was concerned about leaks, like, and so I
4 -- I had, I guess, thought should we file it sooner than
5 later because, I mean, the way this building is, you know,
6 things can get leaked, and so, you know, that was sort of my
7 thought, but I -- I did not have a strong opinion. That was
8 sort of one thing I just thought of, and then I learned that
9 we were filing it Friday.

10 I don't remember how exactly or when I learned
11 that, and I just kind of thought maybe, you know, it was just
12 like "let's get this right. Let's not rush. It's an
13 important case." But I don't remember what -- I don't
14 remember having any discussions with anyone as to why it
15 would be filed on Thursday versus Friday. I know I was not
16 present for any discussions about that.

17 Q Do you know who made the decision to file it on
18 Friday rather than Thursday? Because it says in this e-mail
19 that "the staff's preference is still Thursday morning, but
20 will let you know if we are instructed otherwise."

21 A Whose decision it was? Is that -- is that what you
22 just said?

23 Q Right. It looks like potentially you were
24 "instructed otherwise," or something else happened, because
25 it wasn't filed on Thursday.

1 A Yeah. I don't know. I -- I was never a part of
2 any discussion or heard any -- I mean, you mentioned an e-
3 mail, where I did hear something like that, but I don't
4 remember having any discussion or as to -- any -- being
5 involved where the decision was made "let's file it on
6 Friday."

7 Q Okay. And you said something about not rushing it.
8 I mean, what was involved at that point in terms of the
9 filing?

10 A I mean, I guess just, you know, maybe tweaking the
11 complaint or finalizing the complaint. You know, I think
12 that this was an important case and -- and if we wanted to
13 take, you know, more time just to make sure we, you know, get
14 it right, then -- and that's what I just assumed was the
15 case, and I -- that's, (b)(6),(b)(7)(C) assuming this. I -- I
16 don't know.

17 Q Okay. Do you remember any discussions about the
18 fact that normal practice for the SEC is not to file cases on
19 Friday because the press value is less because the -- over
20 the weekend, there's less opportunity for press?

21 A You know, that might have come up in that brief
22 meeting that we had outside of the Commission meeting. I
23 think I mentioned when -- after we got approved and we were
24 like, you know, we're getting like -- you know, people are
25 saying good case, congratulations, that kind of thing. I

1 think maybe at some point that was mentioned, but --

2 Q And who was in this meeting?

3 A I mean, I honestly -- it wasn't -- it was just
4 people standing around, and some of the people -- I mean, so
5 I just remember it was probably us, you know, the people --
6 it was, you know, Ken Lynch, (b)(6),(b)(7)(C) but --

7 Q And you don't remember who might have raised that
8 issue about the press?

9 A I honestly don't, but I think that may have been
10 raised at that little informal "whoa, we just got this case
11 authorized and we've been working on this for almost two
12 years" kind of moment. So I was a little -- you know, it was
13 kind of crazy, hectic little period, 15 minutes.

14 Q Right. And did you have any involvement in the
15 actual filing of it? I guess it was done in New York.

16 A I did not. From my understanding, it was -- it was
17 like FedEx'd or -- or e-mailed. I'm not even sure. I
18 probably knew at some point, but I don't remember now, to
19 someone in the New York office, to maybe a paralegal or
20 someone, or I -- I actually knew (b)(6),(b)(7)(C) was going to be up
21 there. So maybe it was sent to (b)(6),(b)(7)(C) or maybe he took it
22 with him before he went to New York. I don't remember the
23 logistics, but I know (b)(6),(b)(7)(C) filed the case because I remember
24 there was a question of the signature and he had to -- he had
25 to go back to New York, New York office and get it signed

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

1 to file its case, do you know?

2 A To my knowledge, they weren't.

3 Q Okay. Do you know if general practice and the
4 policies of the agencies actually require or suggest that an
5 entity be informed prior to filing a case?

6 A I have no knowledge of what the Commission's
7 policies are in that regard.

8 Q Okay. Have you been involved in other situations
9 where the SEC has given advance notice to a publicly traded
10 company that the SEC plans to file an action against?

11 A Yes.

12 Q Okay.

13 A Yes, and I do remember one thing about the meeting
14 outside that I think may have been raised about -- about
15 that, about noting about whether there was any -- whether,
16 you know, we were going to talk to -- tell Goldman about it,
17 but I don't know how it was reserved -- resolved.

18 Q Okay. Do you know if there was any reason given
19 not to tell Goldman about it?

20 A No.

21 Q Okay. In the other cases that you've worked on
22 prior to Goldman, did you ever have a situation where you
23 were involved in a case against a publicly traded company
24 where advance notice was not given?

25 A I don't think so. No, I don't remember a case that

1 I worked on where we didn't. Wells.

2 Q Where we didn't give them notice?

3 A Yes.

4 Q Okay. Giving notice is different than Wells?

5 A Yes, I realize that. Yeah.

6 Q Okay. What about the question of whether the SEC
7 informed the New York Stock Exchange that it intended to file
8 a complaint against Goldman prior to the filing of the
9 complaint? Do you know if that was done?

10 A No.

11 Q Do you know if that's common practice within the
12 SEC?

13 A No, I don't know.

14 Q Okay. Do you know whether it's common practice
15 within the SEC to bring a case like that during the New York
16 Stock Exchange trading hours?

17 A I've never -- I don't recall ever considering that
18 in any decision to file a case.

19 Q Okay. Do you remember anything in discussions
20 about the Goldman case about whether the case should be filed
21 during the trading hours because of the effect on the stock
22 potentially?

23 A No, I was not privy to any discussions about that.

24 Q Okay. Do you have an understanding about the third
25 Friday of each month and that it has significance for the

1 expiration of options?

2 A Generally, yes.

3 Q Okay. Did you ever have an understanding about the
4 SEC's policies and practices about whether to file a case on
5 the third Friday of each month because of that?

6 A No, I've never -- this is never even something I
7 considered or had learned about.

8 Q And did you understand in connection with the
9 Goldman investigation there was any discussion about the fact
10 that it was filed on the third Friday of the month?

11 A No.

12 Q Okay. Anything else that you can recall that you
13 can remember that was discussed that related to the timing of
14 the complaint, filing of the complaint?

15 A No. I mean, I think what I've shared is really
16 what I remember, and to the extent that something else got
17 triggered, I tried to share that, but that's all I remember.

18 Q Okay. Why don't we take -- can we take a break?
19 Just go off the record for two minutes and then we'll see if
20 there's anything else we have.

21 A Okay.

22 Q Okay.

23 (A brief recess was taken.)

24 BY MR. KOTZ:

25 Q Just a couple of things I did just want to clarify.

1 A Okay.

2 (b)(6),(b)(7)(C): And there was a couple things

3 (b)(6),(b)(7)(C),(b)(7)(D) wanted to clarify.

