

1 be as big a story as it became. And it could be Goldman saw
2 this press coverage, and it changed their thinking. Maybe
3 before we filed the action they may have been thinking more
4 the way I was thinking: a significant story, but not like
5 the story of, you know, the -- maybe the most covered story
6 ever in the SEC history. So -

7 Q Okay.

8 A I just don't know.

9 Q Okay. Let me ask you this question. Do you know
10 whether you were involved in the decision to file the
11 complaint against Goldman Sachs during trading hours?

12 A Well, I don't -- I wasn't, Because, as I laid out
13 the sequence of events when the timing -

14 Q Right.

15 A -- was sort of set, but I know that I learned
16 afterwards that was an issue. It's not an issue -- like,
17 even if we had filed that Thursday, I think it probably would
18 have been during the trading day. That is our practice. I
19 now am more sensitive to that issue, because I do know some
20 of the discussions afterwards about filing in the middle of
21 the trading day.

22 Q Right. Were there -- was there any consideration
23 that you're aware of prior to the filing of the action to
24 file this case against Goldman not during trading hours?

25 A I have to say I don't think that was an issue on

1 our radar screen, and we didn't discuss it.

2 Q Okay. But after the case was filed, and knowing
3 the impact that it had, not only on Goldman stock, but on the
4 market overall, was there discussion about whether it was,
5 kind of with hindsight, wise to file the action against
6 Goldman Sachs in the middle of the trading day?

7 A What I recall about that [REDACTED], who I
8 believe is a [REDACTED] in the office of compliance,
9 inspections, and examinations, called me and raised this
10 issue, and sensitized me to the issue, because I have been
11 in -- doing enforcement a long time, and it hadn't been on my
12 radar screen at all.

13 Q What did [REDACTED] say?

14 A Essentially, I think he wanted consideration to be
15 given in high profile market-moving types of cases,
16 potentially to file it outside of trading hours because of
17 the impact it had on the market that day.

18 Q And is it in the interest of the SEC generally to
19 avoid market fluctuations that result as -- as a result of
20 their action?

21 A I may leave that to others. It's -- the Division
22 of Enforcement, we want to get the information out. I guess
23 we have an interest in not doing it in a disruptive fashion,
24 I would say. But you balance that against just -- some of it
25 is the logistics of -- the trading day is a pretty long part

1 of the day.

2 Q Right, right.

3 A And I don't think that there are many cases like
4 this case turned out to be. I don't think, as I've said a
5 few times, I didn't realize beforehand the impact. But I do
6 think, at least for me personally, I will think about this
7 issue in high-profile matters.

8 Q And will you, to the extent you can, avoid filing
9 a -- in a high-profile matter, during trading hours, all
10 other things being equal?

11 A If we can do it consistent with sort of our --
12 achieving our goals of our enforcement action, yes, I would.

13 Q And are you aware that, when it came to the filing
14 of the settlement of the Goldman case, the settlement was
15 filed and announced after the trading date?

16 A Yes, I do. I think we waited right until the
17 market closed.

18 Q And do you recall the conversations about that at
19 that time?

20 A I think it was along the same lines that, based on
21 what we had learned as a result of filing the April 16th
22 action during the trading day, that this was big news, and to
23 do it after hours was less disruptive and made sense.

24 Q Do you recall an issue about informing the New York
25 Stock Exchange in advance of the complaint that was filed

1 against Goldman Sachs, and that there were folks from the New
2 York Stock Exchange who called up to inquire why they hadn't
3 been given a heads up?

4 A I don't specifically remember that, but it wouldn't
5 surprise me if they did. But I just don't recall it.

6 Q Was it your practice that, where there is a matter
7 that could potentially have an impact on the market, or a
8 particular stock, to just let the New York Stock Exchange
9 know in advance?

10 A No, I don't think I have that practice. I'm
11 thinking of a couple of significant enforcement actions that
12 my group has filed against significant public companies -
13 General Motors, United Rentals, Terax, Delphi -- that I do
14 not remember where we give a heads up to the SRO -- doing
15 that.

16 BY [REDACTED]:

17 Q In those matters that you just described, was the
18 company aware that the SEC was going to be bringing the
19 matter?

20 A Yes.

21 BY MR. KOTZ:

22 Q Okay. So, if the company wasn't aware, would that
23 change the analysis?

24 A I don't feel like it would have. Again, it's not
25 -- I mean, we do, before we file cases, we think about who

1 we ought to be notifying. Sometimes, if it's relating to a
2 banking issue, you want to let the bank regulators know.
3 Sometimes there are other regulators that, as a courtesy, a
4 heads up, you do notify.

5 At least my practice has -- I guess the SROs don't
6 come to mind, except when we sought trading suspensions.
7 There, obviously, you have to coordinate, because they're the
8 ones who are going to be locking down the trading. But just
9 in your general financial fraud against a public company, I
10 don't remember doing that.

11 BY (b)(6),(b)(7)(C):

12 Q Okay. Do you know if, before this Goldman Sachs
13 matter, before the filing on April 16th, was -- did the SEC
14 give any notice to either the Federal Reserve or the Treasury
15 Department?

16 A If we did it, it was very, very -- I believe -- I
17 feel like it would have been very close in time to when we
18 were filing a -- I don't remember whether we did that or not.

19 Q And can you recall any discussions on that point,
20 apart from -

21 A No, I don't.

22 BY MR. KOTZ:

23 Q All right. With respect to the settlement, do you
24 recall at what point in time was there sort of an agreement
25 in principle? Maybe not all the language was agreed to, but

1 generally there was an agreement on the basic terms?

2 A I -- if -- the way I look at an agreement in
3 principle is you have all the significant terms being what
4 the injunctive relief will look like, how much money they are
5 going to pay.

6 Q Right.

7 A And I do recall the meeting, because I think we
8 came up with the compromise we did on the injunction, which
9 was going to be a 17(a), which would include 1, 2, and 3, and
10 drop to 10(b), that we came to earlier than we came to on the
11 money. The money we were -- I do recall a face-to-face
12 meeting here in Washington, D.C. -- I don't have the date, I
13 maybe have it in my calendar -- where they came in with a
14 higher number than they had previously put on the table. Rob
15 Khuzami gave the number, \$550 million, and they asked to be
16 able to use the telephone in the conference room, and we
17 left.

18 And there were at least -- I feel like there were
19 two calls back to -- from the people -- from Goldman who were
20 there back to Goldman. And I have reason to believe, based
21 on maybe some little chit chat, that Lloyd Blankfine was on
22 the other end of the call, and ultimately we reached that
23 \$550 million in that face-to-face.

24 So, that's the time when I think we had an
25 agreement in principle, because not only did we have the

1 injunctive relief, and we had some of the general outline of
2 undertakings, but the number now nailed down.

3 Q And do you -- you don't recall exactly when that
4 occurred, but do you recall how long before the case was
5 actually approved by the Commission? It was approved by the
6 Commission on Thursday, July 15th. Do you think it was a
7 couple weeks before, or a month before?

8 A I'm going to talk out loud a little, because I --

9 Q Sure.

10 A -- because we still had to put together the papers
11 after that, and we began putting together the papers. But
12 Goldman -- the Goldman side was going to give us a draft of
13 the undertakings that were going to be part of it.

14 So, I feel like it was maybe a month before, but I
15 don't -- either -- that's a round number.

16 BY (b)(6),(b)(7)(C):

17 Q At the time of this face-to-face meeting, if you
18 can recall, was -- had the issue been resolved to any degree
19 as to whether the SEC would be able to inform Goldman -- did
20 not plan to take action against it for other -- in connection
21 with other investigations it was conducting?

22 A That was an issue that they had raised from an
23 earlier point, their concern with other outstanding
24 investigations. I don't remember when that was decided.

25 Repeat your question again, because I want to

1 answer you specifically. Because there did come to be what
2 we all refer to as a "[REDACTED]" letter, and I believe it
3 even came -- ultimately came from me to [REDACTED]
4 on this very subject. Although, as we were drafting it all
5 along, it was unclear who was going to ultimately sign it on
6 behalf of the SEC. I believe it ended up being from me,
7 though.

8 I don't know when that came to be, relative to that
9 conference, but it likely was -- the Dear [REDACTED] letter
10 started to take on -- drafts of that Dear [REDACTED] letter --
11 after that meeting.

12 [REDACTED]: All right.

13 MR. KOTZ: So, why don't I show you some documents?
14 Why don't we mark first, as SEC Exhibit No. 20, an e-mail
15 exchange which starts with an e-mail from Lorin Reisner to
16 [REDACTED] and [REDACTED] 7/8/2010, 2:17 p.m.

17 (Exhibit No. 20 was marked for
18 identification.)

19 THE WITNESS: Okay.

20 BY MR. KOTZ:

21 Q All right. And so, at this -- is it fair to say
22 that, at this point in time, when you sent the e-mail
23 Thursday, July 8th, there might have been some little matters
24 that were still being resolved, but you were making
25 preparations for the Commission to approve the settlement?

1 A Yes.

2 Q Okay. And so, at the bottom of the e-mail that you
3 sent on Thursday, July 8th, to Lorin Reisner, (b)(6),(b)(7)(C)
4 and (b)(6),(b)(7)(C), you say, "Timing: Agree on final papers by
5 Monday; board approval before Commission considers matter
6 next Thursday."

7 Why were you looking for the Thursday? What was
8 that based on? Was that kind of a regularly scheduled
9 calendar session, or was that a special session set up just
10 for this?

11 A I don't think the -- I think there was going to be
12 a Commission meeting already scheduled. We also knew, based
13 on the leaks about the 3-2 vote the prior time, that this was
14 likely going to be an executive -- I guess I had it in my
15 mind this was going to have to be an executive session item.

16 And the timing, I think we knew by this point that
17 there were two issues that were out there as to why we wanted
18 to have the settlement finalized sort of in this mid-July
19 time frame. One had to do with the -- an earnings call
20 Goldman was going to be making, in which they told us we
21 ought to get it done before, because it was going to be very
22 likely that, based on what they were going to have to put out
23 to comply with their disclosure requirements, that the
24 reporters and the public would be able to glean what our
25 settlement number was. And then also, I know that they had

1 an answer due.

2 I think those were the two issues that were driving
3 getting this done quickly. And that Thursday there was a
4 scheduled Commission meeting, and we knew we could attach our
5 executive session on the back end or front end of that
6 meeting.

7 Q And so, the executive session was related only to
8 Goldman?

9 A There were -- I feel like there may have been
10 another executive session item after ours. But the way they
11 do it is the other executive session item, the people related
12 to that, wait outside -

13 Q Right.

14 A -- while we're in there. I feel like maybe there
15 was a second executive session item.

16 Q And the purpose of that is to have as few people as
17 possible participating in the executive session so that
18 information wouldn't be leaked out?

19 A Correct.

20 Q But, of course, in the end, the 3-2 vote on the
21 Commission's settlement, view of the settlement of Goldman,
22 was also leaked.

23 A It was.

24 Q Do you have any idea who might have leaked that?

25 A I have no idea. I would -- very much would like

1 you to find out who did, because the first matter was not
2 executive session.

3 Q Right.

4 A And that was a much bigger universe of people.
5 This was a very limited number of people.

6 MR. KOTZ: All right, let me show you the next
7 document we will mark as SEC Exhibit No. 21. It's an e-mail
8 from Stephen Cohen to Myron Marlin. At the top, "7/14/2010,
9 9:58 p.m."

10 (Exhibit No. 21 was marked for
11 identification.)

12 (The witness examined the document.)

13 THE WITNESS: Do you want me to read this whole
14 article?

15 MR. KOTZ: No, no.

16 THE WITNESS: Okay.

17 BY MR. KOTZ:

18 Q I mean do you remember, generally, that there was
19 an article in the paper, or online, immediately prior to the
20 Commission approving the recommendation to settle with
21 Goldman?

22 A I do remember there being at least one or two -- a
23 couple of stories about settlement talks.

24 Q And do you recall there was a particular concern
25 about leaks, given that this information was already out

1 there about settlement talks?

2 A It -- I think we were already on sort of red alert,
3 whatever you want to call it, about leaks. And I think the
4 fact that it was being reported on heightened that, yes.

5 Q Okay. And so, in this e-mail, Stephen Cohen says
6 to Myron Marlin, "Guess they've got first crack at framing
7 the story." Do you think he's referring to what you had
8 described earlier, that perhaps Goldman would sort of take
9 information and spin it in a way that's favorable to them
10 that may not be as favorable to the SEC?

11 A It's speculative, but I would say that looks like
12 he is getting at the concern that I had expressed earlier.

13 MR. KOTZ: Okay. All right, let me show you the
14 next document I'm going to mark as SEC Exhibit No. 22. It's
15 an e-mail exchange with the e-mail at the top from John
16 Nester to a variety of people, including you, 7/15/2010, 9:55
17 a.m.

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

20 (The witness examined the document.)

21 THE WITNESS: Okay, I see that one.

22 BY MR. KOTZ:

23 Q Do you recall the decision made to file and
24 announce the Goldman settlement that day that the Commission
25 approved the recommendation to go forward with it, Thursday,

1 **July 15th?**

2 A I remember there were discussions about what the
3 timing would be, whether we could make it logistically happen
4 that same day that the Commission approved, or whether it
5 would have to wait until the next day.

6 Q **Other than the logistics, what were the kind of**
7 **substantive reasons to try to get it filed and announced on**
8 **Thursday?**

9 A To the -- sort of the front and center one is to
10 beat leaks. That -- the more time that went by between the
11 Commission approving it and filing the settlement, the more
12 likely it was going to get out there.

13 Q **Were there other considerations?**

14 A I think there was that -- certainly that
15 consideration about not filing during the trading day. I
16 know -- but I think logistics was one of the real issues
17 about whether we were going to be able to get sort of a --
18 some kind of a courtesy copy to the judge and the more --
19 Lorin Reisner and the litigator types thought that there was
20 some benefit to Judge Jones not just reading about it, giving
21 her some, you know, limited advance notice of this.

22 I can't remember any substantive reasons, though,
23 beyond what I have just described.

24 Q **And so, is it fair to say that once it was clear**
25 **the logistics could work, the decision was made to go forward**

1 and file it on Thursday?

2 A Yes.

3 Q And, in this case, Goldman Sachs was aware, and
4 consulted with -- about -- that the filing was to occur?

5 A Yes, although I think because we were undecided
6 about when we were going to be filing the settlement, I don't
7 think Goldman Sachs knew until probably that day what the
8 timing was going to be. I think they generally knew about
9 when the Commission would be considering it, but I don't
10 think they knew whether we were going to be going that day or
11 the next day.

12 Q Was there any discussion about the fact that it
13 would be more advisable to file the Goldman Sachs settlement
14 on Thursday, rather than Friday, because of the kind of
15 traditional thinking that Friday is not a good day to file
16 cases with press attention?

17 A Yes. I think -- and again, me being the dinosaur
18 that I am on this -- I also have the perception that filing
19 significant matters very late in the day can tamp down press
20 attention, because the traditional print media, they need
21 to -- they have deadlines for things appearing in the paper.
22 However, here, I think that this -- it was pretty clear this
23 was going to be newsworthy, whether it was at 10:00 in the
24 morning, 4:00 in the afternoon, or 2:00 in the morning. This
25 was going to be followed and reported on.

1 Q But it was understood that, assuming that you were
2 not going to file it during market hours, that if it were to
3 be filed on Friday, it would probably be filed at the end of
4 the day on Friday, which would not be the best scenario. Or,
5 would you have done it first thing in the morning?

6 But you couldn't do it first thing in the morning,
7 right? Because you have to file it with the clerk's office,
8 and they don't open.

9 A I think the clerk's office -

10 Q They open -

11 A I mean the market opens at 9:30.

12 Q Oh, so you could have filed it at 9:00.

13 A So -- you know, and I think it maybe was under
14 consideration, doing it -- I don't remember ever hearing late
15 in the day Friday. I think it was sort of between Thursday
16 late in the day and Friday early.

17 Although I don't remember if we ever got to the
18 point of deciding on a time for Friday morning, because
19 eventually the people who were in favor of Thursday -- I
20 think I was a Thursday afternooner, too -- they carried the
21 day. And so, we just immediately went to logistics for
22 Thursday.

23 Q Do you know who made the ultimate decision to file
24 the Goldman settlement on Thursday?

25 A I am going to be -- because I can't specifically

1 remember, but I think it may have been Rob, but it --
2 Khuzami -- but I think it was almost a consensus. I feel
3 like there were a lot of people in this conversation, and I
4 know all the press people -- the Myron Marlin's, the [REDACTED]
5 [REDACTED], John Nester types -- saying, "You've got to go
6 Thursday." Thursday was the better time, assuming you could
7 get it logistically done.

8 And once we walked through the fact that we could
9 do this logistically, based on when the Commission would
10 approve us, give us approval, assuming they did, I think it
11 became just clear to everybody that that was the better. But
12 I think Rob was involved in that, since he's the director. I
13 think he would decide.

14 Q Looking at this schedule, do you recall that there
15 was a specific decision to file and announce the Goldman
16 Sachs settlement after the market close, so as not to cause
17 disruption?

18 A I think that was a consideration.

19 Q Now, were you aware that the press advisory, which
20 was sent out before the market close, which was just to
21 notify the media, I guess, that there is going to be an
22 announcement, that because of all the speculation about the
23 Goldman settlement in the paper, the press advisory actually
24 caused Goldman stock to be affected? Were you aware of that?

25 A I don't think I knew that.

1 Q Now, were you aware, during that week in July, in
2 mid-July, that financial regulatory reform was intended to be
3 voted on by the Senate that same Thursday?

4 A I don't know if I knew what the date of the vote
5 was. I was at least following in the newspapers financial
6 reform. It's -- there are provisions that impact what the
7 unit is responsible for, to the extent that -- it says --
8 provides laws regarding derivatives, transactions.

9 So, I would say I was generally aware that --
10 certainly that it was a big issue. I read the newspapers
11 every day. I read the Wall Street Journal and the Washington
12 Post every day, and so I think I was aware. Whether I knew
13 when the vote was going to be, I don't know.

14 Q Now, were you aware that after the SEC filed its
15 action against Goldman, there was a complaint that was made
16 by Congressman Issa that -- with an allegation that the
17 action that the SEC took against Goldman Sachs may have been
18 related to financial regulatory reform?

19 A Yes.

20 Q And, given that at that time, was there any
21 discussion about the fact that the SEC was planning to file
22 its Goldman settlement on the same day that financial
23 regulatory reform would be voted on and eventually passed the
24 Senate?

25 A I'm sorry. If you don't mind -- I'm not sure -

1 Q Was there any consideration -- was there any
2 discussion about that fact, that here you are, on Thursday,
3 July 15th, there had been a complaint from Representative
4 Issa, and now you're filing your Goldman settlement the same
5 day that the financial regulatory reform is finally, after
6 months and months, going to be passed?

7 A I don't remember any discussions along those lines.

8 Q Okay. Did you ever have any conversations with
9 congressional Members or congressional staff regarding
10 financial regulatory reform?

11 A No. I don't think I did. I know I was involved in
12 some Hill briefings. It was a congressman from Massachusetts
13 who was interested in the new unit. And I went to the Hill.
14 I think [REDACTED] was there. Lorin Reisner well may have
15 been there, too. I can't remember his name, the
16 congressman's name. And he wanted to hear about our unit and
17 some of our plans.

18 I wouldn't swear that the -- that somehow that
19 issue didn't in some way come up; it certainly wasn't a focus
20 of that conversation. Other than that, I think I
21 participated in Hill briefings regarding the Goldman case,
22 but I don't remember financial reform -

23 Q Now, the Hill briefings regarding the Goldman case
24 were after the SEC filed its action?

25 A Yes.

1 Q Okay. And in any other conversations you had with
2 congressmen or staffers of Congress, did you ever discuss the
3 Goldman ABACUS case?

4 A Could you repeat that one more time?

5 Q In any conversations you had with particular
6 congressmen in Massachusetts, or any other congressmen, or
7 any other senator, or any staffers from Congress, did you
8 ever discuss the Goldman Sachs investigation prior to Goldman
9 filing its lawsuit?

10 A Prior to us filing the Goldman lawsuit? No, I
11 don't think we -- I don't think I or anyone gave a heads up
12 that we were -- to Congress regarding that. I wasn't party
13 to it.

14 Q Has anybody at the SEC ever mentioned the financial
15 regulatory reform legislation in connection with the Goldman
16 Sachs investigation, or in connection with the filing of an
17 action against Goldman Sachs prior to the action being filed?

18 A Not to my knowledge.

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

23 A I do not.

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

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

3 A No.

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

8 A I'm not aware of such a thing.

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

14 A I am aware of no such information.

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

18 A I do 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 any Members of Congress or
22 congressional employees prior to the complaint being filed?