4 BY MR. KOTZ:

5 Q Did you want to do that now?

6 A Sure. I think you had asked me something along the
7 lines of my knowledge of -- of instances where we did not
8 give a proposed defendant notice in advance, and I think it
9 may have been -- I just want to make sure the record wasn't
10 muddled, because I also may have mentioned Wells in that --
11 my response, and I just want to make it clear that I was
12 talking -- we were talking about notifying a proposed
13 defendant after they've been Wellsed, that we received
14 recommendations by the Commission to sue them, that I had not
15 generally -- most of -- in my experience, we did give advance
16 notice that we had gotten the recommendation to -- to sue
17 them.

18 Q Okay. Thank you.

19 A And one other thing. I did remember that meeting
20 outside the office -- outside the Commission meeting where we
21 were talking about the case, there was a discussion about us
22 notifying, potentially notifying Goldman and then -- then I
23 remember it being -- my -- someone saying, "Well, we don't
24 have to, it's not like required."

25 Q Okay.

1 A That was -- but I don't remember who said it. I
2 just kind of remember that there was an exchange about that.

3 BY (b)(6),(b)(7)(C) :

4 Q Not to try to overbeat this to death, but I think,
5 and correct me if I'm wrong, what you were just talking about
6 as far as giving notice to the defendants is giving notice
7 that the Commission had approved the staff's
8 recommendations --

9 A Yes.

10 Q -- and authorized you to file.

11 A Yes.

12 Q Not recommended that you file?

13 A Yes, exactly. They authorized us, yes.

14 BY MR. KOTZ:

15 Q All right. Let me ask you. You mentioned before
16 that you did some research about service, and so what was the
17 -- what happened with that, exactly? Do you remember?

18 A I think that what I did was we were trying to
19 figure out -- I mean, because it's, you know, Goldman Sachs,
20 and there's so many affiliates, and we're trying to figure
21 out, okay, technically, who would we serve, and so I just
22 remember like kind of going on the New York like Secretary of
23 State or the -- any entity that deals with corporations, to
24 see what was like the entity that was incorporated in New
25 York, because I think there was a question whether the entity

1 that we needed to serve, whether they were a New York
2 corporation or a Delaware corporation. So I went on the
3 Delaware, I think, Secretary of State website and sort of
4 tried to figure out which entity we would be serving.

5 Q Okay.

6 A Because I think at the time Goldman's counsel had
7 maybe returned our call about to sort of them voluntarily
8 accepting, you know, service so we wouldn't have to sort of
9 do their, you know, actual place of business or whatever,
10 whatever the Rules of civil procedure require, that they
11 would actually waive that and accept service.

12 Q And so when did that occur, that Goldman called?

13 A I mean, I -- I mean, it was -- I would imagine it
14 was the week following -- I'm guessing it was the week after
15 we filed the -- the complaint, because we have some -- I
16 guess some time period before we had to serve it.

17 Q I see. So it was after the filing of the
18 complaint?

19 A Yes.

20 Q Okay.

21 A Yeah. That's -- that's what I remember. Again, I
22 can't -- that's my best recollection.

23 Q Okay. Sure. One other question. In the context
24 of the conduct of the investigation that you worked on, was
25 there any discussion about settlement?

1 A No. You mean between the staff and Goldman?

2 Q Or internally among the SEC staffers about
3 approaching Goldman about settlement or discussing the
4 possibility of settlement.

5 A I don't remember that. I mean, I -- my -- I mean,
6 what I would say to that is, you know, we -- we Wellsed them,
7 and so the ball's in their kind of court. I mean, they know
8 what our intentions are and so, you know, it's not in my
9 experience that we would raise settlement. Like if they want
10 to settle, they usually raise it with us.

11 Q And so did Goldman or anyone else raise settlement
12 with the SEC, that you're aware of?

13 A That I'm aware of, no, and I know that we Wellsed
14 them. They submitted a Wells submission. Then they
15 submitted a secondary Wells submission and, as far as I know,
16 there was no -- there was -- there was no discussion of them
17 wanting to settle.

18 BY (b)(6),(b)(7)(C) :

19 Q Is it ever in the staff of the Commission's
20 interest for parties that they're considering suing to
21 settle?

22 A Is it in the -- (b)(6),(b)(7)(C)

23 Q I'm sorry. The Commission staff or the
24 Commission's interest as far as either saving resources of
25 the trial team or anything else.

1 A I mean, I don't really -- I mean, I don't know how
2 I would answer that question. I mean, I don't sort of think
3 of it in that sort of big picture. I think of our case and
4 whether they want -- we told them what our case is. Do they
5 want to fight it? If they do, we litigate, and -- and in
6 terms of -- you know, I've never -- I never have sort of
7 considered that, because I think it's -- I've always thought
8 if they're interested in settling, they would tell us, and I
9 wouldn't raise, "Well, hey, guys, we're recommending, but,
10 you know, if you want to settle."

11 I mean, I think that's sort of not for us to -- to
12 raise that in the context of our case may suggest that we're
13 not confident in our case or -- so it's not something I would
14 raise and I would think that that would -- they would raise
15 that.

16 Q And I think you -- you were testifying earlier
17 that, at least in other cases that you've done, the staff has
18 given notice to the defendant that the Commission approved
19 the recommendation to file an action, is that right?

20 A Yeah. But I should also say that the cases that I
21 have worked on, I have not, to my recollection -- and I've
22 been here a long time -- worked on a case that didn't
23 ultimately settle. So -- so oftentimes the process was they
24 made a settlement, you know, overture and we're saying, okay,
25 we're going to go to the Commission, and so we would let them

1 know that it settled. Okay? We can file our settlement
2 papers now because we've agreed that you're going to settle.
3 That's -- and that is sort of the context that I'm dealing
4 with.

5 I haven't really -- as I think about it today, I
6 don't think I've had a lot of cases where we -- I don't think
7 I've had a case that I've worked on, like investigated it,
8 and then filed, you know, worked on the litigation, where we
9 sued them and it went to court and it was -- it was like
10 fighting. My cases tend to settle. So you would sort of
11 give that notice because there are settlement papers. You
12 know, FYI, your public, you know, may want to know we're
13 about to file a case tomorrow, but they were in the
14 settlement context. So.

15 MR. KOTZ: Okay. We don't have any further
16 questions. The one thing I would ask, and this is actually
17 quite important, in order to preserve the integrity of the
18 investigation, I would ask that you not discuss your
19 testimony with anyone. Obviously, you can discuss it with
20 your representatives, but other -- not discuss the content of
21 your testimony with anyone else.