23 A No.

24 Q Are you aware of any information indicating the SEC
25 coordinated its action against Goldman Sachs with the

1 Democratic National Committee, the Democratic Senate Campaign
2 Committee, the Democratic Congressional Campaign Committee,
3 or any of their employees?

4 A No.

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

11 A No.

12 Q Are you aware of any information indicating that
13 anyone at the SEC shared any information concerning its
14 Goldman Sachs investigation with the U.S. Department of
15 Treasury, the Federal Reserve, or any of their employees
16 prior to the complaint being filed?

17 A No.

18 Q Now, with respect to the settlement that the SEC
19 entered into with Goldman, are you aware of any information
20 indicating that the SEC coordinated the settlement with
21 Goldman Sachs with the Executive Office of the President, the
22 White House, its employees, with Members of Congress, or
23 congressional employees, or with the Democratic National
24 Committee, Democratic Senate Campaign Committee, the
25 Democratic Congressional Campaign Committee, or any of their

1 employees?

2 A No.

3 Q And are you aware of any information indicating
4 that anyone at the SEC shared any information concerning the
5 Goldman Sachs settlement with the Executive Office of the
6 President, the White House, any of its employees, Members of
7 Congress or congressional employees, or the Democratic
8 National Committee, Democratic Senate Campaign Committee, the
9 Democratic Congressional Campaign Committee, or any of their
10 employees?

11 A No.

12 Q And are you aware specifically of any information
13 indicating that anyone at the SEC shared any information
14 concerning the Goldman Sachs investigation or the Goldman
15 Sachs settlement with the news media or any journalists prior
16 to either the complaint being filed or the settlement being
17 filed?

18 A No.

19 MR. KOTZ: All right. We're going to go off the
20 record.

21 (A brief recess was taken.)

22 MR. KOTZ: All right, back on the record.

23 THE WITNESS: Okay.

24 MR. KOTZ: We don't have any more questions. The
25 one thing I would ask, in order to preserve the integrity of

1 the investigation, that you not discuss the content of your
2 testimony with anyone.

3 THE WITNESS: Right. Will do.

4 MR. KOTZ: Okay. With that, we're off the record.

5 (Whereupon, at 11:59 a.m., the examination was
6 adjourned sine die.)

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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 92 pages is a complete, true and accurate transcript of the testimony indicated, held on August 19, 2010, at 9:29 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:

8/31/10

Official Reporter:

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

Diversified Reporting Services, Inc.

PROOFREADER'S CERTIFICATE

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In the Matter of: OIG-534

Witness: Number 18

File Number: OIG-534

Date: Thursday, August 19, 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)

8/31/10

(Proofreader's Name)

(Date)

Chapter Break

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

CC **COPY**

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

WITNESS: Number 19

PAGES: 1 through 52

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

DATE: Monday, July 26, 2010

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

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, Inspector General

5 

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 

13 Jones Day

14 51 Louisiana Avenue, N.W.

15 Washington, D.C. 20001-2113

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C O N T E N T S

WITNESS

EXAMINATION

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

8

EXHIBITS:

DESCRIPTION

IDENTIFIED

1

Confidentiality and Nondisclosure
Agreement

6

2

April 7, 2010, E-mail Chain,

(b)(6),(b)(7)(C) to Reisner

11

3

April 16, 2010, E-mail,

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

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1 PROCEEDINGS

2 MR. KOTZ: We are on the record at 2:02 p.m. on
3 July 26, 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 Can you state and spell your full name
14 for the record please?

15 A

16

17 Q my name is David Kotz. I'm
18 the Inspector General of the United States
19 Security and Exchange Commission. I have with me
20 my colleague from the Office of Inspector General,
21 and you have with you your counsel.

22 Would you like to introduce yourself?

23

24 Jones Day, Washington, D.C.

25

BY MR. KOTZ:

1 Q This is an investigation by the Office
2 of Inspector General, Case No. OIG-534. I'm going
3 to be asking you certain questions and you'll be
4 providing answers under oath. The court reporter
5 will record and later transcribe everything that
6 is said. Please, therefore, provide verbal
7 answers to the questions as a nod of the head or
8 another nonverbal response won't be picked up by
9 the court reporter.

10 Also, so the record will be clear,
11 please let me finish my question before you
12 provide your response. In addition, it is
13 important you understand the questions and give
14 accurate answers. If there is anything you don't
15 understand or anything you do not know or are not
16 sure about please let me know. Otherwise, I will
17 assume that you heard and understood the question.

18 Do you understand those instructions?

19 A Yes.

20 Q Okay. I'm going to give you the perjury
21 warning now. As you can see, your responses to
22 statements given today are provided after you've
23 sworn an oath and will be taken down verbatim by
24 the court reporter. This is an official U.S.
25 Government law enforcement investigation. The

1 claims asserted in this case are serious ones. It
2 is very important you tell me everything you know
3 about the matter at hand and are completely
4 forthcoming and truthful with me.

5 I'm formally advising you that your
6 testimony today is subject to the laws of perjury.
7 Providing false or misleading testimony under oath
8 is a very serious offense. If the evidence shows
9 the testimony you've given is false we may refer
10 it as appropriate.

11 Do you understand those instructions?

12 A Yes.

13 MR. KOTZ: Great. All right. Let me
14 put in first as Exhibit 1, Confidentiality and
15 Nondisclosure Agreement from your counsel.

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

18 MR. KOTZ: (b)(6),(b)(7)(C) if you could
19 just look at it and certify to me that that's your
20 signature on Exhibit 1.

21 (b)(6),(b)(7)(C): Yes, it is.

22 BY MR. KOTZ:

23 Q Okay, great. All right. Now we will go
24 with some background and then I'll ask you some
25 general questions and show you some e-mails. All

1 right? All right.

2 Could you tell me first please what is
3 your education beginning with college?

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

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

6

7

8

9

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

11 A

12 Q

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

14 A (b)(6),(b)(7)(C)

15 Q

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

17 A (b)(6),(b)(7)(C)

18 Q (b)(6),(b)(7)(C)

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

20 A (b)(6),(b)(7)(C)

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

22

23

24 Q (b)(6),(b)(7)(C)

25 A

1 Q (b)(6),(b)(7)(C)

2 A

3 Q

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

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

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

7

8 Q (b)(6),(b)(7)(C)

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

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

11

12 Q (b)(6),(b)(7)(C)

13 A

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

15 Q (b)(6),(b)(7)(C)

16 A

17 Q

18 A

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

20

21 Q (b)(6),(b)(7)(C)

22 A

23 Q

24 A

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

1

[REDACTED]

2

Q

[REDACTED]

3

[REDACTED]

4

A

[REDACTED]

5

Q

6

A

I was hired to work in the [REDACTED]

7

[REDACTED]

here at the Securities and Exchange

8

Commission under Jake Stilman.

9

Q

That was in [REDACTED]?

10

A

Correct.

11

Q

What were your responsibilities in your

12

first job at the SEC?

13

A

Principally brief writing. In addition,

14

there would be action memorandum to the

15

commissioners.

16

Q

How long did you serve in that position?

17

A

[REDACTED]

to the day.

18

Q

What did you do after that?

19

A

David Becker, now current general

20

counsel, [REDACTED]

21

[REDACTED]

in the General Counsel's

22

Office and Mark Cahn, the deputy general counsel.

23

Q

And so what is your title?

24

A

[REDACTED]

25

Q

Is there only [REDACTED]?

1 A [REDACTED]

2 Q What are your duties generally as

3 [REDACTED]

4 A We deal with -- for the most part I deal
5 with litigation matters assisting Mark Cahn, Jake
6 Stilman, and David Becker; mostly matters that
7 involve our Appellate Section and involve our
8 general litigation practice.

9 Q Okay. And who is your current direct
10 supervisor?

11 A David Becker and Mark Cahn.

12 Q Is there two? Do you have two
13 supervisors?

14 A I report to both.

15 Q Who signs your evaluations?

16 A I believe David does.

17 Q All right. Did there come a point in
18 time where you became aware of the existence of an
19 investigation by the SEC into collateralized debt
20 obligations by Goldman Sachs known as the ABACUS
21 Investigation?

22 A Yes.

23 Q When did you first become aware of this
24 investigation?

25 A To the best of my knowledge it would be

1 the day before the action was filed in Federal
2 District Court. That was April 15 of this year,
3 2010.

4 Q 2010?

5 A Correct.

6 Q How did you become aware of this case?

7 A I was in a meeting on the 15th in the
8 office of [REDACTED] who [REDACTED]
9 [REDACTED] -- Office of Legislative Affairs. We
10 were discussing certain matters that would be made
11 public the next day and Goldman was one of the
12 matters.

13 Q So you weren't aware of the Goldman
14 ABACUS case prior to April 15, 2010?

15 A I believe that I had read at some point
16 in a newspaper -- I have a vague recollection of
17 reading something in a newspaper that Goldman was
18 being looked into by the Commission at some point.
19 I can't remember when, but there was certainly
20 nothing I learned at the Commission.

21 MR. KOTZ: Let me show you a document.
22 We're going to mark this as Exhibit 2.

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

25 BY MR. KOTZ:

1 Q It's an e-mail exchange, at the top,
2 between [REDACTED] Lorin Reisner, with
3 copies to Joan McKown and Kenneth Lench dated
4 4/7/10, 2:04 p.m.

5 A Sir, can you tell me the date again?

6 Q Sure, 4/7/10. You can have the
7 document. And take whatever time you want to read
8 it. But I want to turn your attention initially
9 to the second page which starts the communication.

10 A Okay.

11 Q All right. So the e-mail exchange --

12 A Can I have one more second? I'm sorry.

13 Q Oh, sure.

14 A Okay.

15 Q So the e-mail exchange starts with an
16 e-mail from [REDACTED] to [REDACTED] and
17 [REDACTED] talking about how the Senate Permanent
18 Subcommittee Investigations is holding a hearing
19 on Goldman and that they are presently aware of
20 the SEC's ABACUS investigation. And then [REDACTED]
21 [REDACTED] forwards that to you and a few others.
22 Do you see that?

23 A Mm-hmm. Yes.

24 Q So does that refresh your recollection
25 that you were aware of the ABACUS case prior to

1 April 15th and not just from the newspaper?

2 A I did receive this e-mail as it is
3 indicated at the top of the e-mail, but it is a
4 very vague recollection that I have of that. I'm
5 sorry.

6 Q And so after [redacted] sends this to
7 you and a whole bunch of other people there's an
8 e-mail from Lorin Reisner to the same group
9 including you about asking what the proper
10 protocol is. And then you forward that to
11 [redacted] with an FYI. Do you know why you
12 forwarded it to [redacted] Who is

13 [redacted]
14 A [redacted] is one of Joan McKown's
15 [redacted] in the Office of Chief
16 Counsel. [redacted] is also someone that I liaison
17 a lot with.

18 Q And then [redacted] says, "Lorin, just to
19 update you, Ken Lench and I also spoke with [redacted]
20 [redacted]" I assume that refers to you.

21 A Correct.

22 Q Who then consulted with Mark Cahn
23 regarding our options in responding to the PSI.
24 So what were those conversations about with Mr.
25 Lench and [redacted]

1 A I'm sorry, Mr. Lench and [REDACTED]

2 Q Yes. Is it not true what [REDACTED]

3 [REDACTED] is saying, that Ken Lench and her spoke to
4 you who consulted with Mark Cahn about this
5 matter?

6 A I believe I had a phone call with
7 [REDACTED] Ken Lench may have been in the room or
8 on the phone with her and I just can't recall. I
9 remember a very general conversation stemming from
10 this.

11 Q What do you remember about that very
12 general conversation?

13 A I remember having -- the only thing I
14 particularly remember -- if you'll just give me
15 one second --

16 Q Please. Take as long as you need.

17 A I remember consulting with Mark Cahn
18 about this. This is not something I would have
19 had any expertise in dealing with PSI. I had
20 dealt with FCIC matters before. Can I have one
21 more minute to reread the first e-mail again?
22 Sorry.

23 Q Take as long as you need.

24 A Yes, I do remember this at a very
25 general -- a very high-level.

1 Q So what do you remember about it at a
2 high-level?

3 A I remember that we have had ongoing
4 issues with -- not issues, discussions internally
5 about providing sensitive ongoing matters to the
6 FCIC, which is the Financial Crisis Inquiry
7 Commission. And I had been heavily involved with
8 Joan McKown and [REDACTED] [REDACTED]
9 [REDACTED] for the General Counsel's office
10 along with Mark and figuring out how we would
11 address that, how we would provide them
12 information at a high-level as [REDACTED] mentions
13 in the e-mail -- briefings, for instance --
14 without turning over case sensitive information.
15 And I remember very, very vaguely [REDACTED] or
16 someone having reached out to me on a PSI matter.
17 And I remember us believing we would follow this
18 same approach. That is my general recollection of
19 this matter.

20 Q What about the consultation with Mark
21 Cahn? What do you remember about that?

22 A I know that I did consult Mark. I never
23 give any kind of advice without a minimum talking
24 to Mark and we deciding whether to go to David
25 together.

1 Q What was his perspective on this?

2 A I can't remember the substance of it
3 other than if this is what's in the e-mail I would
4 assume this is correct. Because I can't think of
5 any reason off the top of my head that we would
6 have suggested something different vis-à-vis the
7 PSI then we would vis-à-vis FCIC.

8 Q What is meant by "our options in
9 responding to the PSI?" What would the options
10 be?

11 A Sorry, I'm reading our options.

12 Q That's what Ken Lench and [REDACTED]
13 [REDACTED] spoke to you about according to this
14 e-mail.

15 A I don't remember the substance of the
16 conversation so I don't know if they laid out
17 options for me or if they generally asked me how
18 we should proceed and perhaps, for instance,
19 saying should we proceed with the way we have with
20 the FCIC. I just --

21 Q But what would the options be? I mean,
22 what are your options when you respond to some
23 kind of -- this kind of committee?

24 A One would be to -- I mean, this is me
25 speaking only for myself and not for Ken and

1 [REDACTED] as I don't remember them having laid out
2 different options for me. My knowledge as to the
3 FCIC is all that I can speak to, but when we looked at
4 matters with the FCIC there was the approach that the
5 Department of Justice takes, which we consulted with them
6 very heavily, and the FCI takes a very hard approach that
7 they do not provide any materials regarding ongoing
8 investigation.

9 And they try to negotiate limited briefings, I
10 believe -- this is my recollection -- as to closed matters.

11 There was that on one extreme all the
12 way to the other extreme which would be to perhaps
13 provide the PSI or the FCIC as I'm more familiar
14 with, with actual copies of our enforcement file.
15 So it's a broad spectrum.

16 Q And so what was the decision made within
17 that spectrum? What was the approach that the SEC
18 used?

19 A Again, my recollection, and it is very
20 vague, but it is almost completely based on this
21 e-mail recollection that [REDACTED] has written
22 which I was not included on, would appear to be
23 that we were following the same approach we
24 followed with the FCIC, which is to offer
25 high-level briefings in the first instance.

1 Q So in that approach would you reveal
2 information about the ongoing investigation or
3 not?

4 A I have never attended one of the
5 high-level meetings that we've done with FCIC. I
6 cannot speak as to exactly what does or doesn't
7 get communicated during those.

8 Q Right. But what was the approach? What
9 does that mean a high-level meeting? Do you give
10 them information about the ongoing investigation
11 or you don't?

12 A Again, I have never attended one. I
13 have only been in the background where we discuss
14 these at very high- levels.

15 Q All right. But when you were in the
16 background discussing it did you recommend or
17 suggest that the approach be in these high-level
18 briefings to give information about the ongoing
19 investigation or not to give information about the
20 ongoing investigation? I mean, that must have
21 come up.

22 A I'm not trying to avoid answering. I'm
23 more familiar with how we've done it at the FCIC.

24 Q So how did you do it at the FCIC?

25 A The FCIC, for instance, when they sum up

1 by familiarity where we've developed the
2 high-level briefings would be with respect to
3 Freddie or Fannie, the two federal housing -- not
4 exactly federal housing, but the two housing
5 authorities in the nation, and we would talk at a
6 very high-level of some of the matters. It was
7 agreed upon that we would talk at a very
8 high-level about the ongoing matters that we were
9 looking into with respect to Freddie and Fannie.

10 Q So in that high-level discussion would
11 nonpublic information about the investigations be
12 released or not?

13 A I -- at some level yes because in many
14 instances we would be disclosing in the Freddie
15 and Fannie context, I believe, the mere existence
16 of an investigation that may well not be publicly
17 known.

18 Q And so is it your understanding that the
19 PSI approach was the same in which some
20 information was provided, some of which may have
21 been or was nonpublic, but it was at a high-level
22 briefing? Is that your understanding of the
23 approach that was used in the PSI as well?

24 A Based purely on my reading of the e-mail
25 from [REDACTED] and a very vague recollection, I

1 thought that this was -- I don't know that there
2 had been a formal request for PSI -- from PSI for
3 any information related to this particular matter
4 that the e-mail deals with. And I may be wrong on
5 this, but I thought that this was contingency
6 planning about how to deal with something if we
7 got a request.

8 Q All right, but the second page e-mail
9 has a request from [REDACTED]. "I would like
10 to disclose ABACUS to PSI and get any transcripts
11 of testimony." I think that's what precipitated
12 the whole e-mail exchange.

13 A I -- I have a vague recollection that
14 [REDACTED] was an SEC employee --

15 Q On detail to the Senate.

16 A On detail.

17 Q Correct.

18 A To the Senate.

19 Q Yes.

20 A And that I remember having, I believe,
21 had a clarifying phone call with [REDACTED] on.
22 But I don't know that the SEC was actually itself
23 going to be providing any information to the PSI.
24 And I don't think we, the SEC, had received any
25 request for information. And I believe that's why

1 [REDACTED] was truly just contingency planning.
2 And again, this is my very vague recollection that
3 [REDACTED] was contingency planning on the
4 possibility that before we took some kind of
5 action, which I see here is the April 14th
6 reference, that between this April 7th and April
7 14th that she was worried about, I guess, how we
8 would deal with providing the information if we
9 were to.

10 Q All right, but on April 7th, [REDACTED]
11 who is an SEC employee, asks if she can disclose
12 ABACUS to PSI. So that's a request whether an SEC
13 employee, albeit somebody on detail with PSI, can
14 disclose the ABACUS investigation to the PSI. It
15 looks like the conversation is about that. Lorin
16 Reisner says it may be useful to refer Pauline to
17 the proper protocol. You send it off and
18 [REDACTED] says when faced with a similar
19 request from the FCIC we have used high-level
20 briefings to provide relevant info.

21 A I believe that my involvement and Mark
22 Cahn's involvement was a narrower question which
23 was not the propriety -- the properness of [REDACTED]
24 disclosing this information to the PSI. We -- I
25 have no recollection of having been involved in

1 any of that. Our question that we received was if
2 the PSI does become aware of the ABACUS matter
3 through [REDACTED] or some other source, how do we
4 handle that in this April 7th to apparently this
5 April 14th window? That's why I believe it says
6 what is the proper protocol for PSI or another
7 congressional committee requesting and receiving
8 copies of transcripts? Because that question is
9 parallel to the question I had been exploring for
10 some time with our counterparts at DOJ, which is
11 how if we receive similar requests on other
12 matters we respond to the FCIC. So my knowledge
13 base here and what I was looking at and thinking
14 about during this time was much smaller. And that
15 narrow question is what I consulted Mark Cahn on,
16 I believe.

17 **Q So do you know if any nonpublic**
18 **information was released to the PSI about the**
19 **ABACUS case?**

20 **A** I do not know whether [REDACTED] released
21 any information or whether -- whether we ever
22 received the hypothesized request for transcripts
23 from the pending investigation that is referred to
24 in the e-mail. I do not have any -- there was
25 never any further follow up that I can recall at

1 this time.

2 Q So do you know if any information about
3 the ABACUS case was released to PSI?

4 A I am unaware.

5 Q In the situations where nonpublic
6 information was released to the FCIC, did the SEC
7 get approval from the Commission to release that
8 information?

9 A There was -- there was, as I recall,
10 there was an action memo that the General
11 Counsel's office drafted and I was involved in the
12 drafting of that requesting specific delegated
13 authority from the -- from the Commission to --
14 for the General Counsel's office to release that
15 information. There, however, was a view that we
16 already had that authority, but because of the
17 political sensitivities of the FCIC matter that it
18 was appropriate to nonetheless, given that this
19 was going to be an ongoing disclosure for upwards
20 of a year -- that is the FCIC inquiry was
21 scheduled to expire in December of this year --
22 that it was appropriate to nonetheless go back to
23 the Commission and get them involved in this
24 process so that we could have an ongoing
25 discussion with them about the materials that

1 would be released over the course of that year.

2 The Commission would be an active participant in

3 that rather than just having delegated it to us.

4 Q And the Commission approved that?

5 A The Commission did approve that because,

6 again, this was an ongoing specific delegation.

7 The Commission requested that we do periodic

8 briefings of them when substantial FCIC

9 developments occur.

10 Q Did the FCIC seek any information about

11 the SEC's Goldman ABACUS case?

12 A I am not sure off of the top of my head.

13 I apologize.

14 Q Do you remember if the SEC had any

15 questions about Goldman -- anything related to

16 Goldman Sachs?

17 A The FCIC?

18 Q Yeah.

19 A I believe that they were looking at a

20 number of the investment banks at different times.

21 I believe that they did ask questions about

22 Goldman. I may be mistaken, but I believe that

23 they did at some point ask questions.

24 Q Do you know if the FCC --

25 A FCC?

1 Q I'm sorry, FCIC knew that the SEC was
2 going to file its Goldman complaint before the SEC
3 filed in the Goldman ABACUS case?

4 A I know nothing for sure on this point.
5 I do believe that if we had told the FCIC this I
6 would have been involved in the discussion about
7 arranging high-level briefings. And I do not at
8 this point recall those briefings, which is not to
9 say we didn't have these discussions. I just
10 honestly can't recall any discussion. There was a
11 lot going on at that period of time. The
12 Inspector General's office had a number of
13 reports. The FCIC was making substantial
14 requests. We were having to triage a lot at that
15 time in the General Counsel's office and things
16 were moving very fast on a number of fronts and I
17 just can't remember every twist and turn. I
18 apologize.

19 Q How many high-level briefings were given
20 to the FCIC approximately?

21 A I would be purely speculating. [REDACTED]
22 [REDACTED] in the General Counsel's office was a
23 participant in I believe all of those briefings
24 and would be better able to speak to that.

25 Q Can you just give me a ballpark figure?

1 **Five, 10, 20, 100?**

2 A I would be uncomfortable because it
3 would purely be speculation. I would say it was
4 over four.

5 Q **Less than 10?**

6 A I would be uncomfortable saying.

7 Q **Less than 20?**

8 A I would think it is probably less than
9 20, but I don't know for sure.

10 Q **And who attended these other than** (b)(6),(b)(7)(C)
11 (b)(6),(b)(7)(C) **from the SEC side?**

12 A Joan McKown attended some of them. The
13 briefings to the extent -- and the briefings that
14 I'm speaking of just to be clear are briefings
15 about -- and I think this is what you're asking,
16 the briefings about ongoing enforcement matters
17 just to be clear.

18 Q **Right.**

19 A Joan McKown attended a number of those,
20 I believe. I don't know if it was a majority, but
21 she did attend several. (b)(6),(b)(7)(C) I believe
22 attended almost all of them, if not all of them.
23 There's another gentleman who as working with (b)(6),(b)(7)(C)
24 -- or with (b)(6),(b)(7)(C) whose name is (b)(6),(b)(7)(C) -- I apologize.
25 I'm sometimes bad with names. (b)(6),(b)(7)(C) I

1 believe, in the General Counsel's Office. Sorry.

2 Q Okay. We'll figure it out.

3 A And then in addition to them it would be
4 the relevant enforcement attorneys on those
5 matters who would be presenting the briefing with
6 the guidance of Sam as appropriate or Joan as
7 appropriate.

8 Q Are you aware of any action memo that
9 went to the Commission authorizing the SEC to
10 provide nonpublic information to the PSI? Either
11 through delegated authority or otherwise? In
12 other words, you mentioned that there -- you gave
13 the specifics of an action memo with respect to
14 the FCIC. Do you know if there was a similar one
15 with respect to the PSI?

16 A I have a vague recollection that there
17 may have been a memo, but I believe it predated my
18 tenure in the front office of the General
19 Counsel's Office. I only say this because I
20 believe as we were -- I certainly know that the
21 Commission was consulted about PSI matters.
22 Whether there was an action memo, I cannot speak
23 to. I do not believe that I have ever read an
24 action memo.

25 Q Do you recall discussions in which there

1 were concerns that the PSI hearing would bring
2 forth related issues to the ABACUS case about
3 Goldman prior to the SEC filing its complaint?

4 A I am not aware of any of these
5 discussions other than what was just brought to my
6 attention and I had frankly forgotten which is the
7 April 7th e-mail exchange.

8 Q Were you aware that prior to the Goldman
9 case, the ABACUS case being approved by the
10 Commission and then filed, it was placed on the
11 closed Commission calendar on two occasions and
12 pulled back?

13 A No.

14 Q Are you aware that it was ever put on
15 the closed Commission calendar prior to that?
16 Prior to the time it was put on the calendar in
17 April of 2010?

18 A No.

19 Q Do you have any understanding of why the
20 Commission filed the Goldman action on April 16th,
21 Friday, 2010?

22 A Can you clarify the question?

23 Q Do you know why the SEC filed the ABACUS
24 Goldman case on Friday, April 16, 2010? You said
25 you were aware of it on April 15th maybe a little

1 earlier, but certainly on April 15th you were
2 aware of it. Do you know why they filed it on
3 that Friday?

4 A I did not learn firsthand at the time
5 why it was being filed at the time, why it was
6 being filed.

7 Q You learned later why it was being
8 filed?

9 A In a very vague discussion. A very,
10 very vague recent discussion that Joan McKown and
11 I had where Joan and I were both discussing very,
12 very briefly the Goldman matter and the Stanford
13 OIG Report. And I knew that the Chairman had
14 testimony coming up the following week and that
15 certainly as to the Stanford OIG Report it was
16 better to have that out for the members of
17 Congress before the Chairman's testimony. And I
18 believe that Joan said she thought that both these
19 matters were designed to be out before the
20 Chairman's testimony. That was my --

21 Q Both these matters. The other matter
22 you're referring to is the Goldman ABACUS case,
23 right?

24 A I believe so, yes. Yes, that is
25 correct. But again, this was months later and I

1 don't know anything about the particulars of the
2 timing of the Goldman matter.

3 Q Were you aware that generally,
4 historically the SEC didn't like to file cases on
5 Fridays?

6 A Yes.

7 Q Why was that?

8 A It would be pure speculation on my part.
9 I'm happy to speculate.

10 Q Okay.

11 A But it truly is not --

12 Q Speculate away.

13 A I believe I read the particulars -- I
14 had certainly heard that. What I read in the
15 newspapers was, and I believe I did read this on a
16 blog or something in the following days that as is
17 common is things don't get as much publicity when
18 they occur on a Friday maybe.

19 Q So do you know why nevertheless the SEC
20 Goldman case, which was a very high profile case,
21 was filed on a Friday?

22 A Again, this is speculation on my part,
23 but going back to what Joan and I -- what I knew
24 to be the case about the Stanford Report, that
25 there was a desire on all fronts to clear the

1 decks before the Chairman's testimony.

2 Q And when was the Chairman's testimony?

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

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

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

11 THE WITNESS: Yes.

12 BY MR. KOTZ:

13 Q Who is [REDACTED]

14 A He is [REDACTED]. [REDACTED]
15 [REDACTED]

16 Q Does he work for the SEC?

17 A [REDACTED]

18 Q And what information -- what were you
19 discussing with [REDACTED] that's referenced in
20 this e-mail string? You made a bet or something?

21 A I had told [REDACTED] that there was
22 something that I was working on that would --

23 [REDACTED] was aware because [REDACTED]

24 [REDACTED] that I was very

25 stressed and that I was working on something that

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

3 Q Something that you had said?

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

7 Q Oh, I see.

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

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

13 A Yes. (b)(6),(b)(7)(C)

14 (b)(6),(b)(7)(C) I
15 believe.

16 Q And did you in that discussion also
17 discuss with (b)(6),(b)(7)(C) the fact that the
18 Goldman case was about to be announced? It seems
19 to refer to the Goldman case as well.

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

22 Q So what was the best about with (b)(6),
(b)(7)(C)

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

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

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

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

9 Q So you didn't let [REDACTED] know
10 prior to the SEC filing of the Goldman case that
11 there was a potential case against Goldman?

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

18 Q To [REDACTED]

19 A That is correct.

20 Q And just to be clear you didn't reveal
21 to [REDACTED] that the SEC was bringing a case
22 before Goldman before the SEC brought its case?

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

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

3 A I did not do that.

4 MR. KOTZ: Thank you.

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

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

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

11 Q Okay.

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

14 Q And so how -- even if it was a mock bet,
15 but with no stakes, how could you have ever had a
16 mock bet with (b)(6),(b)(7)(C) if he had no idea what
17 either story was about as to which one would drown
18 out the other one?

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

1 It's very simple.

2 BY MR. KOTZ:

3 Q How would he be able to make a bet if he
4 doesn't know what the two matters are about?

5 A I was just teasing between (b)(6),(b)(7)(C)

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

7 Q So did he have a perspective on whether
8 one would drown out the other one or affect the
9 other?

10 A He did not know the substance of either
11 matter so he didn't. It was a joking, teasing
12 kind of thing.

13 Q So had I made the bet you would have
14 won. So you would have won the bet, which means
15 he would have lost the bet. What side did he have
16 on the bet?

17 A Whether there -- I guess one of us had
18 bet whether there would be two stories or whether
19 there would be none or one story. I mean, it
20 wasn't a real bet. It was just a tease.

21 Q Right. I understand. Which side was he
22 on? Which side were you on?

23 A Assuming that I was on the two side.
24 Two-story side.

25 Q So you said there would be two stories

1 and he said there would be one story?

2 A I honestly don't remember. The
3 conversation was -- I don't -- there was no real
4 bet so.

5 Q Right. But how would he be able to make
6 any -- have any intelligent opinion on whether
7 there were two stories or one story or one would
8 affect the other if he didn't know what the
9 stories are about?

10 (b)(6),(b)(7)(C): I think you're assuming
11 that he had an intelligent opinion. I think he's
12 saying there was no intelligent opinion.

13 BY MR. KOTZ:

14 Q But it was some kind of bet so there
15 must have been some back and forth.

16 A I've said before there was no financial
17 bet.

18 Q No, I'm not talking about a financial
19 bet. Just a friendly gentleman's bet. What I'm
20 trying to understand is how could he have a side
21 on it if he didn't know what the two matters were
22 about. I think that of the two stories one's
23 going to be -- have a greater effect than the
24 other. I don't know what the two stories are.
25 How could --

1 A There's nothing about one having a
2 greater effect on here. There's just will there
3 be two stories in the New York Times or one story
4 in the New York Times.

5 BY [REDACTED]:

6 Q Well, the e-mail just prior says -- from
7 you to [REDACTED] says that story about Goldman
8 seems to have drawn all the attention today. That
9 seems to be possibly what the bet is about. Not
10 whether there's two stories versus one, but
11 whether which one drew the attention of the day.

12 A That was not what -- literally it was
13 whether there would be two stories or one. I may
14 have in some conversation said I hope one does not
15 get as much prominent play because it would be
16 harmful to people that I know at the Commission,
17 but I assure you I had no reference to any
18 discussion about either matter.

19 Q So you thought it was possible that one
20 story would not get any press coverage?

21 A To be perfectly frank, I certainly hoped
22 so. I know many people that are referenced in the
23 Stanford Report and I have great respect for them
24 and I did not, obviously caring about them would
25 not want to see them -- obviously as the Inspector

1 General understands, those stories are
2 discouraging for the Commission.

3 BY MR. KOTZ:

4 Q You said, "Here you go. This has not
5 made it to the New York Times. That story about
6 Goldman seems to have drawn all the attention
7 today. What a coincidence these stories came out
8 today. Smiley face."

9 And then he says, "So had I made the bet you would
10 have won. Correct?"

11 A That there were two stories that were
12 going to make it in the press today. I don't
13 believe that they are necessarily referring to the
14 New York Times, but the press today. And so as
15 you can see there are -- there's a link to two
16 stories that are making it in the world.

17 Q So he would have bet that only one story
18 would have made it into the paper?

19 A Again, we really didn't have a serious
20 bet. I just want to be clear.

21 Q Right. But how would he say anything
22 about that only one story would make it in the
23 paper if he didn't know what the stories were
24 about?

25 A Sir, David, (b)(6),(b)(7)(C)

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I do not

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share governmental information with him. Whether you choose to believe it or inquire further about this is certainly your option, but I am telling you the truth. He did not know the substance of this and this was literally someone who had in the days before seen me very stressed. As you're certainly aware, I spent two weeks working on redacting the Stanford Report. Neither the Stanford Report nor the Goldman matter was disclosed to this individual or any other individual by me outside of this building.

Stanford Report. And in the course of that, in the evening before it would appear, I had engaged in this brief banter about probably somewhat happy that having just learned -- and I am speculating here -- but just somewhat happy that I had learned about the Goldman matter and realizing that would probably drown out the bad press for something

1 that I had been (b)(6),(b)(7)(C) working on.

2 Q You said call me for a brief second. Do
3 you remember what that conversation was about?

4 A What time did I send that?

5 Q 4:16 p.m. Because it's three minutes
6 after he sent the e-mail.

7 A I don't remember the sum and substance
8 of that conversation.

9 Q Do you remember if he did call you?

10 A I don't remember if (b)(6),(b)(7)(C) called or not.
11 I'm sure it would be on the phone logs. I just
12 don't know honestly.

13 Q Okay.

14 A I -- I don't know. Sorry.

15 BY (b)(6),(b)(7)(C):

16 Q Why did you write what a coincidence
17 that those two stories came out today?

18 A Obviously, I had the view that it was
19 good that from a moral perspective that the
20 Goldman case was drowning out the Stanford Report,
21 which as David is aware I had been working heavily
22 on. And I assumed that because the Stanford
23 Report would be very damaging for morale for many
24 good people that I work with.

25 BY MR. KOTZ:

1 **Q But what did you mean by coincidence?**

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

8 **Q What would that speculation be?**

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

13 **Q I'm interested in your speculation.**

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

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

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

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

6 A Essentially, yes.

7 Q Okay.

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

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

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

17 A Yes.

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

23 A Not that I'm aware of.

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

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

3 A Certainly not.

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

8 A Certainly not.

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

13 A Yes.

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

16 A Can you please repeat the question?

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

22 (b)(6),(b)(7)(C): I think because we've
23 been using the word coincidence a lot, maybe just
24 say what you mean by the word coincidence there.

25 BY MR. KOTZ:

1 Q Well, do you think that there was an
2 intention or there was some connection between the
3 SEC's filing of the Goldman -- the SEC's
4 announcing of the Goldman settlement and entering
5 into the Goldman settlement on the same day that
6 the financial regulatory reform legislation went
7 through its final stage in the Senate? Or do you
8 think it was just they happened to be on the same
9 day?

10 A Sir, I believe that everything about
11 this is a witch hunt and that the people involved
12 in this are some of the -- that I know -- are some
13 of the most honest, decent people and would never
14 compromise this agency's independence for that
15 reason or anything. We wouldn't -- so the answer
16 to my question is I have no reason and I would be
17 profoundly surprised if anyone would ever do such
18 a thing at this agency.

19 Q And do such a thing you mean?

20 A To have timed anything about Goldman for
21 the reasons you have suggested in that question.

22 Q I suggested reasons. But okay, I got
23 the point. All right. I'm going to ask you
24 further questions.

25 Are you aware of any information indicating that

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

4 A Certainly not.

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

11 A Certainly not.

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

16 A Certainly not.

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

23 A Certainly not.

24 Q Are you aware of any information
25 indicating the SEC coordinated its action against

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

5 A Certainly not.

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

14 A Certainly not.

15 Q Were you aware of the fact that shortly
16 after the SEC filed its complaint against Goldman
17 there were articles or an article in the newspaper
18 with nonpublic information about the vote that the
19 Commission had?

20 A Can you please repeat the question?

21 Q Were you aware that shortly after the
22 SEC brought an action against Goldman there was an
23 article in the newspaper which contained nonpublic
24 information about the vote that the Commission had
25 to approve the Goldman case?

1 A Yes.

2 Q Do you know who leaked that information?

3 A No.

4 Q Did you have any conversations with
5 anybody that would lead you to suspect someone of
6 leaking that information?

7 A No.

8 Q Are you aware of anybody leaking or
9 providing any nonpublic information about Goldman
10 Sachs to the press?

11 A No.

12 Q Were you -- did you have any involvement
13 in the settlement discussions after the filing of
14 the Goldman Sachs ABACUS complaint?

15 A No.

16 Q Were you -- did you have any involvement
17 in the Executive Session or the procedure in which
18 the Commission approved the Goldman settlement?

19 A No.

20 Q Were you aware of -- when was the first
21 time you became aware that there was a settlement
22 in the Goldman case?

23 A When I read it on the New York Times
24 that afternoon.

25 Q Okay.

1 A And moments later I sent an e-mail to
2 several members of the Appellate Section who wrote
3 back that's old news. I guess they had heard it
4 an hour or two before.

5 Q Were you aware of the procedures
6 regarding notification of Goldman Sachs of the
7 SEC's intention to file an action against them in
8 April?

9 A Are you referring to Wells Notice?

10 Q Wells Notice or notice closer in time to
11 the actual case being brought.

12 A I'm not aware of how those procedures
13 exactly work.

14 Q You weren't involved in that process at
15 all?

16 A No.

17 Q Are you aware of any discussions about
18 the market impact on the filing of the Goldman
19 complaint?

20 A Any discussions internally?

21 MR. KOTZ: Yeah. Okay, we have no
22 further questions. The one thing I would ask and
23 this is very important, is that in order to
24 preserve the integrity of this important
25 investigation that we're conducting, that you not

1 discuss the content of your testimony with anyone
2 else. Obviously, you can discuss it with counsel
3 and counsel can't discuss it with anyone else
4 anyway. But I would ask you not to discuss it
5 with anyone other than counsel.

6 THE WITNESS: Am I allowed to discuss it
7 with my boss?

8 MR. KOTZ: I would ask that you not
9 discuss the content of the testimony. You can
10 certainly discuss that you took testimony, it took
11 an hour, it was horrible, it was wonderful.

12 THE WITNESS: Am I allowed to discuss
13 this e-mail with my boss?

14 MR. KOTZ: I would ask that you not
15 because we're in the middle of an investigation.

16 THE WITNESS: It seems that this would
17 be a relevant e-mail to tell my boss about.

18 MR. KOTZ: Well, you can, but I would
19 ask that you not do that until we complete our
20 investigation. Okay?

21 THE WITNESS: I understand your request.

22 MR. KOTZ: Okay. And I would ask that
23 you not discuss it with (b)(6),(b)(7)(C) too. All
24 right?

25 Okay, we're off the record.

1 (Whereupon, at 2:55 p.m., the examination was
2 concluded.)

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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 50 pages is a complete, true and accurate transcript of the testimony indicated, held on July 26, 2010, at 2:02 p.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:

8/2/10

Official Reporter:

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

Diversified Reporting Services, Inc.

PROOFREADER'S CERTIFICATE

In the Matter of: OIG-534
Witness: Number 19
File Number: OIG-534
Date: Monday, July 26, 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)

8/2/10

(Proofreader's Name)

(Date)

Chapter Break

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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

WITNESS: Number 20

PAGES: 1 through 85

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

DATE: Tuesday, July 27, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 9:41 a.m.

 **COPY**

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, Inspector General

5

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

13 National Treasury Employees Union

14 1750 H Street, N.W.

15 Washington, D.C. 20006

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C O N T E N T S

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WITNESS

EXAMINATION

4

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EXHIBITS:

DESCRIPTION

IDENTIFIED

7

1

January 5, 2010, E-mail,

8

Khuzami, [REDACTED] Cohen, [REDACTED]

9

Reisner and [REDACTED]

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January 15, 2010, E-mail,

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[REDACTED] Cohen, [REDACTED]

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and Nisanci

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January 15, 2010, E-mail, [REDACTED] /Cohen

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January 15, 2010, E-mail,

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[REDACTED], Cohen, Nisanci and

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[REDACTED]

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February 22, 2010, E-mail, [REDACTED]

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February 2, 2010, E-mail, [REDACTED]

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April 7, 2010, E-mail, [REDACTED]

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April 11, 2010, E-mail, [REDACTED]

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April 14, 2010, E-mail, [REDACTED]

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April 16, 2010, E-mail, [REDACTED] /Cohen

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1 PROCEEDINGS

2 MR. KOTZ: We are on the record at 9:41 a.m. on
3 July 27, 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

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

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
14 for the record, please?

15

A Yes.

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

16

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

17

Q

Okay.