22 THE WITNESS: Okay.

23 MR. KOTZ: Okay? And then we're off the record..

24 THE WITNESS: Okay.

25 MR. KOTZ: All right. Thank you very much.

1 THE WITNESS: Thank you.

2 (Whereupon, at 10:46 a.m., the examination was
3 concluded.)

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PROOFREADER'S CERTIFICATE

In the Matter of: OIG-534
Witness: Number 14
File Number: OIG-534
Date: Wednesday, July 14, 2010
Location: Washington, D.C.

This is to certify that I, (b)(6),(b)(7)(C) (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

(b)(6),(b)(7)(C)7/20/11

(Proofreader's Name)

(Date)

REPORTER'S CERTIFICATE

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I, (b)(6),(b)(7)(C), reporter, hereby certify that the foregoing transcript of 42 pages is a complete, true and accurate transcript of the testimony indicated, held on July 14, 2010, at 9:13 a.m. in the matter of: OIG-534.

I further certify that this proceeding was recorded by me, and that the foregoing transcript has been prepared under my direction.

Date:

7/20/10

(b)(6),(b)(7)(C)

Official Reporter:

Diversified Reporting Services, Inc.

Chapter Break

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:

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5 (b)(6),(b)(7)(C)

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10

11 On behalf of the Witness:

12 (b)(6),(b)(7)(C)

13 National Treasury Employees Union

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C O N T E N T S

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

1	EXHIBITS:	DESCRIPTION	IDENTIFIED
2	10	February 5, 2010, E-mail	
3		(b)(6),(b)(7)(C)	55
4	11	February 25, 2010, E-mail	
5		(b)(6),(b)(7)(C), Lench and (b)(6),(b)(7)(C)	55
6	12	February 25, 2010, E-mail	
7		(b)(6),(b)(7)(C)	57
8	13	March 4, 2010, E-mail	
9		(b)(6),(b)(7)(C)	59
10	14	April 13, 2010, E-mail	
11		(b)(6),(b)(7)(C)	63
12	15	April 13, 2010, E-mail	
13		(b)(6),(b)(7)(C)	66
14	16	April 15, 2010, E-mail	
15		(b)(6),(b)(7)(C)	69
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1 PROCEEDINGS

2 MR. KOTZ: We are on the record at 9:38 a.m., on
3 July 15, 2010, at the United States Securities and Exchange
4 Commission.

5 I'm going to swear you in.

6 Would you raise your right hand?

7 Whereupon,

8

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

11 EXAMINATION

12 BY MR. KOTZ:

13 Q Would you state and spell your full name for the
14 record?

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17 MR. KOTZ: my name is David Kotz. I'm
18 the Inspector General of the United States Securities and
19 Exchange Commission. I have with me my colleague from the
20 Office of Inspector General, and I see you have
21 with you your representative.

22 Yes. My name is I am
23 national counsel with the National Treasury Employees Union.
24 I'm serving here today as union representative.
25 Just to clarify, my role as set forth in the Weingarten case,

1 I like to do this just so it's clear that whether I'm here as
2 a potted plant or not, my role is to clarify any questions
3 that need clarification, to help (b)(6),(b)(7)(C) verify and
4 answers that need clarification, and that should do it.

5 BY MR. KOTZ:

6 Q This is an investigation by the Office of Inspector
7 General, Case Number OIG-534. I'm going to ask you certain
8 questions and you'll be providing answers under oath. The
9 court reporter will record and later transcribe everything
10 that is said. Please, therefore, provide verbal answers to
11 the questions as a nod of the head or other nonverbal
12 response won't be picked up by the court reporter.

13 Also so the record will be clear, please let me
14 finish my question before you provide your response. In
15 addition, it is important that you understand the questions
16 and give accurate answers. If there's anything you don't
17 understand or anything you do not know or are not sure about,
18 please let me know. Otherwise, I will assume that you've
19 heard and understood the question.

20 Do you understand those instructions?

21 A Yes.

22 Q Let me give you the perjury warning. As you can
23 see, your responses and statements given today are provided
24 after you've sworn an oath and will be taken down verbatim by
25 the court reporter. This is an official U.S. Government law

1 enforcement investigation. The claims asserted in this case
2 are serious ones. It is very important that you tell me
3 everything you know about the matter at hand and are
4 completely forthcoming and truthful with me. I am formally
5 advising you that your testimony today is as to the laws of
6 perjury. Providing false or misleading testimony under oath
7 is a serious offense. If the evidence shows that the
8 testimony you've given is false we may refer it as
9 appropriate.

10 Do you understand those instructions?

11 A Yes.

12 Q Let's start with a little bit of background.

13 [REDACTED]: May I ask one thing here to make
14 sure that we're all on the same page? My understanding is
15 that there are no formal -- there are no other formal
16 warnings that are going to be given because [REDACTED] is
17 neither a subject nor target of the investigation so he would
18 therefore fit the status of a third-party witness. Is that
19 right?

20 MR. KOTZ: There is a provision in the
21 collective-bargaining agreement that requires a notice of
22 rights in a particular case and where an individual is a
23 subject that could lead to criminal prosecution. That's the
24 other criteria there. [REDACTED] does not fit into that
25 category and, therefore, he hasn't been given a notice of

1 rights.

2 [REDACTED]: Therefore, he's neither a target nor
3 a subject.

4 MR. KOTZ: I'm not quite sure what the difference
5 between a target and a subject is.

6 [REDACTED]: That's what the collective
7 bargaining agreement says. I don't know either.

8 MR. KOTZ: I view the terms as synonymous, "target"
9 and "subject."

10 [REDACTED]: I think they're interchangeable.

11 MR. KOTZ: I don't know Enforcement looks at it,
12 but I don't think Enforcement has targets or subjects.

13 [REDACTED]: Just so it's clear. I mean, there
14 are situations during one of these investigatory interviews
15 where that can change on the turn of -- whatever I'm trying
16 to say. I just want to be clear that that's not the case
17 right now.

18 MR. KOTZ: We have no evidence or reason to believe
19 at the moment that [REDACTED] is the subject or target of an
20 investigation that could lead to criminal prosecution.

21 [REDACTED]: Fair enough.

22 BY MR. KOTZ:

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

25 A [REDACTED]

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(b)(6),(b)(7)(C)

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(b)(6),(b)(7)(C)

10

Q

(b)(6),(b)(7)(C)

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(b)(6),(b)(7)(C)

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A

(b)(6),(b)(7)(C)

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(b)(6),(b)(7)(C)

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What job did you take

(b)(6),(b)(7)(C)

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(b)(6),(b)(7)(C)

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I joined the SEC.

1 Q That was in about 2007?

2 A Actually, the -- yeah, there was about a month gap.
3 I think my start at the SEC, don't quote me on this, but was
4 very early February 2008, and I've been here ever since.