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

, my name is David

18

Kotz. I'm the Inspector General of the United

19

States Securities and Exchange Commission. I have

20

with me my colleague from the Office of Inspector

21

General,

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

. This is an investigation

22

by the Office of Inspector General, Case Number

23

OIG-534. I'm going to ask you certain questions.

24

You'll be providing answers under oath. The court

25

reporter will record and later transcribe

1 everything that is said. Please therefore provide
2 verbal answers to the questions, as a nod of the
3 head or another nonverbal response won't be picked
4 up by the court reporter. Also, so the record
5 will be clear, please let me finish my question
6 before you provide your response. In addition, it
7 is important you understand the questions and give
8 accurate answers. If there is anything you don't
9 understand or anything you do not know or are not
10 sure about, please let me know. Otherwise, I will
11 assume that you heard and understood the question.
12 Do you understand those instructions?

13 A Yes.

14 Q Okay. Let me give you perjury warning.
15 As you can see, your response and statements given
16 today are provided after you have sworn an oath,
17 will be taken down verbatim by the court reporter.
18 This is an official U.S. Government law
19 enforcement investigation. The claims asserted in
20 this case are serious ones. It is very important
21 you tell me everything you know about the matter
22 at hand and are completely forthcoming and
23 truthful with me. I'm formally advising you that
24 your testimony today is as to the laws of perjury.
25 Providing false or misleading testimony under oath

1 is a very serious offense. If the evidence shows
2 the testimony you've given is false, we may refer
3 it as appropriate.

4 Do you understand those instructions?

5 A Yes.

6 Q Great. Alright, I'm going to start with
7 a little background and then we'll get into some
8 specifics and maybe show you some e-mails.

9 A Okay.

10 Q Alright. Could you please describe your
11 education beginning with college?

12 A (b)(6),(b)(7)(C)

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

14 Q (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 (b)(6),(b)(7)(C)

22 A (b)(6),(b)(7)(C)

23 (b)(6),(b)(7)(C)
24
25

1 Q (b)(6),(b)(7)(C)

2 A

3 Q

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

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

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

7

8 Q (b)(6),(b)(7)(C)

9 A

10 Q

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

12 A (b)(6),(b)(7)(C)

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

14

15

16

17 Q (b)(6),(b)(7)(C)

18 A (b)(6),(b)(7)(C)

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

20

21

22 Q (b)(6),(b)(7)(C)

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

24 A (b)(6),(b)(7)(C)

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

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Okay.

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I became a

or

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at the

-- at the time the

25

of the SEC.

1 Q How long did you serve as [REDACTED]

2 [REDACTED]

3 A Approximately [REDACTED]. So I believe I
4 started in, I think, [REDACTED]. And I

5 remember that because it was just before [REDACTED]

6 [REDACTED] And in [REDACTED] of this [REDACTED]

7 [REDACTED] [REDACTED] So that's

8 when I -- [REDACTED]

9 [REDACTED]

10 [REDACTED] I believe in [REDACTED] of

11 [REDACTED].

12 Q What were your duties as [REDACTED]

13 [REDACTED]

14 A Essentially to investigate potential
15 securities law violations, to take testimony,
16 request and review documents, make recommendations
17 both on a staff level and then also ultimately to
18 the Commission with respect to enforcement
19 recommendations, drafting complaints, responding
20 to motions. So there was some litigation with
21 respect to -- we obviously had trial counsel or
22 litigators who sort of headed up the trial teams,
23 but on a handful of my cases I also performed
24 litigation related tasks.

25 Q And what is your current position?

1 A I am [REDACTED] -- [REDACTED]

2 [REDACTED] Office of Legislative and
3 Intergovernmental Affairs.

4 Q And is that the position you've held
5 since [REDACTED]

6 A Correct.

7 Q What are your duties in connection with
8 that position?

9 A Essentially our office, which we call
10 Leg Affairs for short, is sort of the -- the
11 primary interface between Congress and I suppose
12 to a lesser extent other agencies and the SEC.
13 So, if there are requests for technical assistance
14 from Congress or Congressional staff, they
15 typically would flow through our office. We spent
16 a lot of time in the past year working on the
17 financial reform bill, providing the staff's
18 technical thoughts, conveying certain points that
19 the staff wanted to convey. Any time someone from
20 the Commission testifies before a Congressional
21 committee, often times we will do sort of
22 testimony preparation, so try to determine what
23 the questions might be, prepare draft questions
24 and answers, maybe assist in editing or in some
25 cases drafting the testimony. I mean I think

1 there are other duties, but it's basically dealing
2 with correspondence that comes in -- often times
3 we'll edit correspondence that is sent from a
4 member of Congress to the Chairman. I think there
5 are other duties, but basically it's -- it's
6 interacting with Congress and its staff with
7 respect to various legislative or other SEC
8 related issues.

9 Q Okay. Who do you currently report to?

10 A [REDACTED]

11 Q And have you reported to him the whole
12 time since [REDACTED]?

13 A He came at some point subsequent to my
14 starting. I don't recall the exact month. Maybe,
15 I'm guessing, [REDACTED] or so.

16 Q Who did you report to before he came?

17 A I don't know who I reported to quite
18 honestly. Oh, actually, for a stretch, [REDACTED]
19 [REDACTED] actually was the Director of Legislative
20 Affairs. At some point, he moved to the Executive
21 Director's office and then ultimately he's now
22 with Commissioner Casey. He's a counsel for
23 Commissioner Casey. So I think technically I
24 reported to [REDACTED], but at the time I think that he
25 was actually [REDACTED] for a stretch and then

1 [REDACTED], I understood that he was
2 probably going to be taking another job within the
3 Commission. So I did I think technically report
4 to him. I did interact with him. I kept him in
5 the loop. [REDACTED] was also [REDACTED].
6 You know, we -- I didn't report to her, but we
7 sort of kept each other apprised of what we were
8 doing. And then, obviously, other members. Our
9 particular office is located within the Chairman's
10 suite, so other folks within the Chairman's office
11 -- Didem Nisanci, the Chief of Staff, or [REDACTED]
12 [REDACTED] or Rick Delfin or other folks. We'd sort of
13 interact with them until [REDACTED] took over as
14 director.

15 Q I see. Okay. Did there come a time
16 when you became aware of the existence of an
17 investigation by the SEC into the sale of
18 collateralized debt obligations by Goldman Sachs,
19 known as the ABACUS investigation?

20 A I did become aware of the investigation.
21 Yes.

22 Q At what point did you become aware of
23 that investigation?

24 A I believe that I became aware we were
25 investigating Goldman in or around the January

1 2010 timeframe.

2 Q Okay.

3 A Although I don't think I had any
4 specifics about what it related to. I think it
5 had -- I knew it had to do with some form of asset
6 backed security, but the specifics of it I don't
7 think I understood until later.

8 Q Okay. But you were generally aware in
9 about January of 2010 that there was a pending
10 investigation against Goldman Sachs?

11 A That's -- that's my best memory of when
12 I first learned of the investigation.

13 Q And were you aware generally that that
14 was considered a national priority for the SEC and
15 marks a significant case for the SEC?

16 A I think I assumed it was. I don't think
17 anyone ever used the term this is a national
18 priority or --

19 Q Okay.

20 A -- but I assumed since it was Goldman,
21 it was a significant case.

22 Q Okay. Alright. Let me show you the
23 first document. We're going to mark as Exhibit 1.

24 This is an e-mail exchange between Robert Khuzami,

25 [REDACTED] Steven Cohen, [REDACTED] Lauren

1 Reisner and you, dated 1/5/10, sent 7:52 p.m.

2 We're going to mark as Exhibit 1.

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

5 BY MR. KOTZ:

6 Q And if you see -- if you -- you know,
7 take your time to read it.

8 A Okay.

9 Q But if you want to start from the
10 beginning, there's an e-mail from Robert Khuzami to
11 a variety of people, not you, saying I've heard
12 that Senator Levin and the Senate Permanent
13 Subcommittee on Investigations is preparing to
14 hold Goldman and other banks to a hearing. Late
15 January/February is what I'm hearing. Any intel
16 we can get on timing would be helpful as we would
17 certainly want to file our Goldman case before the
18 hearing, which will put us on the offensive on
19 this issue. And then [REDACTED] responds, I'm
20 happy to check with PSI staff to see what they'll
21 tell us. This is somewhat delicate because they
22 likely don't want us to beat them to the punch
23 either. And then Rob responds I doubt they know
24 anything about our case. Steven Cohen says we can
25 calendar it for the fourteenth just to be safe.

1 Robert Khuzami says too soon. And [REDACTED]
2 says just for information, the Senate will be in
3 recess until January 19. So we've seen some
4 e-mails and had some testimony on this. Explain to
5 me if you could the concern about the Senate
6 Permanent Subcommittee on Investigations having a
7 hearing prior to the SEC bringing its action.

8 A I mean my -- my concern? Or Mr.
9 Khuzami's concern? Or --

10 Q Either. Start with yours or what your
11 general sense of the concern expressed in these
12 e-mails.

13 A Sure. I mean I'm -- I'm assuming the
14 thought was that -- well, I don't know. I don't
15 know what Mr. Khuzami was thinking about. I
16 assume that there was concern that if there were a
17 hearing on particular issues that we were covering
18 in our investigation, that that might in some way
19 shape or form negatively impact or affect either
20 the investigation or a case that might actually be
21 brought.

22 Q Right. But [REDACTED] also refers to
23 beat them to the punch and put us on the
24 offensive. I mean isn't it fair to say that the
25 SEC was about to bring a case against Goldman. It

1 would obviously be a significant case with
2 something that would provide good exposure and
3 publicity for the SEC and they wanted to be able
4 to bring it first before some of the same issues
5 were already raised at the PSI hearing.

6 A Well, I don't know if at this point in
7 time we were ready to bring a case.

8 Q Well, it talks about being calendared
9 for the fourteenth.

10 A And I think Mr. Khuzami replied too
11 soon.

12 Q Right.

13 A But -- but on -- on -- on the point
14 about -- yeah. I mean I would -- again I don't --
15 I don't know specifically what [REDACTED] was referring
16 to, but I assume that there would be some PR
17 benefit that would flow from us bringing a case
18 against Goldman prior to their being a sort of
19 public discussion about potential issues.

20 Q Okay. And that at the same side on the
21 PSI, you know, you had experience working on that
22 committee. I mean do you think that on some level
23 the PSI folks would have liked to have kind of
24 brought this issue to the forefront first before
25 the SEC?

1 A I don't -- I don't know, but I would
2 assume. I mean --

3 Q You would assume yes?

4 A I would assume yes. I mean it would
5 make sense for them to want to -- to get it out
6 there first. But I -- again I don't know that.

7 Q Okay. And were you involved at this
8 point. You're cc'd, but you didn't respond. Do
9 you remember this back and forth?

10 A I do remember this e-mail string. Yes.

11 Q And so what do you recall about it
12 generally?

13 A Well I recall reviewing it at the time.
14 I'm trying to think what if anything I or anyone
15 else in Leg Affairs did in response to it.

16 Q Okay. I mean --

17 A I mean I recall being aware of -- of the
18 sort of desire to -- to try to have a case be
19 brought prior to PSI having whatever they were
20 going to have on Goldman.

21 Q And do you know where Robert Khuzami got
22 his information about late January/February and
23 was there some kind of effort to check whether
24 that was correct?

25 A I don't know where he got his

1 information from. I feel like not necessarily in
2 this context, but maybe at some point later, he
3 might have known someone -- either an attorney for
4 Goldman or someone at Goldman that -- that might
5 have been the source of information. Again, I
6 don't know if it's specific to this.

7 **Q Did you do anything or did the folks in**
8 **Leg Affairs do anything to check out whether in**
9 **fact there was going to be hearing by PSI in**
10 **January/February?**

11 A I'm -- I don't recall if we did anything
12 to check it out. I know that -- or at least check
13 it out with PSI at this point in time. I believe
14 at this point in time PSI had been making a number
15 of document requests from us on a variety of
16 issues. Actually, the two primary ones were
17 related to credit rating agencies -- an exam that
18 we did back I believe in 2006 -- and also related
19 to our CSE program. And I think we understood
20 that PSI would be holding hearings on financial
21 related issues. We assumed it would be related to
22 these topics. I -- I feel like we probably did
23 sort of -- without directly confronting the issue
24 -- try to get a sense for when they might be
25 holding hearings. But I just don't recall what we

1 did specifically.

2 Q Alright. Let me show you a bunch of
3 e-mails so you have it all in front of you.

4 A Okay.

5 Q So you know you have the proper
6 opportunity for recollection. So Exhibit 2 is an
7 e-mail exchange between you, Steven Cohen, [REDACTED]
8 [REDACTED] and Didem Nisanci, Friday,
9 January 15, 2010 at 11:10 a.m.

10 A Okay.

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

13 BY MR. KOTZ:

14 Q If you see there there is a reference
15 about a request for documents to be provided to
16 the Senate from Goldman. And you say thanks,
17 Steve. Is this case already on our calendar?

18 A Okay.

19 Q And then Exhibit 3 is an e-mail exchange
20 between you and Steven Cohen dated 1/15/10,
21 11:30 a.m.

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

24 BY MR. KOTZ:

25 Q And then this exchange -- this question

1 I guess of who in the Senate asked for docs and
2 Steven Cohen says it is PSI. So I guess this is
3 just clarifying that it's the same entity.

4 A Okay.

5 Q And then the next document we're going
6 to mark as Exhibit 4 is an e-mail exchange between
7 you and [REDACTED] Steven Cohen, Didem Nisanci
8 and [REDACTED] 1/15/10, 12:52 p.m.

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

11 BY MR. KOTZ:

12 Q And in this one Didem says right, so all
13 the more important to bring the case. Steven
14 Cohen says we're pressing them to bring it at the
15 next closed meeting on the 28th. There's some internal
16 issues about which individuals to charge that they're working
17 through. I'll let you know if that does not happen. And
18 then [REDACTED] says for what it's worth, the soft touch
19 intel we're getting from PSI is that they are not
20 doing a hearing on this anytime soon. And then
21 you say which knowing PSI is almost certainly
22 accurate given that they are just getting large
23 volumes of docs. They almost certainly wouldn't
24 hold the hearing without going through them in
25 some level of detail. Does this refresh your

1 recollection that at some point the information
2 that you and/or [REDACTED] got was that PSI was
3 not doing a hearing at that time?

4 A I think it is consistent with what I
5 said before in that I feel like we probably did
6 find -- find out -- try to find out when they were
7 doing the hearings. And I think this does -- this
8 does refresh my recollection that we learned that
9 they wouldn't be doing a hearing any time soon.
10 My e-mail is referring to the fact that the e-mail
11 from [REDACTED] indicates that they apparently are
12 requesting -- Goldman just provided PSI with
13 documents and I was just offering that usually PSI
14 is pretty thorough, so they probably wouldn't be
15 holding a hearing if they're just getting the
16 documents -- anytime soon.

17 Q Okay. And is it fair to say that given
18 that information, there was less pressure to kind
19 of bring the case. Cohen says we're pressing them
20 to bring it at the next closed meeting. Didem
21 says right, so all the more important to bring the
22 case. So with the news that PSI was not going to
23 have a hearing, the pressure was somewhat off. Is
24 that fair?

25 A I think -- I think that makes sense.

1 Well, I think that it -- it certainly -- if there
2 was an awareness that PSI was not going to bring
3 this hearing soon, then whatever pressure might
4 have existed to try to bring one before them
5 obviously is alleviated somewhat.

6 Q And were you involved at all in the
7 process like Steve Cohen says there are some
8 internal issues about which individuals to charge
9 that they are working through. Were you aware of
10 what that debate was -- what those internal issues
11 were?

12 A I don't believe at this point in time I
13 was. I -- I should add with respect to my current
14 duties, [REDACTED]
15 Legislative Affairs -- all the duties I indicated
16 before. I don't think it's formally part of my
17 title, but I do on occasion serve as [REDACTED]
18 [REDACTED] to Chairman Schapiro. So because I have
19 the experience with enforcement matters, you know,
20 depending on how busy I am or how busy the
21 calendar is, I'll maybe take one or two or
22 sometimes three cases on a particular calendar --
23 sometimes none. But I forgot to mention that and
24 this sort of reminded me about that.

25 Q Do you have an understanding at that

1 time that this Goldman case was first put on the
2 calendar in December then taken off, then put on
3 the calendar in January and taken off? I mean did
4 you have that understanding?

5 A I don't believe that I did. If there's
6 something -- I don't believe that I did.

7 Q Did you -- [REDACTED] Did
8 you reach out to them or speak to them to try to
9 find information about what the hearing might be
10 or what they were looking at?

11 A I know [REDACTED] refers to the soft intel --
12 I don't -- soft touch intel. I don't recall what,
13 if any, conversations I had with them. I -- I
14 know at some point I did discuss the Goldman
15 hearing with PSI, but I don't recall what, if
16 anything, I talked to them about at this point in
17 time.

18 Q Alright. The time you did discuss it,
19 when was that? That was before or after the
20 Goldman case was filed by the SEC?

21 A Before.

22 Q Okay. Was it a short time before?

23 A I think it started in or around early
24 February.

25 Q Okay. What were the nature of those

1 **discussions?**

2 A Senator Levin had asked to speak with an
3 individual named [REDACTED] who is an
4 employee in our Risk Fin Division. Apparently he
5 had read -- [REDACTED] he had read that
6 existed prior to his time at the SEC.

7 Q **Alright. Let me just show you the**
8 **e-mail.**

9 A Yeah.

10 Q **I just want to make sure that, you know,**
11 **you have an opportunity to review this e-mail as**
12 **you are describing it.**

13 A Okay.

14 Q **So let me mark as Exhibit 5 an e-mail**
15 **exchange between you and [REDACTED]**
16 **2/22/10, 2:50 p.m.**

17 A Yeah.

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

20 BY MR. KOTZ:

21 Q **And so in this e-mail, below that you**
22 **sent to [REDACTED], you describe this**
23 **[REDACTED], so I just want to make sure you**
24 **have it in front of you.**

25 A Okay. Thank you. Yeah, so Senator

1 Levin had asked to speak with [REDACTED]
2 because he had somehow [REDACTED] I think he
3 [REDACTED]
4 Congressional committees. He wasn't asking to
5 speak to him because he was an SEC person, but
6 rather this was a guy he wanted to try to -- he
7 thought had a sort of an expertise that he could
8 tap into and/or learn from. It just so happened
9 he worked at the SEC. So, somehow that request
10 either was made of me or came to me. So we set up
11 the meeting. Senator Levin met with -- with [REDACTED]
12 [REDACTED] and in the course of the discussion,
13 the -- PSI's investigation of Goldman was -- was
14 mentioned. So I -- I know at that point in time
15 obviously the issue was -- I do have a memory of
16 discussing it.

17 Q Now did [REDACTED] know that the
18 SEC was investigating Goldman as well?

19 A As of -- I believe he did. I don't know
20 when he first learned of it. Whether, you know,
21 in advance of the meeting, I told him that there
22 is an investigation, so we need to be careful or
23 -- or whether it was subsequent to the meeting.
24 It probably was before, because I probably had
25 some idea that one of the things that they wanted

1 to talk about related to Goldman. So I don't know
2 if he -- I don't have a memory as to whether he
3 knew before, but I -- I feel fairly confident just
4 based on my practice that I probably would have
5 told him in advance of the meeting.

6 Q And did you participate in that meeting?

7 A Yes.

8 Q Okay. Did in that meeting (b)(6),(b)(7)(C)

9 (b)(6),(b)(7)(C) or anyone else from the SEC say
10 anything about the existence of an investigation
11 by the SEC against Goldman?

12 A No. But I -- I should say that at the
13 end of the meeting, Senator Levin requested (b)(6),(b)(7)(C)
14 assistance going forward, which I think is part of
15 what -- what is referenced in the e-mail in Exhibit
16 5. And I got the sense that -- from -- from the
17 questions they were asking that they were aware
18 that we were investigating Goldman. Because they
19 indicated to the extent that there isn't any sort
20 of issue or conflict or -- or ethical reason why
21 (b)(6),(b)(7)(C) couldn't help, I think they wanted his
22 assistance to review some Goldman-specific
23 documents. So this -- this issue of whether or
24 not he would be permitted to further assist them,
25 my memory was raised at this meeting with Senator

1 Levin.

2 Q And you say in this e-mail, my
3 understanding is that the SEC also is
4 investigating this issue, a fact that has been
5 publicly reported. In what way had that been
6 publicly reported?

7 A My memory is there was an article -- I
8 want to say January, but I'm not sure. But I just
9 have a memory of reading an article where it
10 alludes to an SEC investigation. I think it talks
11 about a PSI investigation. It also mentioned the
12 SEC. Obviously, it wasn't -- it wasn't being
13 confirmed by the SEC or anything like that, but my
14 memory is that there was an article that
15 referenced it.

16 Q Do you know what publication that
17 article was in?

18 A I don't. I don't.

19 Q So given that Senator Levin was already
20 aware of the investigation, was (b)(6),(b)(7)(C)
21 free to discuss it because Senator Levin was
22 already aware of it?

23 A I -- I don't -- no. Not free to -- the
24 question was whether he could assist PSI --

25 Q Right.

1 A -- in their investigation. At no point
2 in time was he free to discuss whatever we were
3 doing, although my knowledge -- my understanding
4 is he didn't know anything about what enforcement
5 was doing.

6 Q But was (b)(6),(b)(7)(C) allowed to just
7 acknowledge the existence of the SEC Goldman
8 investigation given that you said it seemed like
9 Senator Levin already knew about it?

10 A No. No. And I believe what happened
11 was -- well, what happened was I went back to -- I
12 sent this e-mail to -- to (b)(6),(b)(7)(C) I discussed
13 in internally. I also discussed it with (b)(6),(b)(7)(C)
14 And the thought was that if (b)(6),(b)(7)(C) were going to
15 provide the assistance that Senator Levin
16 requested, he would have to be walled off entirely
17 from the investigation and that was not something
18 that folks thought was a good idea. Not because
19 he -- (b)(6),(b)(7)(C) was assisting in this investigation,
20 but he did have a certain expertise and who knew
21 if he might be needed as an asset or a resource in
22 the future. So what -- what I communicated back
23 to PSI was basically without confirming that there
24 is an investigation, to the extent that there were
25 one that related to Goldman, if he were to provide

1 this assistance, he would be foreclosed from
2 serving in any capacity. So given that we're
3 unable to -- (b)(6),(b)(7)(C) not going to be able to
4 provide the assistance that you're looking for.

5 Q Okay. So (b)(6),(b)(7)(C) didn't provide any
6 further assistance to Senator Levin or his office
7 after that first meeting?

8 A He did have another meeting -- what
9 happened is they -- they sort of -- they -- we had
10 a few discussions about this issue where we sort
11 of -- they finally came to understand that (b)(6),(b)(7)(C)
12 was not going to be able to review the documents.
13 My memory is they came back and asked well, what
14 if we showed you documents but we don't tell you
15 where they're from and it won't have any markings
16 on them. These were sort of risk-related
17 documents that (b)(6),(b)(7)(C) would maybe have an expertise
18 in. Would he be able to review those? We
19 discussed that internally with -- with (b)(6),(b)(7)(C)
20 and others and the thought was that it seems like
21 form over substance. We're not going to sort of
22 close our eyes and pretend that these aren't
23 Goldman documents. Subsequent to that, I want to
24 say a few weeks later, they -- they asked if they
25 could just talk to him generally about risk

1 related issues. Sort of what certain terms meant.
2 And I don't even know necessarily what all these
3 things mean, but value-at-risk and convexity and
4 gamma, alpha -- or gamma, theta, something called
5 NV01. And also just generically how it is that
6 certain -- how risk departments would be set up.
7 If -- sort of if -- if -- if you had different
8 trading desks, how it would flow up generally. So
9 (b)(6),(b)(7)(C) did have a meeting with PSI where he
10 discussed those issues subsequent to Exhibit 5 and
11 what we've been talking about.

12 Q Were you at that meeting?

13 A Yes.

14 Q Okay. And was any information about the
15 SEC investigation of Goldman discussed at that
16 meeting?

17 A No.

18 Q Okay. Do you know if Senator Levin or
19 his staff at any point in time was made aware of
20 the SEC's timing or in planned timing of their
21 Goldman investigation?

22 A I don't believe that they were. On the
23 night before the actual case was filed -- and I
24 should back up. Subsequent, pretty soon after

25 (b)(6),(b)(7)(C) met with PSI staff, PSI requested

1 of us that -- basically asked if (b)(6),(b)(7)(C) could find
2 any experts that would be able to testify at a
3 Goldman hearing. I think that they told me when
4 the hearing was going to be -- the 27th of April.

5 Q Of April?

6 A Of April. So -- so could (b)(6),(b)(7)(C) identify
7 any experts and in the event he can't -- so
8 basically folks to talk about the kinds of things
9 that he talked about. If he can't find someone,
10 then they indicated they wanted (b)(6),(b)(7)(C) to testify or
11 somebody else at the SEC. So, I had multiple
12 discussions with PSI trying to communicate why we
13 didn't think that would necessarily be a good
14 idea.

15 Q The part about (b)(6),(b)(7)(C) or somebody at the
16 SEC testifying.

17 A (b)(6),(b)(7)(C) or somebody at the SEC. Correct.
18 And I think the fear was that given our
19 investigation and the fact that I think at this
20 point in time we probably knew that a case was
21 going to be coming sooner rather than later, that
22 one, there could be planted questions that might
23 undercut our case. Two, (b)(6),(b)(7)(C) may just say -- I
24 mean (b)(6),(b)(7)(C) is a super smart guy, but he's not
25 necessarily -- he wouldn't necessarily know when

1 there's a trap being laid for him or when things
2 are sort of appropriate to say from an enforcement
3 context vice just sort of general stream of
4 consciousness.

5 Q I'm sorry, was it intended at that point
6 that the SEC case would have been filed prior to
7 the hearing in these deliberations?

8 A I don't -- at some point in time during
9 the deliberation, I realize -- because this is
10 literally sort of a week plus, you know, maybe 10
11 days to -- to -- 10 days or so prior to the filing
12 of our case. So at some point in that time frame,
13 there was an understanding on my part that the
14 case was going to be filed very soon.

15 Q And did that make a difference in
16 whether somebody from the SEC could testify about
17 Goldman?

18 A I think knowing that we were going to
19 file a case certainly made it that much more
20 important that someone from the SEC not testify,
21 because it could negatively impact the case.

22 Q Even if the hearing occurred after the
23 case was filed?

24 A Correct. Correct.

25 Q Alright. So at that point in time --

1 and this I would guess would be the beginning of
2 April? Sometime the beginning of April since you
3 said it was about 10 days before the case was
4 filed. The case was filed on the 16th.

5 A Yes. I -- I have a memory of the issue
6 being sort of front and center on -- and I -- I --
7 I -- I -- in preparation for today, I sort of just
8 looked at the calendar. The Saturday before we
9 filed the case, I remember either getting a call
10 or an e-mail from PSI where the issue of -- if you
11 can't find somebody for -- to testify for us, we
12 -- we want (b)(6),(b)(7)(C) or somebody else sort of
13 being conveyed by PSI.

14 Q So was that the point in time in which
15 you understood that there was going to be a
16 hearing on April 27th?

17 A Yes.

18 Q Okay. So say it was about a week before
19 the filing. The filing was on a Friday. This was
20 on a Saturday. So say it's about a week before in
21 the April 8th, 9th, 10th range?

22 A That sounds about right.

23 Q Okay. So in the April 8th, 9th, 10th
24 range, you became aware that the hearing that the
25 PSI was doing was going to take place on April

1 27th. And I assume that you conveyed that to
2 other folks --

3 A Yes.

4 Q -- within the SEC?

5 A Yes. I don't have a memory of to whom I
6 conveyed it, but I'm sure I did.

7 Q And so, was it kind of understood at
8 that point that it would behoove the SEC to have
9 its case filed prior to April 27th?

10 A I don't know the answer to that. I -- I
11 -- I don't -- I don't know if it was already sort
12 of calendared and/or locked in to be filed. At
13 the -- you know, when I found out the hearing is
14 April 27th, I don't know where enforcement was in
15 terms of precisely when the case was going to be
16 brought.

17 Q Okay. But at that point, you understood
18 that they were going to file the case prior the
19 PSI hearing?

20 A If I didn't know sort of on that
21 Saturday, I know -- I surely found out soon
22 thereafter.

23 Q Okay. Alright. Let me show you another
24 document and mark it as Exhibit 6. An e-mail
25 exchange between you and (b)(6),(b)(7)(C) dated

1 2/25/10, 5:25 p.m.

2 (Exhibit No. 6 was marked for
3 identification.)

4 BY MR. KOTZ:

5 Q Now do you remember that [REDACTED]
6 was detailed to the PSI?

7 A Yes.

8 Q Okay. And there were some discussions
9 about what she could or couldn't do?

10 A Yes.

11 Q Some of it is reflected in this e-mail?

12 A Yes.

13 Q What do you recall about that?

14 A I recall -- I recall sort of a couple
15 different sets of discussions. And actually, can
16 I just read -- read the e-mail real quick --

17 Q Please, please.

18 A -- just to -- okay. So I recall sort of
19 on the front end [REDACTED] having questions about
20 trying to understand the extent to which she could
21 communicate certain information she had from being
22 at the SEC to PSI staff. And in -- in particular,
23 I -- I do recall her mentioning the Goldman matter
24 as one of those things. She wanted to know hey,
25 what can I tell them about what I know?

1 Q And what was decided in that case?

2 A My memory is she was told -- I believe
3 -- I -- both I told her and I believe [REDACTED]
4 told her basically -- basically you can't disclose
5 nonpublic information. You're -- you're still
6 bound by the prohibition on disclosing nonpublic
7 information that you gather here. You'll be
8 detailed there. You know, you can -- basically I
9 -- I -- I think I recall telling her you can
10 basically be just, you know, it's almost like
11 you're at PSI. You're there now. If you need to
12 -- if you need to make inquiries of the SEC, you
13 do it just like any other PSI member, meaning you
14 come through us. You don't reach out to [REDACTED] or
15 Ken or other people you may have a relationship
16 and try to sort of get information through them.
17 It comes through us just like you're somebody else
18 at PSI.

19 Q Okay.

20 A That's -- that's basically what I
21 recall.

22 Q Now, given that Senator Levin's office
23 knew that the SEC had a Goldman case, I mean was
24 that considered nonpublic information? Just the
25 existence of the case?

1 A It probably was. Yeah, I mean -- yes.

2 I would assume it was.

3 Q So, to your knowledge, [REDACTED]
4 didn't talk to the folks at PSI about even the
5 existence of the SEC's Goldman ABACUS case?

6 A I don't believe so, but obviously I
7 wasn't -- you know. I wasn't with her all the
8 time. But I -- but I --

9 Q Were those the instructions given to her
10 by you and other folks at the SEC?

11 A Yes.

12 Q Did you ever reach out to her in terms
13 of trying to find out when they were having a
14 hearing?

15 A No.

16 Q Alright. Let me show you another one.
17 I'm going to mark as Exhibit 7, dated 4/7/10,
18 4:45 p.m., between you and [REDACTED].

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

21 BY MR. KOTZ:

22 Q And it looks like there was some concern
23 in this one. This is later on. If you could see
24 it starts on the back page where she says the
25 Senate's Permanent Subcommittee on Investigations

1 will hold a hearing on Goldman's role in the
2 financial crisis on April 27th. So it looks like
3 maybe this even might have been the first time you
4 were notified.

5 A That's probably right. Yeah.

6 Q We're starting by interviewing Goldman
7 witnesses. PSI is presently unaware of the ABACUS
8 investigation. PSI will learn of the
9 investigation on Friday anyway when the first
10 witness comes in. But since time is short, I
11 wanted to see what you think. Then there's a
12 little back and forth. It seemed like there was
13 some concern about what she might say. References
14 to a gentle reminder. So if you want to take a
15 minute to read it and just tell me what you
16 remember.

17 A Sure. Okay. I do remember this
18 exchange. I remember there was sort of two
19 issues. She was asking could she disclose the
20 fact of the investigation and also there was this
21 question about transcripts -- what the protocol
22 would be if she wanted to obtain our SEC
23 investigatory transcripts.

24 Q Right.

25 A And I -- I -- I do recall the back and

1 forth e-mails where I know my view was we should
2 just tell her basically you can't disclose any
3 nonpublic information. I didn't have an
4 understanding that she had disclosed any up to
5 that point in time. But I thought it would make
6 sense just to reiterate what we had told her
7 before which is basically you can't disclose
8 nonpublic information on the transcripts. PSI
9 knows how to get them if they need them basically
10 and there's a protocol to follow for that. The
11 gentle reminder -- my memory is and it says it
12 here that that basically that was on the point
13 that everything should flow through Leg Affairs.
14 She shouldn't try to reach out to [REDACTED] or other
15 people she knows. And that's when [REDACTED] said maybe
16 a gentle reminder is in order.

17 **Q Did you provide that general reminder?**

18 A I did have a call with her where in
19 substance I communicated what was reflected in the
20 e-mails to [REDACTED]

21 **Q And so your confident that [REDACTED]**
22 **did not disclose any nonpublic information to PSI?**

23 A I don't -- I don't know if she did or
24 not. I know that we -- I told her again at this
25 point in time in a phone conversation you

1 shouldn't disclose any nonpublic information to
2 PSI.

3 Q And she didn't kind of indicate to you I
4 already did or whoops?

5 A No. No, she did not.

6 Q So she didn't give you any indication
7 that she had disclosed any nonpublic information?

8 A No.

9 Q Alright. The next two documents
10 actually relate to the discussion we were having
11 before. We're going to mark as Exhibit 8 and 9.

12 Exhibit 8 is an e-mail exchange with you and [REDACTED]

13 [REDACTED] 4/11/10, 6:47 p.m. And then for

14 Exhibit 9 is an exchange also between you and [REDACTED]

15 [REDACTED] 4/14/10, 9:23 p.m. This relates to the

16 discussions that you referenced earlier about

17 having an SEC person -- particularly [REDACTED]

18 [REDACTED] -- testify at the hearing.

19 A Yeah. I'm familiar with these e-mails.

20 (Exhibit Nos. 8 and 9 were marked for
21 identification.)

22 BY MR. KOTZ:

23 Q So basically, the point here is what you
24 were saying that Senator Levin was requesting that

25 [REDACTED] or somebody else testify and the

1 SEC didn't think it was a good idea and in the end
2 what happened?

3 A I had numerous conversations with PSI
4 staff --

5 Q Right.

6 A -- about -- about -- well, first of all,
7 internally, I tried to press [REDACTED] as
8 well as ultimately my memory is [REDACTED]
9 [REDACTED] Risk Fin, to try to find another
10 academic or another expert that we could say to
11 PSI here's a person who can speak to the same
12 sorts of things that [REDACTED] can. I know there were
13 some names thrown about, but those never -- it
14 never resulted in anyone that we thought would be
15 an adequate substitute. So I had numerous
16 conversations with PSI where I tried to impress
17 upon them the importance of not calling [REDACTED]
18 or anyone else at the SEC -- that it would be a
19 bad idea if in fact there -- there were an
20 investigation related to Goldman and -- and word
21 got out -- or -- or -- or if there were in fact an
22 investigation of Goldman and people began asking.
23 There was a fear that questions would be planted
24 basically and that [REDACTED] may say something that
25 could harm the investigation.

1 Q Now how were you able to convey to PSI
2 that this would be a concern without giving them
3 the impression that the SEC was doing an
4 investigation?

5 A Well, again, particularly at this point
6 in time, I -- I -- they understood in my view that
7 there was an investigation. So often times when I
8 communicated with them, I'd say to the extent that
9 there were an investigation, it would be
10 problematic. I believe sort of towards the end, I
11 probably just said I'm not going to keep putting
12 that disclaimer out there. Just for the purposes
13 of our discussion, let's just assume that it's --
14 that it -- that it is -- that it's accurate.
15 Because it was sort of -- every -- every --

16 Q It's accurate that the SEC had an
17 investigation going?

18 A Yes. In other words, so I didn't have
19 to keep saying if in fact there were an
20 investigation, because the whole point was we
21 wanted to impress upon them the fact that it could
22 negatively impact us if (b)(6),(b)(7)(C) testified.
23 So I had numerous discussions with PSI about that
24 issue, trying to communicate to them or convince
25 them not to call (b)(6),(b)(7)(C) or any SEC

1 witness.

2 Q And what happened at the April 27
3 hearing? Did they call [REDACTED]

4 A No, they did not.

5 Q Did they call somebody else?

6 A No. They did not.

7 Q They didn't call anybody else from the
8 SEC?

9 A No. They called -- it was just Goldman
10 witnesses is my memory.

11 [REDACTED]: Irrelevant.

12 BY MR. KOTZ:

13 Q Alright. Let me show the next document.
14 We're going to mark as Exhibit 10, I believe. And
15 this is an e-mail exchange between you and Steve
16 Cohen, dated 4/16/10, 8:06 a.m.

17 A Yes.

18 (Exhibit No. 10 was marked for
19 identification.)

20 BY MR. KOTZ:

21 Q And at the bottom, you say to Steve
22 Cohen in an e-mail, Friday, April 16, 7:50 -- hey,
23 Steve, can you please let me know when we file
24 against Goldman so I can inform PSI. What was
25 that all about?

1 A I wanted to communicate to PSI once it
2 became public that there was a case against them.
3 So I wanted to let them know that hey, we filed
4 against Goldman.

5 Q So immediately as the case became
6 public, you wanted to make sure kind of as a
7 courtesy to let PSI know?

8 A Yes.

9 Q Because there had kind of been these
10 discussions and you didn't feel like you could
11 tell them until it was made public. But now that
12 it was made public, you wanted immediately to call
13 them.

14 A That is -- that is accurate.

15 Q And you did do that?

16 A Actually, my memory is that when it
17 became public -- I forget where I was -- whether I
18 was in another meeting or not, but I believe that
19 (b)(6),(b)(7)(C) forwarded the press release to PSI and
20 at some point soon after, I saw it and I think I
21 forwarded a copy of the complaint -- although I
22 realized after the fact I think the complaint was
23 in what (b)(6),(b)(7)(C) had sent as well. So soon after --
24 soon after it became public, I think (b)(6),(b)(7)(C)
25 forwarded it to PSI. And then soon after that, I

1 sent another e-mail to PSI saying here's the
2 complaint. Something like that.

3 Q Did you have a conversation with them at
4 that time or was it just --

5 A I did have a conversation with them that
6 day.

7 Q Was it about the same issue? About them
8 still wanting to call somebody or?

9 A I think -- I think part of it -- I think
10 they wanted to know, learn as much as they could
11 about the complaint without -- basically that we
12 weren't able to publicly share. So they -- they
13 wanted to find out what it is -- you know, learn
14 more about -- about the complaint. So there were
15 questions on those fronts. I believe that they
16 wanted -- I don't remember precisely when they
17 requested it, but they wanted a briefing from our
18 staff, our enforcement staff about the case and at
19 some point relatively soon after -- whether it was
20 the day of the filing or over the weekend or some
21 point thereafter, they did indicate that they --
22 they wanted a witness. They indicated either --
23 initially I think said Chairman Schapiro or Rob
24 Khuzami. And then eventually that became they
25 wanted Rob Khuzami to testify. My memory is that

1 I was told that some point after that that Senator
2 Levin had weighed in and -- and indicated he did
3 not want an SEC witness.

4 Q Are you familiar with the investigation
5 that we're conducting here generally?

6 A I -- I mean I know you're conducting an
7 investigation.

8 Q One of the issues we're looking at is
9 whether there was coordination between the SEC and
10 say Congress regarding the Goldman case in
11 regarding of the timing of the Goldman case. And
12 I mean is it fair to say from your knowledge, the
13 SEC did not coordinate say with the PSI about the
14 timing of the Goldman case?

15 A That's correct.

16 Q And in fact, it seems as though from the
17 information we have in your testimony, that not
18 only did the SEC not coordinate with the PSI about
19 the timing of the Goldman case, on some level the
20 SEC was competing with the PSI to try to get their
21 case out before. And so in some respects, PSI and
22 the SEC far from cooperating, were actually trying
23 to beat each other to the punch. Is that fair?

24 A I mean I -- that obviously was a concern
25 early on. We learned that they weren't holding a

1 hearing any time soon. I think it became --
2 whether it was still a concern, I assume it
3 probably was, but it was less of an issue. And I
4 think at some point in time, there was an
5 awareness -- and this is probably late in the game
6 -- that we were going to bring our case before
7 them. So then it didn't really become -- before
8 they held their hearing.

9 Q You understand where I'm coming from?
10 In other words, the allegation is that the two
11 entities are working together to try to coordinate
12 when the SEC would bring its case. But in fact,
13 on some level, they were working at odds if
14 anything to try to -- each side try to ensure that
15 they would bring the matter out to the public
16 before the other.

17 A I can't speak to what PSI -- whether PSI
18 had that desire. But I think it's fair to say
19 that there was a desire -- yeah. That there was a
20 desire for us to bring the case first.

21 Q Alright. Let me show you another
22 document. Well, let me -- before we do that, let
23 me ask you a few questions about financial reform.
24 You said that you work quite a bit on financial
25 reform.