5 Q The position you started in and the position you're
6 in how is [REDACTED]

7 A Right.

8 Q What are your duties as [REDACTED] for the
9 SEC?

10 A I'm in the Enforcement Division and generally --
11 I'm sure I'm not giving the full list, but generally my
12 duties are to investigate potential violations of securities
13 laws and then if there are to recommend to my client that
14 charges are brought and then participate in the litigation.
15 I'm sure there's -- you know, there's other miscellaneous
16 stuff, but that's the -- that's about it.

17 Q Who is your current supervisor?

18 A [REDACTED]

19 Q Has he been your supervisor since February 2008?

20 A No, my -- when I was hired my boss was a branch
21 chief named [REDACTED] and then [REDACTED] was his boss.
22 At some point in -- I can't give you an exact date, but at
23 some point in late 2009 or early 2010 the Enforcement
24 Division was restructured and so as a result of that
25 currently [REDACTED] is my direct boss.

1 Q Did there come a time where you became aware of or
2 involved in an investigation by the SEC into the sale of
3 collateralized debt obligations by Goldman Sachs?

4 A Yes.

5 Q When was that?

6 A I'll answer your question. Before I do I just
7 wanted to say at this point as I discuss this investigation
8 I'm going to be talking about things that arguably are
9 attorney work product or covered by the attorney-client
10 privilege. That privilege or the protections under that
11 doctrine are held by my client and not me and it's not my
12 decision to waive that. That -- and I'm saying that the
13 client has instructed me to waive those protections. I've
14 been advised by people, including [REDACTED] who was
15 helpful that by talking to you I'm not waiving those
16 protections, but I just wanted to be clear that that's why
17 I'm talking about this.

18 Now, to answer your question, I don't know the
19 exact date, but the middle of 2008 was when essentially we
20 began to investigate Goldman Sachs' CDO practices.

21 Q What was your role in the Goldman Sachs
22 investigation?

23 A I was one of -- essentially [REDACTED]
24 [REDACTED] who worked the case so --

25 Q Was there a hierarchy between [REDACTED] Was

1 there a [REDACTED] or you worked side by side?

2 A Division of labor, but there was no -- there was on
3 formal hierarchy. There was a division of labor that changed
4 over time. The other [REDACTED] did
5 different things over time. We would fill in when the other
6 was busy and then [REDACTED] and
7 so I would then take a more active role filling in for a lot
8 [REDACTED]

9 Q Was this one of the first cases you worked on
10 because you had just started at the beginning of 2008?

11 A Yes.

12 Q This investigation was referred to as the Abacus
13 Investigation. Is that right?

14 A Yes.

15 Q Did you understand that this Abacus Investigation
16 was considered to be a national priority investigation for
17 the SEC?

18 A Yes, not -- not at first and I'm not -- honestly
19 I'm not entirely sure what that means, but I know that
20 there's a category of national priority investigations. I
21 think over time I had heard that it became one.

22 Q Did that have any impact on what you were doing?

23 A No.

24 Q If you could generally summarize the investigative
25 efforts that were conducted from the middle of 2008 until

1 December 2009, when it was first placed on the calendar just
2 in a general sense.

3 A Okay. Sure. For lack of a better word, we found
4 the case. We were looking not at Goldman Sachs but generally
5 in the CDO market and had some e-mails from other witnesses
6 and other participants in this market. We came upon some
7 evidence that -- we had come upon some troubling fact
8 patterns that took place in the CDO market starting in late
9 2006 and early 2007 and had developed for lack of a better
10 word a working theory about some potential fraud taking place
11 in that market that involved, not to bore you, but synthetic
12 CDOs and the possibility of manipulation or, you know,
13 interference in the collateral selection process for that.

14 We came upon some evidence that -- that was
15 particular to the CDO that Goldman Sachs in essence had set
16 up a CDO at the -- at the request of a kind of hedge fund,
17 Paulson, who had short buys in this market. Anyway, so we
18 found evidence that this looked strange or that it could fit
19 into our fact pattern of fraud. It became one of the CDOs
20 that we then decided to look at and to prioritize. Generally
21 then, you know, what the general effort was from until that
22 time, until I think you said the end of 2009, we -- you know,
23 we did what we normally do in investigations. We gathered
24 e-mails and other evidence from the relevant parties. There
25 were three major parties that we were trying to get evidence

1 from and then other sort of peripheral witnesses including
2 investors. We took testimony of a number of people in the
3 transaction. We also did some phone interviews for
4 less-critical witnesses who we just wanted to know what they
5 had to -- to know.

6 As we built the case we -- you know, we essentially
7 began testing various fact patterns making sure that our
8 theory of the case was accurate. And I'm -- we -- other work
9 was going on at that time including other work in the CDO
10 space and at some point in the middle of 2009 we placed a
11 Wells call to Goldman Sachs, which might be a logical place
12 to sort of stop the chronology.

13 Q While you were working on the Abacus Investigation,
14 were you aware of any interest by the Chairman's Office in
15 that particular investigation? And this would be prior to
16 when it was first put on the calendar.

17 (b)(6),(b)(7)(C): If I can maybe clarify the question
18 there as to whether he knows when it was first placed on the
19 calendar and when that was?

20 BY MR. KOTZ:

21 Q My only point is obviously the Chairman's Office
22 would be interested if it was placed on the calendar.

23 A Right.

24 Q I'm talking about in the investigative stage did
25 you become aware that the chairman's office was aware of it?

1 A Not that I can remember. They -- they could have
2 and if it would have, again, I can't -- I don't know.

3 (b)(6),(b)(7)(C) : Thank you.

4 BY MR. KOTZ:

5 Q You don't remember any occasion when the Chairman's
6 Office became interested that you knew about in that time
7 period?

8 A I can't -- I can't remember that I don't think.

9 Q Were there any disagreements among the Enforcement
10 staff as to particular aspects of the investigation, whose
11 testimony should be taken, who should be Wellsted? We're
12 talking again in the stage from the middle of 2008 until it
13 was put on the calendar the first time in December 2009.

14 A Yes, I mean, there certainly were. There's --
15 there were general -- I mean, there were not dispositive
16 disagreements, but there's always sort of I have a view about
17 this witness, others have a view of that witness, their
18 credibility, you know, the -- whether they're an important
19 witness or whether we can wait to take them. I'm not -- I'm
20 not sure that's -- that I really member specifics at this
21 point and I'm not sure how relevant those were.

22 More broadly this was -- because this was a
23 relatively unique fact pattern or it was -- it involved a lot
24 of different moving parts, there were -- there was certainly
25 a robust dialogue about charging decisions as we were

1 thinking -- as we became convinced that at a minimum the CDOs
2 -- that were fraudulent elements to the issuance of the CDO.
3 There was robust debate about charging who and under what
4 theories.