1 A Correct.

2 Q And was having a financial reform
3 legislation bill go through something that was
4 important to the SEC?

5 A I don't know if the Commission formally
6 ever espoused a view on the importance of
7 financial reform. I think it probably would be
8 split. My -- this is a sort of an educated guess
9 -- split amongst the Commissioners. There may be
10 differing views.

11 Q What about the Chairman's office?

12 A I think the Chairman's office and
13 Chairman Schapiro did indicate a desire for
14 financial reform -- you know, obviously depending
15 on what's in it -- but for there to be a financial
16 reform bill passed. Yes.

17 Q And was there a general sense that
18 whatever the final details in the financial reform
19 legislation, there would be some matters in that
20 legislation that would be favorable to the SEC?

21 A I think that probably -- yeah. I think
22 that's probably right. I mean depending on which
23 draft -- there were so many different drafts in
24 House and Senate. Some were -- had provisions
25 that were better for the SEC. Some had ones that

1 were less. But I'm sure every single draft had.
2 some provisions that were helpful to the SEC.
3 Some had provisions that were bad as well.

4 Q Right.

5 A In fact, all -- at the end of the day,
6 it's always a mix and a balance.

7 Q Right. At the end of the day, based on
8 the legislation that's passed, does the SEC feel
9 that it's more good than bad in that legislation?

10 A I can't speak for the whole SEC, but me
11 personally I think it's more good than bad. Yes.

12 Q And the financial reform legislation --
13 I think maybe as many legislations do -- although
14 you would know better than me -- kind of ebbed and
15 flowed. Sometimes it looked like it was more
16 likely to be passed. Sometimes it looked like it
17 was less likely to be passed. Is that fair?

18 A I think that's accurate.

19 Q And the times when it looked like it was
20 less likely to pass, was there some discouragement
21 or concern within the SEC that you know this
22 wasn't looking good, that this legislation which
23 might be favorable may not make it?

24 A I don't think there was necessarily --
25 again, I can't speak for the whole SEC. I mean

1 there were certainly times where -- where I
2 personally thought it was less likely that is was
3 going to pass. At the end of the day, I think I
4 probably always thought that something would pass.
5 I didn't know what the actual form was. But, you
6 know, as it ebbed and flowed and as provisions got
7 put in or taken out, there were certainly times
8 where I thought oh, geez, it would be more
9 problematic if this passed vice the previous
10 version or vice the version in the House or
11 whatever so --

12 Q So it wasn't a matter so much of we want
13 it to pass. It doesn't look like it's going to
14 pass. It was more kind of how it's looking in
15 terms of the provisions?

16 A At least from my perspective, that's
17 what I was concerned about. I mean I was so
18 enmeshed in the process that sort of what I was
19 doing was on all the various provisions that were
20 sort of flowing through the SEC -- I obviously
21 wasn't involved in all of them, but you know sort
22 of providing technical assistance in responding to
23 questions and giving our feedback on a variety of
24 things.

25 Q Now were you aware as someone who's an

1 expert in legislative affairs -- were you aware of
2 the affect that the SEC's filing of the Goldman
3 action had on the financial reform process?

4 A I would not -- not withstanding the fact
5 that I used to work [REDACTED] and I am in
6 Leg Affairs, I would not refer to myself as an
7 expert in legislative affairs -- just given the
8 intricacies --

9 Q Okay.

10 A -- and the things I've seen, but --

11 Q Based on your experience in legislative
12 affairs?

13 A I actually was -- I personally was not
14 aware of the impact that the filing of the case
15 would have. I, for whatever reason -- I knew it
16 was an important case, but I was very surprised at
17 the level of interest, the level of media interest
18 in the case and the fact that it -- it was just --
19 it was everywhere it seemed like after the case
20 was filed and I was not expecting that.

21 Q I mean is it fair to say that given the
22 interest -- the tremendous interest that the SEC
23 case against Goldman got, that it did have an
24 impact on the financial reform legislation?

25 A My personal opinion -- again I don't

1 know. There's so many different factors. I think
2 it probably did at the end of the day.

3 Q What was that impact in your opinion?

4 A It probably was sort of, you know, I
5 don't know if motivation is the right word. But
6 it was -- it did sort of reinject it seemed like
7 -- again this is my own personal take on what I
8 read in the paper and interaction with others. It
9 just seemed like -- like the legislation had more
10 momentum to move forward after the case came out.

11 Q That's the Goldman case?

12 A Correct.

13 Q And so in either conversations in Leg
14 Affairs or anywhere else in the SEC, did anyone
15 make that connection? Did anyone even say wow,
16 look at this effect that this Goldman case had?
17 Not only did the SEC get a lot of press, but it
18 looks like it may have pushed financial reform.

19 A I'm sure I had those discussions. I
20 don't recall any specific one. I mean it wasn't
21 like I was sitting around sort of focused on that
22 issue. But I'm -- I'm sure at some point in time
23 that topic came up.

24 Q And did you ever have a discussion with
25 anyone prior to the SEC's filing of the Goldman

1 case that said -- or I wonder if or I hope that
2 this Goldman case will move forward financial
3 reform legislation?

4 A No. I don't have any memory of ever
5 having done that -- had that discussion before the
6 filing of the case.

7 Q Do you think that most people were
8 surprised that the filing of the Goldman case had
9 such an impact on financial reform legislation?

10 A I'm not sure who you mean by most
11 people. Meaning internally?

12 Q Yeah.

13 A Like my coworkers?

14 Q Yeah.

15 A I mean I honestly don't know. I would
16 guess yes. I mean it could -- because that's -- I
17 was surprised and -- and I assume sort of folks
18 that are similarly situated with me would feel the
19 same way. I don't remember a specific discussion
20 about someone saying --

21 Q Right.

22 A -- geez, I'm shocked about this.

23 Q Were you aware of a discussion about
24 whether to file the Goldman case on Friday given
25 the fact that Friday historically was considered

1 not a day to file a case because of the news
2 cycle?

3 A I -- I -- I actually don't recall. I --
4 I remember the night before I was sort of in the
5 room where the -- the time -- the fact that it was
6 going to be filed on Friday was discussed.
7 Whether or not there was a discussion about hey,
8 should we file it on Friday or it could -- you
9 know, it may not be the same amount of press
10 attention or whatever -- I don't remember that
11 being discussed.

12 Q Do you recall that Chairman Schapiro had
13 some testimony the following week -- I think on a
14 Tuesday maybe -- and there was some talk about
15 trying to make sure to get this Goldman case filed
16 before her testimony?

17 A Was it the Lehman -- the testimony
18 regarding the Lehman report? If you -- I think it
19 was around that time.

20 Q I believe so.

21 A I -- I -- yeah. I mean I do have a
22 memory of in that time frame I was -- was sort of
23 helping to prep Chairman Schapiro for her testimony
24 -- so both in reviewing the testimony questions
25 and answers, etc.

1 Q Did you get the impression that she
2 wanted the Goldman case to be filed before her
3 testimony?

4 A I -- I don't remember that at all. No.
5 I do remember once it was filed sort of making
6 sure -- trying to make sure that she was prepped
7 to answer questions about the issue because we
8 thought that it would come up, although I don't
9 know if it did or not.

10 Q And is it fair to say prior to the
11 Goldman case that the SEC has some bad publicity
12 rising out of the Madoff case and other matters?

13 A Sure.

14 Q And that affects the relations with
15 Capitol Hill?

16 A There's no question that that issues
17 surrounding Madoff or other -- other issues that
18 we were critiqued for. Whether it was -- you
19 know, the Lehman hearing was about the CSE
20 program. There's no -- there's no question that
21 when those issues are sort of out there, that that
22 impacts the requests for information from Congress
23 and I'm sure shapes their view of the SEC.

24 Q And at the same time, when the SEC
25 brings a case like Goldman, and that gets good

1 publicity, that has a positive impact on the SEC's
2 reputation and helps relations with Congress. Is
3 that fair?

4 A I would assume so. Although I guess it
5 probably depends on the member of Congress and
6 sort of how they feel about the case, because I --
7 obviously there was -- there was a lot of good
8 press. There were a lot of articles that attacked
9 us as well saying -- you know, critiquing the
10 strength of the case, etc. So I'm sure for some
11 they thought oh, the SEC's on the right path. For
12 others may have thought, the SEC continues to
13 screw up.

14 Q And so is it fair to say that at least
15 for the folks who are now in control of both
16 houses of Congress, they're more likely to be
17 favorable towards the SEC when they bring a case
18 like Goldman?

19 A I mean obviously it's an over
20 generalization and I don't know specifically how
21 every Democratic member thinks about that issue or
22 -- or other issues related to the SEC. You know,
23 if -- if asked to sort of speculate, I would agree
24 that -- that most Democrats probably would have
25 thought that that was a good case.

1 Q And so does it make your job easier and
2 make it easier to kind of represent the SEC before
3 folks in Congress when they bring a big case that
4 say at least some members in Congress are happy
5 about?

6 A I don't know if it makes my job easier.
7 You know, obviously I -- I mean I'm happy when we
8 bring good cases. And I'm happy when other people
9 think we bring good cases when people think hey,
10 the SEC's -- you know, they're -- they're --
11 they're sort of reforming their ways. They're
12 doing what they need to do. They're on the right
13 track. So to the extent that that case or
14 anything else that gets publicized encourages
15 people to feel that way about the SEC, that's -- I
16 think that's a good thing and the more the people
17 have good feelings about the SEC, then -- then I
18 think the better it is for us.

19 Q And it is particularly important if
20 those people who have good feelings about the SEC
21 are members of Congress, right?

22 A Well, they obviously have more -- more
23 power than most.

24 Q And so the SEC case against Goldman got
25 a tremendous amount of publicity. That's fair,

1 right?

2 A Correct.

3 Q And so the SEC may not have envisioned
4 that much publicity. Is it fair that the SEC knew
5 or was hoping that the Goldman case would get them
6 some significant positive press?

7 A You know, I can only speak to -- to me
8 personally. And again I was not expecting the
9 level of publicity that rose from it. I mean I
10 don't remember thinking in advance geez, I hope we
11 get good publicity out of this case. I remember
12 -- I don't remember, but I assume I thought in
13 advance this will be a good case. This is us
14 being aggressive, going after folks who did
15 something wrong, so that's a good thing.

16 Q Steve Cohen and some others including
17 the Chief of Staff are copied on some of these
18 e-mails back and forth that relate to Goldman, that
19 relate the PSI hearing. Do you know why they were
20 specifically involved? I mean these relatively
21 high level people in the Chairman's office.

22 A I mean a lot of times on enforcement
23 related issues Steve -- Steve -- I would cc Steve
24 or send an e-mail directly to Steve. He is -- he's
25 Enforcement Counsel of the Chairman. He seems to

1 know sort of what's going on in enforcement. And
2 -- I'm sorry. Go ahead.

3 Q But do you think that Steve Cohen and
4 the Chief of Staff were also involved in these
5 discussions because the Goldman case was a big
6 case for the SEC and it had the potential to
7 provide some very good press for an agency that
8 could use help with its reputation?

9 A I mean I think they were more involved
10 because this was sort of a high level
11 Congressional inquiry and issue. Didem obviously
12 is the Chief of Staff, but she [REDACTED]
13 [REDACTED] so she's involved in some of the
14 Congressional-related issues. I don't think --
15 you know, if it were sort of a -- either an
16 extremely low level Congressional inquiry or --
17 and I suppose that would have to mean by
18 definition that whatever the request was related
19 to something that was completely innocuous, then
20 maybe we -- maybe they wouldn't be involved. But
21 I tend to think that Steve probably would have
22 been because it was enforcement related and any
23 time it's any sort of not -- well, not every time
24 -- but I mean often times Didem is -- is brought
25 into the loop on Congressional issues that are --

1 are not innocuous or more important.

2 Q But do you believe that there was more
3 involvement from the Chairman's office in this
4 matter, too, because they believed that Goldman
5 was a big case for the SEC?

6 A I mean I don't think there was any more
7 involvement on -- as it relates to the stuff we're
8 talking about than in other PSI-related inquiries
9 that had -- that had happened or other sort of
10 high-level Congressional issues that arose.

11 Q Okay. Has the SEC had any contact with
12 the White House or any members or staff of
13 Congress in connection with the proposed financial
14 regulatory reform legislation?

15 A I assume yes, but I don't know for sure
16 and I've never had any contact with the White
17 House.

18 Q Okay.

19 A I think -- I assume, you know, it's
20 possible that Didem or -- Didem is the only one
21 that comes to mind that might have had contact.

22 Q Why does she come to mind?

23 A I feel like I have a memory of -- of at
24 some point in time and I don't even recall the
25 issue. There were so many issues. Just hearing

1 that she had spoken to White House counsel or I
2 don't even know who, but someone at the White
3 House about a particular issue.

4 Q Related to the financial reform
5 legislation?

6 A I believe so. But again I don't have
7 specifics.

8 Q What about with respect to the Goldman
9 case? You know, Mary Schapiro was appointed by the
10 President. If the SEC is about to bring a big
11 case, wouldn't she inform the White House that
12 she's bringing a big case?

13 A I don't believe so.

14 Q No?

15 A I'm not aware of any.

16 Q Would that be improper? And on some
17 level she works for the President.

18 A Well, we are an independent agency.

19 Q Right.

20 A And I think it would be improper --

21 Q It would.

22 A -- to give a heads up to the White House
23 or -- or -- or tell them for whatever reason --
24 I'm not sure what the reason would be -- that
25 we're about to bring an important case.

1 Q But just as an FYI, I mean he's the head
2 of the government -- the President, right?

3 A Right.

4 Q Shouldn't he know what the government is
5 doing? I mean if an agency in the government is
6 about to do something, shouldn't he or, you know,
7 his deputies in the White House know what they're
8 doing?

9 A Well, again, I can only speak to the
10 fact we are an independent agency. I'm not aware
11 of any communication that was given to the White
12 House in advance about the Goldman case or any
13 other case. So in my personal view, I don't think
14 it would be appropriate to give a heads up.

15 Q Had the SEC had any contact with members
16 or staff of Congress in connection with the
17 proposed financial regulatory reform legislation?

18 A Meaning did we have contact with members
19 of staff or Congress? Yes, we had substantial
20 contact.

21 Q And what did that relate to just
22 generally?

23 A I mean it ran the gamut in terms of the
24 issues. I mean really anything in the -- the
25 financial reform bill that touched upon or related

1 to the SEC. We probably had contact with members
2 of staff -- often times committee staff, sometimes
3 with members, obviously sometimes with other
4 member's staff. So, you know, OTC derivatives,
5 credit rating agencies, investor protection
6 related provisions -- there are some enforcement
7 provisions in there -- municipal securities
8 issues, private fund issues. I mean it really ran
9 the gamut. Really everything in the bill that
10 touched upon the SEC, we had communications with
11 staff or members of Congress.

12 Q Let me ask you about this private
13 funding. Self- funding -- was that something that
14 the SEC thought would be a good thing if it could
15 get it?

16 A Again, I can't speak to the whole
17 Commission, but I know Chairman Schapiro thought it
18 was -- it would be beneficial and I personally did
19 as well.

20 Q And so there were conversations between
21 folks in the SEC and staff or members of Congress
22 about the self- funding issue?

23 A Yes.

24 Q And do you know if the SEC had any
25 contact with the White House about the

1 **self-funding issue? Argued their case maybe?**

2 A I'm not aware of anything specific. I
3 don't know if sort of at the very end of the
4 process -- and just -- just to give sort of a
5 little background, self-funding was not in the
6 House bill that passed the House. It was in the
7 Senate bill.

8 Q **Okay.**

9 A They had a conference. The House
10 actually agreed to accept self-funding and made an
11 offer to the Senate that included it and
12 notwithstanding the fact that the Senate had it
13 included, they balked at it. My understanding is
14 because certain appropriators were upset that they
15 would lose the SEC from their jurisdiction. So at
16 that point in time, there were some very high
17 level discussions -- my understanding is there
18 were high level discussions between members of
19 Congress. Whether or not folks from the SEC had
20 conversations with the White House about
21 self-funding at that point, I don't know. It
22 wouldn't surprise me.

23 Q **Do you know if the White House had a**
24 **particular position on whether the SEC should get**
25 **self-funding?**

1 A I don't know. But now that I think
2 about it, I feel like there was a discussion -- I
3 don't -- I didn't participate in any discussions
4 with the White House about self-funding. But I
5 feel like there was a discussion about
6 self-funding with the White House sort of at the
7 end of the process.

8 Q And do you know what the White House
9 position was?

10 A I don't -- I don't know. I don't know
11 if they were -- you know, there's sort of --
12 there's sort of different levels of support. You
13 could sort of be supportive, but you're not
14 willing to necessarily go to bat for it. Or you
15 could be antagonistic, but you're not going to go
16 to the wall to try to keep it. I mean if I had to
17 guess, I feel like they were probably supportive,
18 but they were sort of probably letting Congress
19 work out what the issue was. That -- that --
20 that's sort of my feel of it. I don't have any
21 specific memory of that.

22 Q Now do you remember any point in time in
23 communications between SEC folks and members or
24 staff of Congress where there was language in the
25 financial reform bill that maybe the folks in

1 Congress were happy about and maybe the SEC was
2 happy about, too, but that was one of the, you
3 know, flows I guess in the ebb and flow of the
4 bill and there was some discussion about the fact
5 that, you know, it would be nice to have this
6 passed, but, you know, the momentum -- we're
7 losing the momentum financial national reform.

8 A I don't recall any specific discussion
9 where -- along those lines. But I'm sure at some
10 point there were -- either I or someone else had
11 discussions that just said hey, what's -- what's
12 the status right now? How's it looking? And,
13 probably depending on the day, they might have
14 said it's looking pretty good or I don't know or I
15 don't know, things are looking tough right now. I
16 mean I'm sure those discussions took place. I
17 don't specifically remember them.

18 Q And do you know if there were any
19 discussions where somebody in Congress said
20 something to the effect I need something to push
21 this through, you know. Do you have any cases
22 coming up? I mean is there something we can use
23 that will identify to the American people the
24 importance of financial reform?

25 A I'm not aware of any communication along

1 those lines.

2 Q Alright. Let me ask you several other
3 questions. So just for the record, do you have
4 any reason to believe that the SEC's action
5 against Goldman Sachs or the timing of that action
6 was to advance financial regulatory reform
7 legislation?

8 A No.

9 Q Are you aware of any information
10 indicating that the SEC's action against Goldman
11 Sachs or the timing of that action was to advance
12 financial regulatory reform legislation?

13 A Can you say that one more time? I just
14 want to figure out how that's different.

15 Q Sure. Are you aware of information
16 indicating that the SEC's action against Goldman
17 Sachs or the timing of that action was done to
18 advance financial regulatory reform legislation?

19 A No.

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

1 A No.

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

10 A No.

11 Q Did you have any interaction with the
12 Democratic National Committee, the Democratic
13 Senate Campaign Committee, the Democratic
14 Congressional Campaign Committee or any of the
15 employees with regard to the financial reform
16 legislation?

17 A No.

18 Q Were you aware of anybody at the SEC who
19 had such interactions?

20 A I am not.

21 Q Are you aware of any information
22 indicating that anyone at the SEC shared any
23 information concerning its Goldman Sachs
24 investigation with the U.S. Department of
25 Treasury, the Federal Reserve or any of their

1 employees prior to the complaint being filed?

2 A I am not.

3 Q Were you aware of the issue about
4 whether Goldman Sachs would be given notice that
5 the SEC was bringing an action against them?

6 A I believe -- my memory is the first I
7 became aware of that was after the case was filed
8 where Goldman indicated that they hadn't been
9 given a heads up. I -- I don't remember that. I
10 don't remember knowing that before the case was
11 filed.

12 Q Did anyone within the SEC give any
13 explanation as to why that happened after you
14 found that out?

15 A I mean I think I found that out by
16 reading press reports.

17 Q Did you have any communications with
18 anyone in the SEC about that?

19 A I don't remember if I did or not -- if I
20 asked Steve Cohen or someone else, hey, why -- why
21 -- what was the reason behind that? I just -- I
22 don't remember.

23 Q Okay. Did anyone at the SEC say oh, no,
24 we did give them notice? I mean was that disputed
25 to your knowledge?

1 A I feel like -- I feel like the idea that
2 they were shocked -- I mean this is my view of --
3 and I'm trying to remember what it is that causes
4 me to feel this way, but knowing how
5 investigations work, and knowing how the process
6 worked, the idea that they were completely caught
7 off guard and had no idea that any sort of action
8 was coming I found to be sort of a disingenuous
9 argument. And I don't think there was anything
10 specific that I knew about. I mean --

11 Q So your understanding was it may have
12 been that they weren't given a specific kind of
13 formalized heads up at the end, but that Goldman
14 generally was involved in the Wells and other
15 things and had to know that the SEC was going to
16 bring a case?