5 Q Were there particular individuals who were not
6 charged who some in the group thought should be either
7 investigated and/or charged?

8 A Yes.

9 Q What were those?

10 A The major disputes I remember centered around
11 whether -- we charged Goldman Sachs and Fabrice Tourre. We
12 did not charge [REDACTED] at Goldman Sachs who had
13 some participation in the transaction. Those were [REDACTED]
14 [REDACTED] and an individual named [REDACTED] In addition to
15 that there was I thought robust and healthy debate about
16 whether to charge parties external to Goldman Sachs including
17 Paulson & Company.

18 MR. KOTZ: I think we'll get into that a little bit
19 more later. Let me show you a document. I'm going to mark
20 it as Exhibit 1.

21 (Exhibit No. 1 was marked for
22 identification.)

23 BY MR. KOTZ:

24 Q This is an e-mail from you to [REDACTED]

25 11/24/09 at 3:41 p.m.

1 A Yeah, I've reviewed this.

2 Q What was this referring to when you mentioned some
3 of the recent press about Paulson's trade?

4 A That's a good question. I can't entirely remember.
5 There was -- starting in late 2009, we observed that the
6 press, and -- well, let me state what I do know and I know in
7 the context of this. I know on December 24, Christmas Eve,
8 the New York Times ran a well-informed -- somewhat inaccurate
9 but well-informed about this market and that got a lot of
10 media attention. This is prior to that so I'm not -- it's
11 obviously not the New York Times article but there -- there
12 was -- there was media attention. There was certainly
13 attention to Paulson at that point. Paulson is about -- at
14 this time Paulson is about to get picked up on --
15 particularly everyone knew he'd made a great trade but I --
16 if I remember, the media might have been picking up that he
17 made a "great trade" in connection with some CDOs that were
18 underwritten. I can't remember the exact article though. I
19 do vaguely remember the situation.

20 Q Were there any concerns within the group about
21 potential leaks to the press with respect to the Abacus
22 Investigation?

23 A We -- there weren't concerns that anyone was
24 leaking to the press. There was concern -- I mean, look,
25 we're not supposed to leak to the press our investigations.

1 We don't talk to the media. And I can tell you obviously
2 from the context of this I remember generally -- I don't know
3 if it's in connection with this article, but generally at the
4 time we weren't thrilled that there was beginning to be media
5 attention to these kinds of trades. We felt that our
6 investigation could proceed much more efficiently if there
7 weren't newspaper articles running about these issues. In
8 other words, that can change the way witnesses talk to you,
9 that can change the way you get information, you know, from
10 the defense counsel. So I remember concern about, rats, the
11 media is getting wind of this sort of issue. I remember that
12 particularly in connection with the December 24 article I
13 mentioned. But in terms of leaks, I don't remember anyone
14 being worried that there leaks coming from the Enforcement
15 staff.

16 Q Do you remember if there was anything in any of
17 these articles that seemed to come directly from what you
18 were working on?

19 A No. I would have noticed that, you know. We -- I
20 -- you certainly read the article with an eye towards where
21 they're getting this information not least because if they're
22 getting good information from an outside witness, we'd like
23 to figure who that is to talk to them. Right? Like if
24 there's someone from Goldman leaking to the press they -- you
25 should know that Paulson was doing something else or

1 something, we'd love to know that because that's a witness we
2 want to talk to. So you certainly read it with an eye
3 towards who's giving this information.

4 I don't -- I remember reading with that in mind and
5 I certainly don't recall ever thinking this is clearly coming
6 from the Enforcement staff. I think I would have seen that,
7 too.

8 Q Were you able to figure out who the sources were
9 for these articles such that you could maybe to them as well?

10 A No. We -- I mean, there's a certain -- as you
11 might know there is certainly sensitively towards reaching
12 out to the press. I mean we would love to call the New York
13 Times reporter and say who are your sources. Can't do that.
14 So you try to intuit it. I can tell you that this doesn't
15 relate to Goldman, but certain other investment banks,
16 employees were clearly talking to the press and we tried to
17 guess or figure it out. But we never -- in other words, I --
18 I don't know to this day who's talking to the press if anyone
19 is.

20 Q Do you recall that in December 2009 the Abacus case
21 was first put on the closed Commission calendar?

22 A Vaguely. And to explain that, we went up and down
23 the calendar a couple of times. There were meetings. A lot
24 of this does blur in my head so forgive me if I'm not --

25 Q Let me show you a few documents.

1 A That would be great.

2 Q Maybe that will help clarify things.

3 MR. KOTZ: I'm going to mark this document as
4 Exhibit 2, an e-mail from [REDACTED] to Mark Adler and
5 [REDACTED] dated 12/8/2009 at 11:46 a.m.

6 (Exhibit No. 2 was marked for
7 identification.)

8 BY MR. KOTZ:

9 Q If you notice below, there's an e-mail from [REDACTED]
10 [REDACTED] to [REDACTED], Monday, December 7, 2009, that
11 references that the matter was put on the calendar for
12 12/17/09. Just take your time.

13 A Sure.

14 Q Then there's a reference on 12/8 saying, At
15 Cheryl's request we pulled this recommendation from today's
16 2B. Then let me show you another document that will help as
17 well.

18 MR. KOTZ: This we're going to mark as Exhibit 3.
19 (Exhibit No. 3 was marked for
20 identification.)

21 BY MR. KOTZ:

22 Q This is an e-mail from Steve Cohen to [REDACTED]
23 1/4/10 at 7:16 p.m. If you look at this one, the last page,
24 there's an e-mail, [REDACTED] Tuesday, December 8, 2009,
25 that says, The above-captioned matter has been withdrawn from

1 the December 17 closed meeting agenda by the staff in
2 consultation with the Trial Unit. It was determined that
3 staff will take testimony from [REDACTED]
4 [REDACTED] prior to making a recommendation to
5 the Commission. Then if you can see on Exhibit 2 it also
6 references the fact that, At Cheryl's request we pulled this
7 recommendation for today's 2B and scheduled [REDACTED] testimony
8 for January 7.

9 Does this refresh your recollection that the first
10 time the Abacus matter was put on the calendar was December
11 17 and then it was withdrawn in order to take [REDACTED]
12 testimony?