17 A I think that they -- I mean the fact
18 that they -- and actually the fact -- you
19 mentioned that there had been Wells'd. That -- I
20 had forgotten that they had been Wells'd. But, if
21 you've been Wells'd, then you're on notice. I
22 mean the staff's view at that point in time is
23 that -- to recommend an action. And so you
24 shouldn't be surprised. I mean I think that was
25 just a PR ploy on the part of Goldman. This is my

1 personal opinion. I have no basis to --

2 Q Were you aware as to whether there was a
3 policy within the SEC generally that after a
4 recommendation was approved by the Commission to
5 bring a case, a call is made to the entity to say
6 we're about to file?

7 A I'm not aware of any such policy. I
8 wouldn't be surprised if it existed. But I just
9 don't -- I mean it --

10 Q What about the issue of the affect on
11 the market? Did you hear any conversations about
12 whether the SEC should have informed the New York
13 Stock Exchange that it intended to file a
14 complaint against Goldman Sachs prior to the
15 filing of its complaint?

16 A I don't recall hearing about that. I
17 mean I recall vaguely, you know, the notion of the
18 timing of our cases and -- and if they impact they
19 market, so should we bring a case after the market
20 or before the market or whatever, but not -- not
21 the New York Stock Exchange being given a heads
22 up.

23 Q Was there a discussion about whether to
24 bring the Goldman case during market hours?

25 A I -- I -- there may have been, but I

1 wasn't a part of it.

2 Q You're aware that there was a media
3 report after the Goldman case was filed which
4 provided information about what the Commission
5 vote was?

6 A Correct.

7 Q Are you aware of who might have leaked
8 that information?

9 A I am not.

10 Q Was there some concern within the SEC
11 that that information got out?

12 A Me, personally, I think yes, but I don't
13 have any specific memory of discussions. Me,
14 personally, I mean I was troubled by that fact
15 because, you know, the nonpublic -- the closed
16 Commission meetings are closed for a reason and
17 there shouldn't be leaks about what the votes are
18 or what's discussed at the closed meeting.
19 They're supposed to be a candid discussion about
20 the case and that's not something that should be
21 out there for public consumption.

22 Q Do you have any idea who might have
23 leaked that information?

24 A I do not.

25 Q Do you know of anyone who may have

1 provided nonpublic information about the SEC's
2 case against Goldman to the news media?

3 A No.

4 Q Were you aware as to whether there were
5 settlement discussions between the SEC and Goldman
6 Sachs prior to the complaint being filed?

7 A I actually don't recall if I knew or not
8 -- or whether there even were or not.

9 Q Were you involved or did you have any
10 awareness of the settlement discussions with
11 Goldman after the case was filed?

12 A I knew they were taking place, yes. And
13 I -- at one point I got sort of a high-level
14 description. And so I -- I knew they were taking
15 place as it got closer to the settlement being on
16 the calendar. I'm sure I learned definitively
17 that -- I knew discussions were taking place. At
18 some point later in the process, I knew that a
19 deal had been struck. And then it was just a
20 question of whether the Commission would approve
21 it.

22 Q Were you aware that the SEC announced
23 its settlement -- essentially finalized and
24 announced its settlement with Goldman on the same
25 day that the financial reform legislation cleared

1 a major hurdle?

2 A I am aware of that.

3 Q And is it correct that that day was a
4 seminal date for the financial reform legislation?
5 And that was the last hurdle before it went to the
6 President.

7 A So it cleared the Senate on that date?

8 Q Right.

9 A That's -- that is an important date in
10 terms of the legislation, yes.

11 Q Do you have any idea why the timing was
12 such that the same day that the Goldman case was
13 settled was the day that this seminal event
14 occurred in the financial reform legislation?

15 A I do not. I mean I think it's just --
16 this is my own personal view. I think -- and from
17 what I've gathered, it's -- it was coincidental.
18 I don't know how it -- why it was that the case
19 was calendared on that day, but I don't think -- I
20 know I personally, and I don't think anybody else
21 here knew with any degree of certainty when it was
22 the Senate was going to do what they did. My
23 personal view, I think it was entirely
24 coincidental.

25 Q But there were -- isn't it correct that

1 during that week, there was a lot of talk about
2 the Senate holding a vote on that Thursday?

3 A I -- I know that there was -- yeah. I
4 mean there -- there -- there was talk of -- of the
5 Senate having the votes that it needed and then it
6 was just a matter of sort of when the leadership
7 and when, you know, the proxy rules of the Senate
8 when the vote would take place.

9 Q But during that week, wasn't Thursday
10 the day that most news reports had in discussions
11 about when that vote would take place?

12 A That's probably right. That's --

13 Q Okay.

14 A I just -- I don't remember.

15 Q Now, do you know if the SEC was aware at
16 the time that they decided when to finally settle
17 with Goldman Sachs that there were allegations
18 that in the bringing of the action that they were
19 timed with financial reform legislation?

20 A Can you say that one more time? Sorry,
21 I want to make sure I --

22 Q Do you think the S -- the SEC brought
23 its action against Goldman. And then there was a
24 complaint filed and there was an accusation, which
25 we're investigating, that the filing of the

1 Goldman case was done in coordination with the
2 folks who were pushing the financial reform
3 legislation. My question is do you think that the
4 SEC was aware of that allegation at the time they
5 decided what date to settle with Goldman and
6 announce the Goldman settlement?

7 A Well, again, not -- I can't speak on
8 behalf of what the Commission knew. I don't know
9 this, but I'm -- I'm sure that the folks who were
10 negotiating the settlement were aware of the
11 complaint that had been lodged. I'm not aware of
12 any --

13 Q So why would they settle on the same day
14 as this big moment in financial reform legislation
15 given those previous allegations?

16 A I think it was entirely coincidental. I
17 mean I'm not aware of any linkage at all between
18 when this case was settled and the passage of the
19 financial reform.

20 Q Do you have any information on the
21 deliberations that took place as to when to settle
22 the Goldman case?

23 A I mean I was aware that settlement
24 discussions were going on. I'm not aware of the
25 specifics as to when it was a deal was struck and

1 when it was that it was calendared, etc.

2 Q Are you aware that I believe the
3 Chairman also had some testimony the following
4 week, and there was an interest in trying to get
5 this settlement out before the testimony?

6 A I'm not aware of there being a desire to
7 settle the case so as to better the testimony. I
8 know that when the case came out, I had sort of
9 been involved in sort of editing -- inputting
10 edits on the testimony up to a point in time and
11 then I actually [REDACTED] and Julie took it
12 over. And subsequent to [REDACTED] --
13 my memory isn't subsequent -- there was the -- the
14 -- the desire to plug in a paragraph or -- or
15 language on the Goldman case because it was such,
16 you know -- it was -- it was a big deal. It was a
17 settlement. We wanted to address it in the
18 testimony. But I'm not aware of there being a
19 linkage between settling the case so as to improve
20 the testimony.

21 Q Okay. Alright. Why don't we go off the
22 record for a minute and we'll just talk and see if
23 there's anything else?

24 A Gotcha. Okay.

25 (A brief recess was taken.)

1 BY MR. KOTZ:

2 Q We've discussed the fact that there was
3 a leak of information about the initial vote of
4 the Commission in connection with the action
5 against Goldman. Were you aware that there was
6 another leak of the Commission vote in connection
7 with the settlement?

8 A Yes.

9 Q And were you aware that before the
10 settlement was announced, there were stories in
11 the press about the fact that Goldman and the SEC
12 were getting close to settling?

13 A I do remember -- yes. I do remember
14 press reports about that.

15 Q Do you remember if there was any concern
16 among the folks that you worked with that the
17 information about the Goldman settlement might get
18 out before the SEC announced it?

19 A I'm not -- I don't have any memory of
20 any discussions or communications along those
21 lines. I mean it makes sense that folks would be
22 concerned that you don't want nonpublic
23 information to get out before the settlement, but
24 I -- I don't recall any discussions about it.

25 Q And is it fair to say that the SEC would

1 also want them to be the one to announce a
2 settlement of that magnitude rather than have it
3 come out from some other source?

4 A I think it would make sense -- it's our
5 -- it's our case. It's -- you know, we're the
6 folks who are announcing the settlement. I would
7 think it would make sense that it would come from
8 us.

9 Q And it be advantageous for the SEC if it
10 came from the SEC?

11 A Well, I'm not sure what kind of impact
12 that would have.

13 Q Well, let me give you two possible
14 impacts.

15 A Okay.

16 Q One possible impact would be that the
17 SEC could style the settlement the way they
18 wanted. You know, if you were Goldman, you might
19 want to characterize the settlement one way. You
20 know, irrespective of, you know, the settlement is
21 the settlement. But, wouldn't it be advantageous
22 for the SEC to characterize the settlement the way
23 they wanted to and not let Goldman characterize
24 the settlement the way Goldman wanted to.

25 A That makes sense.

1 Q Okay. And would it also be advantageous
2 because the press that the SEC would obtain from
3 the Goldman case would essentially be about the
4 SEC's announcement of a case and that would be
5 better than the SEC announcing a case a day or two
6 after the news already got out?

7 A I -- I suppose that would make sense,
8 yes. And we'd -- we'd be able to -- you know --
9 we'd be prepared to respond to the inevitable
10 inquiries that would come from it.

11 Q And is it fair to say that given the
12 tremendous press attention in connection with the
13 filing of the Goldman case, the SEC knew that they
14 would be getting significant press with the
15 settlement of Goldman?

16 A Again, I can't speak for the Commission,
17 but, yeah, I'm sure that people were aware of
18 that.

19 Q And so, given that, it would be
20 advantageous for the SEC to announce the Goldman
21 settlement first itself before word leaked out
22 through another source?

23 A I think -- I think that makes sense. I
24 mean the fact of the matter is -- you know, there
25 had been these press reports and whether -- you

1 know, what the source of it was -- whether it was
2 somebody from Goldman or lawyers for Goldman or
3 someone at the SEC -- whomever it was, there were
4 these reports about a possibly impending
5 settlement that were out there prior to our actual
6 announcement.

7 Q And do you think that those reports
8 would give a little more urgency to the SEC
9 wanting to be in a position where they could
10 announce the settlement so that there wasn't
11 further information or maybe details of the
12 settlement that got out before they announced it?

13 A You know, I don't -- I don't know if
14 that -- I don't know if folks thought of that or
15 not.

16 Q Did that make sense to you?

17 A Say it one more time. Sorry, I want to
18 make sure I --

19 Q Would it make sense to you that given
20 that there were sort of some of these press
21 reports coming out about the possibility of a
22 settlement, that that would create a little more
23 urgency for the SEC to want to announce the
24 settlement with all the details officially before
25 even more information got out and which would

1 essentially water down the story once the SEC
2 announced it?

3 A I mean I don't think that that would
4 cause us to do anything we otherwise wouldn't do.
5 I mean I think that it is --

6 Q Well, let's assume the SEC was going to
7 settle --

8 A Um-hmm.

9 Q -- with Goldman.

10 A Okay.

11 Q There's a question of when they would
12 announce the settlement. So wouldn't they want to
13 announce the settlement as soon as possible given
14 that there were starting to be leaks so that they
15 could kind of sort of frame the story and get the
16 details out and have the press attention be
17 focused on their announcement rather than these
18 other details?

19 A I mean I guess I'm not aware of those
20 leaks impacting the timing at all. So whether or
21 not someone considered that and wanted to move
22 faster, I don't know. But I'm just not aware of
23 folks being impacted by that in terms of when we
24 filed this settlement.

25 Q Okay. Anything else?

1 (b)(6),(b)(7)(C) : No.

2 MR. KOTZ: Okay. That's all we have in
3 terms of questions.

4 The one thing I would ask, and this is very
5 important. In order to preserve the integrity of the
6 investigation that you not discuss the content of your
7 testimony with anyone.

8 THE WITNESS:: Okay.

9 MR. KOTZ: Alright. And with that,
10 we're off the record.

11 (Whereupon, at 11:08 a.m., the examination was
12 concluded.)

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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 83 pages is a complete, true and accurate transcript of the testimony indicated, held on July 27, 2010, at 9:41 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:

8/3/10

Official Reporter:

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

Diversified Reporting Services, Inc.

PROOFREADER'S CERTIFICATE

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In the Matter of: OIG-534
Witness: Number 20
File Number: OIG-534
Date: Tuesday, July 27, 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)

8/3/10

(Proofreader's Name)

(Date)

Chapter Break

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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

WITNESS: Number 21

PAGES: 1 through 48

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

DATE: Tuesday, July 27, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 11:15 a.m.

ORIGINAL

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, Inspector General

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

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9 Washington, D.C. 20549

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C O N T E N T S

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WITNESS

EXAMINATION

[REDACTED]

4

EXHIBITS:

DESCRIPTION

IDENTIFIED

1

January 5, 2010, E-mail Chain,

Khuzami to [REDACTED] et al.

12

2

January 15, 2010, E-mail Chain,

[REDACTED] to [REDACTED] et al.

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3

April 16, 2010, E-mail,

[REDACTED] to Schapiro

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4

April 16, 2010, E-mail,

[REDACTED] to [REDACTED]

24

1 PROCEEDINGS

2 MR. KOTZ: We are on the record at 11:15 a.m. on
3 July 27, 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 Okay, can you state and spell your full
14 name for the record?

15

A

16

Q

17 the Inspector General of the United States
18 Securities and Exchange Commission. I have with
19 me colleague from the Office of the Inspector
20 General, [REDACTED] This is an investigation
21 by the Office of Inspector General, Case No.
22 OIG-534. I'm going to ask you certain questions.
23 You'll be providing answers under oath. The court
24 reporter will record it and later transcribe
25 everything that is said. Please, therefore,

1 provide verbal answers to the questions, as a nod
2 of the head or another nonverbal response won't be
3 picked up by the court reporter.

4 Also, so the record will be clear,
5 please let me finish my question before you
6 provide your response, and I'll try to let you
7 finish your response before I ask the next
8 question. In addition, it is important you
9 understand the questions and give accurate
10 answers. If there's anything you don't understand
11 or anything you do not know or are not sure about,
12 please let me know. Otherwise, I will assume that
13 you heard and understood the question.

14 Do you understand those instructions?

15 A I do.

16 Q Great. All right, let me give you
17 perjury warning.

18 As you can see, your response to the
19 statements given today are provided after you've
20 sworn an oath and will be taken down verbatim by
21 the court reporter. This is an official U.S.
22 Government law enforcement investigation. The
23 claims asserted in this case are serious ones. It
24 is very important you tell me everything you know
25 about the matter at hand and are completely

1 forthcoming and truthful with me.

2 I'm formally advising you that your
3 testimony today is subject to the laws of perjury.
4 Providing false or misleading testimony under oath
5 is a very serious offense. If the evidence shows
6 the testimony you have given is false, we may
7 refer it as appropriate.

8 Do you understand those instructions?

9 A Yes.

10 Q Okay, great. All right, why don't we
11 start with a little bit of background. If you
12 could describe for me your education beginning
13 with college.

14 A (b)(6),(b)(7)(C)

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

16 Q (b)(6),(b)(7)(C)

17 A

18 Q

19 A

20 Q

21 A

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

23 Q (b)(6),(b)(7)(C)

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

25 A (b)(6),(b)(7)(C)

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

2 Q (b)(6),(b)(7)(C)

3 A

4 Q

5 A

6 Q

7 A

8 Q

9 A

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

11

12 Q (b)(6),(b)(7)(C)

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

14 A (b)(6),(b)(7)(C)

15 Q

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

17 A (b)(6),(b)(7)(C)

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

19

20

21 Q (b)(6),(b)(7)(C)

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

23 A (b)(6),
(b)(7)(C)

24 Q (b)(6),(b)(7)(C)

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

1 A (b)(6),(b)(7)(C)

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

3 Q (b)(6),(b)(7)(C)

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

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

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

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

8 Q (b)(6),(b)(7)(C)

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

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

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

12 Q (b)(6),(b)(7)(C)

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

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

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

16 Q (b)(6),(b)(7)(C)

17 A (b)(6),(b)(7)(C)

18 Q (b)(6),(b)(7)(C)

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

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

21 A (b)(6),(b)(7)(C)

22 Q (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

[REDACTED]

2

Q

[REDACTED]

3

A

4

Q

5

[REDACTED]

6

7

A

[REDACTED]

8

Q

[REDACTED]

9

[REDACTED]

10

A

I came to the SEC.

11

Q

When was that exactly? Do you remember?

12

A

[REDACTED]

13

Q

And what was your position when you came

14

to the SEC?

15

A

[REDACTED]

16

Q

Do you have a position, a specific

17

title?

18

A

[REDACTED]

19

[REDACTED]

20

Q

How many

[REDACTED]

21

A

[REDACTED]

22

Q

Okay, you,

[REDACTED]

23

A

[REDACTED]

24

Q

And do you have a particular that you

25

focus on?

1 A No, we all work on legislative affairs.

2 Q And that's still your current position.

3 A Yes.

4 Q And so what are your duties generally
5 for the SEC?

6 A We are liaison between Capitol Hill or
7 Congress and the SEC.

8 Q All right. Who is your current
9 supervisor?

10 A [REDACTED]

11 Q [REDACTED]

12 A Yes.

13 Q Did there come a time when you became
14 aware of the existence of an investigation by the
15 SEC into the sale of collateralized debt
16 obligations by Goldman Sachs known as the ABACUS
17 investigation?

18 A I didn't know it was the ABACUS
19 investigation, but I -- I was aware that there was
20 a Goldman investigation.

21 Q When did you first learn of that
22 investigation?

23 A I don't know, to be honest. I -- I knew
24 that we had a case against Goldman, and I -- I
25 honestly don't remember when. I just had heard

1 that it was in the works.

2 Q Did you learn about it before you came
3 to the SEC?

4 A No.

5 Q Do you think it was shortly after you
6 came to the SEC?

7 A No, I think it was a while.

8 Q Did you understand that that
9 investigation was considered a national priority
10 investigation for the SEC?

11 A I don't know what you mean by "national
12 priority."

13 Q Did you consider it to be one of the
14 more important investigations that the SEC was
15 working on?

16 A Yes, one of the -- one of many important
17 I guess I would say.

18 Q Were you aware that the Goldman
19 investigation was put on the calendar, then taken
20 off the calendar, then put on the calendar again
21 and then taken off the calendar prior to it
22 finally being approved?

23 A I've heard of a lot of cases getting
24 moved around. I don't work on the enforcement
25 issues, so I might have known that, but I don't

1 recall that now. I mean, I --

2 Q And were you ever --

3 A I knew it was coming for a while, but I
4 didn't know when.

5 Q Were you ever made aware of why it was
6 on the calendar then taken off and put on the
7 calendar, taken off?

8 A Not that I remember.

9 Q All right. The first communications
10 that we have of your e-mails that relate to the
11 Goldman case has to do with a PSI hearing in
12 January of 2010. Do you think -- and I'll show
13 you these e-mails -- do you think that might have
14 been the first time you heard about it?

15 A I'd have to see the e-mails to remember.

16 MR. KOTZ: Okay, sure. All right, why
17 don't we show you the e-mails? Okay. So let me
18 put both e-mails in so that you have the full
19 context for the questions we're going to ask you.

20 (Exhibit No. 1 was marked for
21 identification.)

22 BY MR. KOTZ:

23 Q The first e-mail is between Robert
24 Khuzami, [REDACTED], Stephen Cohen, you, Lorin
25 Reisner, dated 1/5/10 at 7:52 p.m. And the

1 second e-mail string -- the first one we're going
2 to mark as Exhibit 1. The second e-mail string
3 we're going to mark as Exhibit 2, and that's an
4 e-mail exchange between you, [REDACTED] Stephen
5 Cohen, Didem Nisanci, [REDACTED] 1/15/10, at
6 12:52 p.m.

7 (Exhibit No. 2 was marked for
8 identification.)

9 BY MR. KOTZ:

10 Q So, take whatever time to read this.
11 They're kind of related e-mail strings. The first
12 one is starting on January 4, 2010. Robert
13 Khuzami sends an e-mail to you, Lorin Reisner, and
14 Stephen Cohen -- I'm sorry, it actually starts on
15 January 4th with an e-mail from Robert Khuzami to
16 Mary Schapiro, Didem Nisanci, [REDACTED] you,
17 and Stephen Cohen with a copy to Lorin Reisner
18 about hearing that Senator Levin and the Senate
19 Permanent Subcommittee on Investigations is
20 preparing to haul Goldman and other banks to a
21 hearing. And then Robert Khuzami says, "Late
22 January/February is what I am hearing," okay?