13 A Yes. I mean, I -- I can tell you I -- I don't have
14 a clear recollection of why when it was -- I remember it
15 being withdrawn because obviously [REDACTED] is kind of
16 involved in bringing it up to the -- you know, getting
17 documents ready to go to the Commission. I remember it being
18 withdrawn and I certainly remember at this time a lot of
19 debate about charging [REDACTED] And so I do remember withdrawing
20 things from the calendar because we were basically instructed
21 don't bring something to the Commission until you have more
22 clarity on whether to charge [REDACTED]

23 Q Who instructed you in that matter?

24 A The decision on whether to put something up or not
25 was above my pay scale. Right? And so I was never

1 instructed either way to take things down and I think these
2 e-mails reflect [REDACTED] was -- was taking things off the
3 calendar, so I wasn't really instructed to take things off
4 the calendar.

5 Q Do you remember the debate or disagreement between
6 [REDACTED] and others about [REDACTED]

7 A Yes.

8 Q Do you recall that [REDACTED] opinion was in
9 favor of taking [REDACTED] testimony and eventually charging
10 [REDACTED]

11 A Yes.

12 Q Do you recall that at a certain point of time
13 [REDACTED] actually withdrew or tried to withdraw as
14 litigation counsel for the case over this issue?

15 A I remember him withdrawing or trying to withdraw.
16 I don't know if he did or not. It was -- it was a -- I
17 remember him withdrawing at some point. I remember him being
18 upset about [REDACTED] I don't want to be difficult, but I don't
19 -- I'm not sure I was ever told why he was withdrawing.

20 Q What was conveyed to us, and I want to make sure if
21 this is consistent with your recollection, was that [REDACTED]
22 [REDACTED] at that point in time felt that at a minimum [REDACTED]
23 testimony had to be taken, that he felt it was not
24 appropriate to put the case on the calendar without at least
25 taking [REDACTED] testimony and that he withdrew or threatened to

1 withdraw or tried to withdraw from the case and then the
2 decision was made as you can see in these e-mails to withdraw
3 it from the calendar and take [REDACTED] testimony.

4 A I don't remember anything inconsistent with that.
5 I mean, I certainly don't remember why he withdrew. I do
6 remember a lot of discussion about [REDACTED] I mean, and that we
7 ultimately took his testimony as a result of those concerns.

8 MR. KOTZ: Let me show you another document which
9 we're going to mark as Exhibit 4. This is an e-mail exchange
10 between you and [REDACTED] Cheryl Scarborough and [REDACTED]
11 [REDACTED] dated 12/7/09 at 12:13 p.m.

12 (Exhibit No. 4 was marked for
13 identification.)

14 BY MR. KOTZ:

15 Q It was conveyed to us by several people and it
16 seems like the documentation demonstrates that it was put on
17 the calendar, then it was pulled off to take [REDACTED]
18 testimony. But then from this e-mail, Monday, December 7, it
19 looks like there was some discussion about taking [REDACTED]
20 testimony before but I guess there was some difficulty in
21 scheduling. What do you remember about that?

22 A I certainly remember the difficulty in scheduling,
23 and in fact my memory of this e-mail was in respect to that.
24 The e-mail on the bottom here on Exhibit 4 I recall being
25 asked to put together because we were getting very annoyed

1 with his counsel about the delay in testimony and so I was
2 asked to put together a timeline. This is pretty standard
3 because essentially if the staff attorney can't set up the
4 testimony, often times you'll then get more senior people to
5 call counsel and say, no, seriously, this testimony has to
6 take place. That's the context with this.

7 More generally I don't -- what I remember is we --
8 [REDACTED] felt strongly that [REDACTED] should -- we should take
9 [REDACTED] testimony and frankly that he should be charged and
10 the testimony should be used to confirm that. We felt -- I
11 remember a debate about why -- other people had the view and
12 I believe had this view, but I'm not a decision marker,
13 right, that we should -- we can file a charge against Goldman
14 and Tourre and, you know, at the same time set up -- you
15 know, take testimony while the process is going on and if we
16 determine that [REDACTED] is chargeable which the evidence to date
17 hasn't indicated, but if we determine that based on
18 testimony, then we could amend the complaint. So the real
19 debate I remember was why don't we amend complaints. I
20 remember that because I remember there being some commentary
21 about why is the Trial Unit so afraid to amend the complaint
22 as new evidence comes in. So I don't know if that helps, but
23 I think that what you might you're seeing in the documents.

24 Q So there were efforts made in November to try to
25 take [REDACTED] testimony but there was difficulty in scheduling.

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 (b)(6),(b)(7)(C) 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 (b)(6),(b)(7)(C) testimony and then was
13 withdrawn when it was decided that, no, we need to take
14 (b)(6),(b)(7)(C) testimony first.

15 Q Who made that decision, do you know, to withdraw
16 the case from the calendar and decide to take (b)(6),(b)(7)(C)
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 to take [REDACTED] testimony because there's not enough evidence
2 to charge him so why would we bother? Or was it a debate
3 between when to bring the case vis-à-vis taking [REDACTED]
4 testimony?

5 A I -- I'm trying to remember what different people
6 thought. I mean, there was -- as I've mentioned, there was
7 robust debate around these issues. I recall that [REDACTED]
8 [REDACTED] and I both felt that [REDACTED] testimony should be
9 taken, that, you know, while the documentary evidence and
10 everything else suggest that he wasn't a culpable defendant,
11 that nevertheless, you know, you take people's testimony. I
12 recall that we -- at various points we considered doing it
13 prior to what you're seeing in late 2009. And frankly the
14 reason that we didn't if I remember correctly was just
15 investigative time. I mean, this case involves a one CDO and
16 yet there were probably ultimately witnesses we talked to and
17 so there's limits to how many people you can speak with. I
18 mean, we could -- we could speak above [REDACTED] or aside from
19 [REDACTED] I mean, just on Goldman there could be 20 people to
20 talk to. So that's why we didn't talk to [REDACTED] originally.

21 I recall me and [REDACTED] feeling like, yes, we
22 should talk to him. Of course we should do any number of
23 other things, you know, but you have to prioritize. I don't
24 recall anyone believing that [REDACTED] testimony was
25 unnecessary, but I do recall -- again, what I remember was

1 some debate about could we file charges or bring something to
2 the Commission to consider filing charges without having
3 taken his testimony. And the debate -- I don't remember who
4 said what and who felt why. Obviously I remember (b)(6),(b)(7)(C)
5 feeling very strongly that (b)(6),(b)(7)(C) testimony needed to be
6 taken yesterday and he should be Wellsed immediately
7 thereafter. I disagreed with him certainly on the Wellsing.

8 But no one felt that his testimony was unnecessary.
9 I certainly remember some people pointing out that, you know,
10 there were a number of peripheral witnesses whose testimony
11 could be taken. Why is he one that has to be done and why
12 not others? I wish I could be more helpful.

13 Q You mentioned the reason that (b)(6),(b)(7)(C) testimony
14 hadn't been taken related to the fact of investigative time,
15 there were a lot of witnesses that were taken, there was a
16 lot work that was done. My question to you is was there some
17 kind of urgency to bring the case to the Commission's
18 attention perhaps because it was on this national-priority
19 list such that at that point the case had been investigated
20 for some time and, yes, I guess you could go on and take
21 everybody's testimony, but was there some urgency to bring
22 this case forward already?

23 A It's funny, I -- certainly I remember at the staff
24 level there was. And again it may help to understand my
25 perspective on it. From my -- from my perspective -- I think

1 [REDACTED] but from
2 my perspective and then from [REDACTED] perspective, we
3 kind of -- we thought we had a great case and we -- you know,
4 a large part of the investigative work was -- was complete.
5 And so again from my perspective, yes, we could take any
6 number of other people's testimony but it won't change the
7 fundamental charging decision on Goldman Sachs.

8 Q Was that because of the fact that this was thought
9 to be a significant case against a well-known entity? Was
10 that part of the reason that you wanted to get the case
11 forward as quickly as you could?

12 A From the [REDACTED] perspective, no. From my
13 perspective, this was a good case that, you know, had a lot
14 of merit. If there was additional urgency, I mean, I think
15 every staff attorney feels that their case has merit and
16 therefore should be brought if -- if the facts support the
17 charges. If I -- if I personally had more urgency than that
18 it wasn't because of a national-priority issue. I think it
19 was because I -- this is me talking personally, I felt that
20 it was important for -- you know, that fraud -- that fraud
21 had occurred in connection with eventually even the financial
22 crisis and that -- you know, that to the extent that fraud
23 occurred in those matters it was important to bring those
24 cases at some time. But that -- again, that didn't have to
25 do with national priority as much as I liked my case.

1 Q Did you get any sense from any of the folks above
2 you in the chain that this was a particularly important case
3 and as soon as you could get it together it would be good to
4 push it forward and bring it?

5 A I can't recall specific conversations to that
6 point. What I generally recall is it was understood that
7 this was an important case because you're charging -- because
8 of a couple of factors. You're charging Goldman Sachs and
9 your charges relate to the financial crisis in some way. So
10 that was important, but that didn't -- from -- again, I don't
11 -- generally what that meant was in fact there was a lot of
12 caution on this case. In other words, the -- as I'm sure
13 you've seen in the documents, the robust discussion around
14 whether to take [REDACTED] testimony, my impression that was
15 relatively unique and that is because there was the sense
16 that because of the factors I described it was important to
17 get the case right and to -- and to get the facts buttoned
18 down correctly, and that led to a lot of -- again generally
19 my sense is when things went off the calendar it was because
20 of worry that we really need to get this right because of
21 those factors.

22 Q But the perspective of some that you could bring
23 the case in December and then if you wanted to look at [REDACTED]
24 at the same time and amend the case, was the reason to bring
25 the case in December based on the fact that this was an

1 important case and that it would be good for the SEC to get
2 it out there as quickly as they could?

3 A I don't remember that.

4 MR. KOTZ: Let me show you the next document.
5 We're going to mark it as Exhibit 5.

6 (Exhibit No. 5 was marked for
7 identification.)

8 BY (b)(6),(b)(7)(C)

9 Q May I ask one question? Apart from whether or not
10 the case could possibly be amended after it was filed, was
11 there any concern voiced by anybody as to there being any
12 potential problems or hurdles in taking investigative
13 testimony from people after a case was filed?

14 A Yes.

15 Q Who voiced those concerns and what were those
16 concerns?

17 A I can't remember who specific voiced the concerns,
18 but I'm sure everyone had those concerns. Once the case is
19 filed you're in deposition land and there's -- there's just
20 complexities involved there. And once a case is filed,
21 witnesses' impressions change, the amount of coaching -- all
22 witnesses are coached, you know, at this -- in this type of
23 matter. The coaching could change. So, yes, I remember
24 generally thinking that was a concern and that's why I was
25 very comfortable -- I mean personally (b)(6),(b)(7)(C) who is not a

1 decision maker was very comfortable with the decision to pull
2 this matter at the time because [REDACTED] could be an important
3 witness. I -- I agree generally with [REDACTED] that he
4 should be taken and there are certainly -- it certainly would
5 be helpful to take his testimony prior to filing charges, so
6 if that helps.

7 BY MR. KOTZ:

8 Q Let me show you this document. We've marked it as
9 Exhibit 5. It's an e-mail exchange between you, [REDACTED]
10 and [REDACTED] 12/22/09 at 1:40 p.m.

11 A I hate long e-mails.

12 Q I think this may relate to that New York Times
13 article that you referenced. This relates to a New York
14 Times reporter working on a story on CDOs and then John
15 Nester had an e-mail exchange with George Canellas which
16 eventually then got to Cheryl Scarborough and [REDACTED] and
17 then you were copied on it. [REDACTED] says in his e-mail,
18 FYI please be careful. Then [REDACTED] says: Bag Bag Bag
19 -- CAT.

20 A Okay.

21 Q Do you know what that referred to?

22 A No idea.

23 [REDACTED]: Have you reviewed this carefully?

24 THE WITNESS: Yes, I mean, I think I show up at the
25 end of an e-mail chain where they finally figure who the

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. We
13 -- aside from Goldman Sachs we were charged with looking more
14 broadly at this market and had touched a number of market
15 participants in synthetic CDOs. So -- so, yes, I think it
16 came from the right people.

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

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

1 tend to have cooperating witnesses as easily. And remember,
2 in part we're relying on cooperating witnesses here and
3 witnesses who want to talk to us and, you know, media
4 attention is terrible for that. And so that's my
5 interpretation of when [REDACTED] 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 [REDACTED]
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, [REDACTED]
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 Q But it could have been some of the people that the
2 SEC was talking to then talked to the New York Times.

3 A Sure.

4 Q Let me show you this document. This is Exhibit 3,
5 an e-mail exchange dated 1/4/10 at 7:16 p.m. After the
6 e-mail that I showed you previously where it said that the
7 matter was withdrawn to take testimony from [REDACTED]
8 then [REDACTED] said, We will be resending this
9 recommendation up to the Commission on February, January 8.
10 Then there is some back and forth about when it put it up,
11 Rob Khuzami says, I think the 14th is a bit aggressive and
12 probably unnecessary. Let's stick with the 21st. Do you
13 recall that essentially what occurred is the matter was put
14 on the calendar for December 17, it was then taken off the
15 calendar to take [REDACTED] testimony, [REDACTED] testimony was taken
16 and then it was right back on the calendar?

17 A If that -- if that's what happened, I don't
18 remember anything inconsistent with that. I just -- I -- the
19 part I really don't remember is when it was put on the
20 calendar after [REDACTED] testimony.

21 Q Do you remember when [REDACTED] testimony was?

22 A Yes, it was very early January right after New
23 Year's.

24 Q This e-mail exchange, Exhibit 3, seems to indicate
25 that it was put back on the calendar relatively soon after

1 [REDACTED] testimony.

2 A It -- it could have. As I said, I don't remember
3 anything with inconsistent with that. And that's easily
4 confirmable. Right? We can check. But I just -- I don't
5 remember when it was put back on, et cetera.

6 Q Did you sit in on [REDACTED] testimony?

7 A I took his testimony.

8 Q You took his testimony? What do you recall about
9 the testimony?

10 A Well, I -- I remember it was me, [REDACTED] and [REDACTED]
11 [REDACTED] from the SEC side. [REDACTED] may have been there but he
12 was busy on other stuff, and [REDACTED] At the time [REDACTED]
13 and [REDACTED] had what I think I would characterize as
14 healthy disputes, robust disputes about the nature of the
15 case and it came out during the testimony. And, you know,
16 they would ask different things. It was hard for me to
17 control the testimony as the sort of lead. That's one of my
18 personal recollections.

19 I remember [REDACTED] providing essentially what
20 seemed like fair recollections about his role in this
21 transaction and I remember him in particular having limited
22 contact with the AC1 deal that we charged. That was
23 consistent with the documents and that's why I hate to say
24 all along or I knew it, but we had felt going into that
25 testimony that [REDACTED] had limited discussions connected to this

1 transaction, that Tourre was the man on this transaction.
2 His testimony confirmed that and I failed to find documentary
3 evidence to refute what he said.

4 Q This was conveyed to us and I want to get your
5 reaction to it.

6 A All right.

7 Q That (b)(6),(b)(7)(C) was of the opinion that (b)(6),(b)(7)(C)
8 really was involved in this particular matter and had been
9 working on a lot of other things prior to the testimony of
10 (b)(6),(b)(7)(C) which was one of the reasons why (b)(6),(b)(7)(C) didn't feel
11 like there was a strong case against (b)(6),(b)(7)(C) and that in the
12 testimony he asked questions to try to elicit that
13 information such as, Weren't you working on all of the
14 matters? Didn't you have other things to work on? -- in an
15 effort to kind to give some credence to the theory that he
16 had before. Did that occur?

17 A No. What I remember occurring is we -- I mean, the
18 main thing I remember is frankly (b)(6),(b)(7)(C) spent a few hours
19 asking questions designed to support his theories that did
20 not in -- in any event have bearing on the case. Him having
21 done that, by 3:00 p.m. I was given the opportunity to do
22 what I felt we needed to do which was here's the AC1
23 transaction, what role did you have? Here's the marketing
24 book. Did you review this? Did you comment on this? And I
25 recall him clearly, you know, and credibly telling us I

1 didn't really. I didn't. I didn't. [REDACTED] I do remember
2 and there's a transcript so this isn't -- my recollection
3 isn't magic here, but [REDACTED] I do remember [REDACTED] asking
4 questions for why he didn't review this.

5 And, I mean, it certainly was clear that there were
6 other transactions going on. To the extent that [REDACTED] did
7 that or maybe I did that to -- to understand what else [REDACTED]
8 was doing, that's completely relevant because we're testing
9 -- look, if [REDACTED] was doing nothing else all day and tries to
10 tell us that he didn't review the marketing books for AC1,
11 it's not credible. So there's a reason to ask those
12 questions to test his veracity. If we did that, it's in that
13 context.

14 Q So at the end of the day you felt that the
15 testimony was done in a fair and thorough way to elicit
16 information with the possibility of charging [REDACTED]

17 A Absolutely.

18 Q But you walked out of the testimony of [REDACTED] more
19 skeptical of bringing a case against [REDACTED] Is that fair?

20 A It is. I -- I should -- I mean as much as I like
21 to self-aggrandize, it's not me making that decision. And
22 because there had already been discussion about this point, I
23 walked out of the testimony happy because I knew I had the --
24 the evidence that the decision makers needed to discuss the
25 point. In other words, I had the marketing book in front of

1 him, I had his recollections. I knew at that point it wasn't
2 my decision to charge [REDACTED] so my goal was just to make sure
3 that we would keep -- to be honest, that [REDACTED]
4 questions could be done in time to allow me to get the
5 evidence that we needed to discuss the issue.

6 Q Do you remember generally though that [REDACTED]
7 testimony was done and the decision was to go forward, put it
8 on the calendar and put the matter forward without charging
9 [REDACTED] You'd taken the testimony, there were no revelations
10 in the testimony such that [REDACTED] had to be charged and so now
11 you were just going to put it back on the calendar.

12 A Actually, I don't remember it that way. Let me
13 tell you what I do remember. I remember coming back from
14 [REDACTED] testimony having personally thought [REDACTED] is not
15 chargeable, but that wasn't the view of all the team members.
16 In particular, [REDACTED] still felt strongly that [REDACTED] was
17 chargeable much to some -- in effect, my thought personally
18 at the time was were you in the same room when we took that
19 testimony, and I think other -- certainly [REDACTED] shared
20 that view. However, so -- so it wasn't as simple as we came
21 back from [REDACTED] where the testimony took place and we were
22 done with [REDACTED] But to the contrary, I remember robust
23 debate taking place based on the testimony and other evidence
24 about that. In fact, I remember putting together -- having
25 to put together as comprehensive as possible a set of

1 documentary evidence relating to work on [REDACTED] work on the
2 transaction. That all took place after this testimony. I
3 mean, obviously I prepared for the testimony as well I could,
4 but after that I had to do further research into precisely
5 when did he see a draft of the marketing book.

6 Q Do you remember if that occurred after it was put
7 back on the calendar and then withdrawn the second time?

8 A No, because I don't remember the second -- it
9 becoming withdrawn. If I could though I think your question
10 originally was did it happen after we took [REDACTED] testimony
11 and my -- my -- I clearly remember, yes, after [REDACTED]
12 testimony we were not done. In other words, there was still
13 robust debate about whether to charge [REDACTED]

14 Q If you look back at Exhibit 3, the e-mail that [REDACTED]
15 [REDACTED] sends at the bottom of the page where he says, We will
16 be resending this recommendation up to the Commission on
17 Friday, January 8. Enforcement's front office has asked that
18 the matter be calendared for the second or third week in
19 June. Then he says: This is a high-profile Enforcement that
20 recently became time sensitive. Do you know what [REDACTED] was
21 referring to when he said that this case recently became time
22 sensitive?

23 A No. Let -- let me think to see if I remember
24 anything about time sensitivity at that time. No, I don't.
25 I'm sorry. This is one other thought to the extent it helps.