23 A Okay.

24 Q And then you respond, "I'm happy to
25 check with PSI staff to see what they'll tell us.

1 This is somewhat delicate because they likely
2 don't want us to beat them to the punch either."

3 Khuzami said, "Any intel we can get on
4 timing would be helpful as we would certainly want
5 to file our Goldman case which addresses some of
6 these same issues before the hearing, which will
7 put us on the offensive on this issue."

8 And then you say, "I'm happy to... probe
9 very softly... but wanted to make sure we wouldn't
10 prefer something more," I guess in terms of soft.

11 And then Robert Khuzami says he doubts
12 that they know anything about the case and that
13 they're shooting for January 21st to present their
14 case to the Commission. "So, that is early enough
15 that I'm hopeful we will beat them to the punch.
16 So for now just get a sense if you can of when
17 they are scheduled to hold their hearing."

18 And Stephen Cohen says, "We can calendar
19 it for the 14th to be safe unless you think that's
20 too soon."

21 Robert Khuzami says, "Too soon...." And
22 then [REDACTED] comes back and says actually the
23 Senate will be in recess until January 19th. All
24 right, is this sort of coming back?

25 A It is now that I see this, yes.

1 Q A little bit? Okay. And then if you
2 look at the second document --

3 A I'm just reading it.

4 Q Yeah. At some point you say, "For what
5 it's worth, the soft touch intel we're getting
6 from PSI is that they're not doing a hearing on
7 this anytime soon." And then (b)(6),(b)(7)(C) says,
8 "Which knowing PSI is almost certainly
9 accurate...." Okay?

10 A Okay.

11 Q All right, so what do you recall about
12 this? It looks like there was some concern
13 initially that the PSI hearing would be before the
14 SEC brought the case, but then that concern was
15 allayed by the intel you got. Is that fair?

16 A Yes, and I'm trying to remember what we
17 learned from PSI, and I just don't remember except
18 for what's here, which is that they weren't doing
19 a hearing in the --

20 Q Yes, but I mean we talked to PSI.
21 They'd indicated to us that they never any had
22 intention of doing a hearing at that time, so I
23 don't know where Rob Khuzami got his information,
24 but -- so, do you recall generally just calling
25 them and kind of feeling them out and them saying

1 no, there's nothing going on right now?

2 A I obviously did, but I don't remember
3 doing that.

4 Q Okay.

5 A Or maybe I heard it from -- well, I just
6 don't know.

7 Q But do you remember this notion that
8 Enforcement or Stephen Cohen was concerned that
9 the PSI would have their hearing prior to the SEC
10 bringing its case?

11 A Yes. Now that I see these, I do
12 remember that.

13 Q And you say, "This is somewhat delicate
14 because they likely don't want us to beat them to
15 the punch either," and so was that your sense from
16 your experience that PSI probably would like to
17 have their hearing before the SEC brought their
18 case?

19 A Yes.

20 Q It seems like each side was trying to
21 "beat them to the punch," which I guess is Rob's
22 word. Is that --

23 A I can't speak for PSI.

24 Q Right.

25 A And I can't speak for Enforcement. But

1 that -- that does seem like the -- that -- that
2 would make sense to me.

3 Q And so what would be the reason why the
4 SEC would want to have their Goldman case brought
5 before the PSI hearing?

6 A I wouldn't know that. I mean, I --

7 Q Well, let me posit an idea --

8 A Yes.

9 Q -- and see what you think about it. Is
10 it fair to say that the SEC over time has had some
11 bad publicity -- Madoff and some other things --
12 that have created some bad publicity about the
13 agency?

14 A Certainly.

15 Q Bringing the Goldman case would be an
16 opportunity to get good publicity, and obviously
17 it did get a tremendous amount of publicity. The
18 SEC is bringing a big case -- you know, that's
19 what we should be doing.

20 A I think any case would bring good
21 publicity.

22 Q Right, but is -- I mean, is it fair to
23 say that the Goldman case brought more publicity
24 than any other case maybe the SEC's ever brought?

25 A Yes. I wouldn't have known how big the

1 publicity would be, but you would assume that
2 Goldman Sachs would be a good -- a case that would
3 generate publicity.

4 Q So, do you think that perhaps the
5 Enforcement Division wanted to bring their case
6 against Goldman first so they would be able to,
7 you know, have it be known out there that they're
8 bringing a big case before the story kind of gets
9 out, because somebody else is already looking at
10 Goldman?

11 A That would make sense.

12 Q And do you think that the information
13 that you provided that the PSA is not doing a
14 hearing kind of allayed that concern in terms of
15 worry that the PSI would bring this forward before
16 the SEC?

17 A Yes.

18 Q Do you remember having conversations
19 with the PSI about the Goldman case or no?

20 A No.

21 Q Okay.

22 A No.

23 Q Did you ever have a conversation with
24 the PSI where you referenced the fact that the SEC
25 was bringing a case against Goldman?

1 A After we brought the case but not
2 before.

3 Q Because we have another testimony that
4 clearly the bringing of the Goldman case was
5 nonpublic but that it was kind of understood that
6 Senator Levin knew that the SEC was bringing a
7 case against Goldman. Did you have that
8 impression?

9 A I -- I don't believe I ever spoke with
10 them. I definitely certainly never referenced
11 that we had a case. I do know that they had come
12 to us for expert help on issues involving their
13 investigation, as they do on a number of
14 investigations, and I recall that they had reached
15 out. They wanted to talk to (b)(6),(b)(7)(C) --

16 Q Right.

17 A -- in Risk Fin, and so they may have
18 understood that we had a case, but I -- I'm quite
19 sure that I never mentioned -- I don't think
20 anyone that I know -- in fact, I know no one I
21 know ever mentioned to them -- I don't know, but
22 I'm not aware of anyone I know, and I know I
23 didn't tell them tell them that we had a case.

24 Q Were you aware in advance that the SEC
25 was going to file its Goldman case? I mean, were

1 you -- did you know that it was about to happen?

2 A On -- on April --

3 Q 16th.

4 A 16th? Yes.

5 MR. KOTZ: Okay, let me show you an
6 e-mail to that effect. I'm going to mark it as
7 Exhibit 3.

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

10 BY MR. KOTZ:

11 Q It's an e-mail from Myron Marlin to Mary
12 Schapiro with a copy to a whole host of people,
13 including you, 4/16/10, 1:10 a.m.

14 A Myron is a night owl.

15 Q I guess so. And so it's an e-mail to
16 Mary. It says, "Mary, here's an update on
17 Friday's activity," and then it goes through a
18 timeline of a variety of things, including a
19 filing of the Goldman complaint. Why were you
20 copied on this, do you know?

21 A Several reasons. Anytime anything --
22 anytime we put out a press release of a
23 significant event, someone in Legislative Affairs
24 will forward it to the Hill. So, we need to know
25 it's coming so that we can be sure to --

1 Q Okay.

2 A -- be at our computers waiting. Also,
3 as you'll see on this day, there were other things
4 going on -- the release of your Stanford Report,
5 and that was also something that we'd had many
6 Hill requests for so we needed to know what time
7 everything was going out.

8 Q And so do you send a copy of the Goldman
9 complaint to folks on the Hill?

10 A I believe (b)(6),(b)(7)(C) sent the press
11 release. I don't know if the complaint was
12 attached. And we have a list of our authorizing
13 committees and other people who are generally
14 interested in the SEC's activities that we send
15 all big announcements to. I then sent it to the
16 PSI staff after (b)(6),(b)(7)(C) sent hers out, because I
17 didn't think that they were on her list, to make
18 sure they knew about the case as well.

19 Q And what you sent to the PSI staff was a
20 press release that had already been issued?

21 A Yes.

22 Q So, you did not have communications with
23 anyone on the Hill about the Goldman case prior to
24 the case being filed.

25 A That's right.

1 Q Do you have any understanding of why the
2 SEC filed its case on this particular date,
3 4-16-2010?

4 A Not that I remember.

5 Q When you got this e-mail -- I assume
6 didn't it at 1:00 in the morning. I assume you
7 got it somewhat later in the morning. Was that
8 the first you knew that the Goldman case was about
9 to be filed?

10 A No, we knew that week, sometime that
11 week. I don't remember exactly when, but we -- I
12 knew before Friday morning.

13 Q Did you know before Friday morning that
14 it was going to be filed sometime that week, or
15 did you know before Friday morning that it was
16 going to be filed on Friday morning?

17 A So much went on in April. I don't
18 remember exactly when I knew stuff, but I assume
19 -- I knew -- I believe we knew at least on
20 Thursday if not sooner that it was going to be
21 Friday. I just can't remember when I knew -- what
22 day.

23 Q And did you have any knowledge of why
24 the decision was made to file on Friday?

25 A Not that I remember. I very well could

1 have been privy to that, but I -- I just don't
2 remember it.

3 Q One of the things that has come up in
4 some of the e-mails is that historically the SEC
5 did not want to file cases that got press
6 attention on Friday with the idea being, you know,
7 the press coverage is going to be less, because
8 you're going to get the Saturday paper. Do you
9 remember any discussion about that in this case?

10 A Oh, boy. I don't remember, but there
11 certainly could have been. I mean, I've heard
12 that before. It's the same of releasing anything
13 on a Friday -- is there's always the -- what --
14 what you just said, you know, that there's not as
15 many people read the Saturday paper. I've heard
16 that before.

17 Q Right.

18 A So I could have heard it here, but I
19 just don't remember.

20 Q Although in this case it didn't seem to
21 hurt the press coverage.

22 A Seriously.

23 Q Did you have an awareness of when the
24 Goldman complaint was ready, so to speak, for
25 filing that week?

1 A Again, I might have heard that, but I
2 don't remember.

3 Q Were you aware that the following week
4 Mary Schapiro had testimony about Lehman that was
5 sort of significant testimony?

6 A Yes.

7 Q Were you aware that there was an
8 interest in trying to get the complaint filed
9 prior to the testimony?

10 A I might have been. Again, I -- I just
11 don't remember all the details. There were so
12 many things going on at that particular point in
13 time.

14 Q All right, let me show you the next
15 document.

16 A Okay.

17 Q I'm going to mark it as Exhibit 4,
18 e-mail exchange between you and [REDACTED] --
19 I'm sorry, [REDACTED]

20 A Oh, [REDACTED]

21 Q -- [REDACTED] from Senator Kaufman's
22 office --

23 A Yes.

24 MR. KOTZ: -- dated 4/16/2010, 10:45
25 a.m.

1 (Exhibit No. 4 was marked for
2 identification.)

3 BY MR. KOTZ:

4 Q And so at the bottom of the page we see
5 (b)(6),(b)(7)(C) e-mail of the press release.

6 Is that what you were referring to that she sent
7 out the press release to various folks in
8 Congress?

9 A Yes. Yes.

10 Q And then you have this individual who
11 e-mails back, "Wow." And you e-mail back, "Do you
12 know how hard I was biting my tongue yesterday?" And
13 then he responds, "You are the Sphinx!"

14 A Yes.

15 Q What was that referring to?

16 A If I recall correctly, Senator Kaufman,
17 for whom (b)(6),(b)(7)(C) works -- I can't

18 remember if it was the senator himself or (b)(6),(b)(7)(C)

19 (b)(6),(b)(7)(C) -- wanted to meet with members

20 of Enforcement -- it might have been Rob Khuzami

21 and Lorin Reisner; I know he's met with them

22 before -- to ask why we hadn't brought any big

23 cases yet.

24 Q Wow.

25 A And so I had to have a long conversation

1 with [REDACTED] talking about how he wanted
2 to meet with these guys to complain that we
3 haven't brought any big cases, and I just had to
4 listen, and so then when he says, "Wow," that's
5 when I said I had to bite my tongue, because
6 obviously I couldn't say anything. And after
7 that, he said we don't need the meeting; you guys
8 go -- go work on your case.

9 Q And so what does he refer to, "You are
10 the Sphinx?"

11 A I guess that I -- it's funny, because I
12 remember at the time thinking I guess he means
13 that I sat quietly like a sphinx.

14 Q Oh, okay. So, when was this
15 conversation that you had with [REDACTED]

16 A Well, I say here "yesterday," so I'm
17 guessing it was Thursday.

18 Q Do you remember if it was in the morning
19 or the afternoon or the evening?

20 A I don't remember.

21 Q But clearly you knew Thursday that the
22 SEC was going to bring a case against Goldman.

23 A Yes.

24 Q Do you think you might have known that
25 before Thursday?

1 A I certainly could have.

2 Q And do you think you knew that the SEC
3 was going to bring the case on Friday or you just
4 knew that the SEC was going to bring a case
5 shortly? I'm trying to get at was it kind of
6 commonly understood throughout the week that the
7 SEC was going to bring its case on Friday?

8 A I don't remember when the decision was
9 made or known.

10 Q Okay.

11 A But it certainly could be. I mean --

12 Q But you don't remember specifically.

13 A I just don't remember.

14 Q Do you remember if there was anything
15 that happened, any holdup, if the case -- the
16 complaint was ready then it's not ready, or some
17 kind of last-minute thing, or was it kind of
18 always understood when it was going to be filed?

19 A I just don't know.

20 Q All right. All right, you're aware of
21 the financial regulatory reform legislation I
22 assume.

23 A Painfully well aware.

24 Q And you've worked on that for a
25 considerable amount of time?

1 A Yes.

2 Q Would you say that the SEC generally was
3 in favor of having some legislation of financial
4 regulatory reform passed?

5 A The chairman certainly was, and -- I
6 mean, I don't know that -- the Commission never
7 took a vote, but the chairman certainly was, and
8 much of the staff was.

9 Q And is it fair to say there were a
10 number of things in the financial reform
11 legislation that could have been very advantageous
12 to the SEC?

13 A Sure, yes.

14 Q Are you aware of any contact the SEC had
15 with the White House or any folks within the White
16 House about financial regulatory reform
17 legislation?

18 A The White House?

19 Q The White House.

20 A I'm not personally aware of that. I've
21 -- I've never had contact. I know there was
22 contact with Treasury. I don't know if --

23 Q What was the contact with Treasury
24 about?

25 A Well, early on in the process, Treasury

1 put out a draft bill, and they came to our staff
2 to seek our technical expertise on that.

3 Q We understand that in connection with
4 self-funding -- is it fair to say that
5 self-funding was a matter that the SEC was very
6 interested in having?

7 A Yes.

8 Q And we understand that perhaps with
9 respect to self-funding there was a conversation
10 with the White House about maybe trying to get the
11 White House to weigh in, in favor of self-funding.

12 A I knew that that had happened, but I --
13 I wasn't -- I'd -- I'd heard that that had
14 happened, but I wasn't on the calls.

15 Q Do you know who was on those calls?

16 A I assume Didem Nisanci?

17 Q Why would you assume Didem?

18 A Because she's the chief of staff.

19 Q Okay.

20 A This is a high-level issue.

21 Q Does she have some connection with the
22 White House?

23 A I don't know.

24 Q Do you know if the SEC was successful in
25 getting the White House to assist its position on

1 self-funding?

2 A We didn't ultimately get it, so I don't
3 -- I -- you would have to ask the people who
4 talked to them. I just don't know.

5 Q Is it fair to say that throughout the
6 process of the financial regulatory reform there
7 were kinds of ebbs and flows, certain points in
8 time where it looked like it was more likely that
9 the legislation would pass and other times it
10 would look like it was less likely?

11 A I personally always thought that
12 something would pass. I -- certainly there were
13 times when the momentum in the press was large,
14 but from my perspective staff on the Hill were
15 always working hard toward getting this done.

16 Q Are you aware of the impact if any that
17 the SEC's filing of its Goldman case had on the
18 momentum of the financial reform legislation?

19 A I'm certainly aware of allegations that
20 the Goldman case helped push -- helped that
21 momentum push it toward conclusion -- you know, do
22 -- do I -- yeah.

23 Q You have some expertise in some context.
24 Do you think that that was the case? Did you see
25 any evidence of that?

1 A No. I mean, yes, there was more press
2 about the financial crisis, but I never -- I --
3 I'm not aware of that switching any votes or, you
4 know, anything specific. It -- it kind of added
5 to the overall din or the overall noise
6 surrounding the need for reform.

7 Q Okay.

8 A So, I wouldn't want to say that I don't
9 think it had -- played any role, but I also don't
10 think it played a specific role.

11 Q Did any conversations you had -- I
12 assume you had numerous conversations with members
13 of and staff of members of Congress about the
14 financial reform legislation.

15 A Yes.

16 Q Did any conversation that you had with
17 any member of Congress or any staff member of
18 Congress relating to financial regulatory reform
19 legislation -- did the Goldman Sachs investigation
20 or the filing of an action against Goldman Sachs
21 by the SEC ever come up?

22 A After the complaint was filed, it might
23 have --

24 Q Okay, I'm --

25 A But I'm not --

1 Q Before the complaint stopped.

2 A No.

3 Q Was there any point in time where any
4 member of Congress or staff member said, you know,
5 do you have any big cases coming, like this
6 conversation with [REDACTED] that might help to
7 provide some momentum for financial regulatory
8 reform?

9 A I never had that conversation, no.

10 Q Do you know if the SEC gave anyone in
11 either the White House or Congress a heads-up that
12 the SEC was about to file its case against Goldman
13 Sachs?

14 A I know I didn't, and my understanding is
15 that no one else did either, and I'm not aware of
16 anyone doing that.

17 Q All right. Did you have any
18 communications with the Democratic National
19 Committee, the Democratic Senate Campaign
20 Committee, the Democratic Congressional Campaign
21 Committee, or any of their employees relating to
22 financial regulatory reform?

23 A No.

24 Q You --

25 A Not that I'm aware of at all.

1 Q Were you aware that shortly after the
2 SEC brought its action against Goldman there was a
3 press report about the commission vote of that
4 action?

5 A Yes.

6 Q Do you have any idea who might have
7 provided that information to the news media?

8 A No.

9 Q Was there any effort within the SEC to
10 try to figure out who may have brought that, who
11 may have leaked that information?

12 A There might have been, but I wasn't a
13 part of that effort.

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

19 A Ask the question again? I'm sorry.

20 Q Sure. Are you aware of any information
21 indicating that anyone at the SEC shared any
22 information concerning its Goldman Sachs
23 investigation with the news media or --

24 A Am I --

25 Q -- or journalist prior to the complaint

1 being filed?

2 A Am I aware that information was shared?

3 Q Right.

4 A Or --

5 Q Right.

6 A I mean, I saw the news reports --

7 Q Oh, I see.

8 A -- about the -- but I'm not aware of
9 anything other than what I read in the -- in the
10 press, if that --

11 Q So, you're not aware of anyone in the
12 SEC sharing any information with the news media --

13 A That's right.

14 Q -- about the Goldman case prior to it
15 being filed.

16 A That's right, I am not.

17 Q You're aware that there was an article,
18 and the article seemed to convey information.

19 A That's right.

20 Q All right. Were you aware of the issue
21 about whether or why the SEC did not inform
22 Goldman Sachs immediately prior to the filing of
23 its action -- that it intended to file an action?

24 A Am I aware that that's a complaint?

25 Q Yeah.

1 A Yeah. I've heard that complaint, yes.

2 Q From Goldman Sachs.

3 A Well, not me personally, but I've heard
4 about that complaint from Goldman Sachs.

5 Q Right, and are you -- do you know
6 anything about that?

7 A No.

8 Q Did you ever have a discussion with
9 anybody at the SEC about --

10 A No.

11 Q What about the effect on the market?
12 Were you aware of any concerns from the New York
13 Stock Exchange that the SEC did inform the New
14 York Exchange about the Goldman Sachs complaint
15 prior to filing it given the effect on the market?

16 A Again, I've heard general things about
17 this in the press or through -- but not -- I'm not
18 aware personally of anything of those --

19 Q Were you surprised at how much press
20 attention the Goldman Sachs case got?

21 A I was.

22 Q Did you anticipate some press attention?

23 A Yes. I anticipated some, but certainly
24 not as much as there was.

25 Q Are you aware of any concern about

1 filing a case against Goldman as a publicly traded
2 company during the middle of the trading day,
3 given its impact on the stocks of Goldman Sachs?

4 A It -- it wasn't anything that I thought
5 about.

6 Q You aware of this issue regarding the
7 third Friday of each month having significance for
8 the expiration of options?

9 A No.

10 Q Were you aware whether there were any
11 settlement discussions with Goldman Sachs prior to
12 the filing of the action against Goldman Sachs?

13 A I'm not aware of any. I -- I just don't
14 know about that.

15 Q Were you aware of the settlement
16 discussions that began to take place after the SEC
17 brought its action?

18 A I knew that there were discussions. I
19 didn't know how -- anything about them.

20 Q Did you know in advance when the SEC was
21 going to finally settle with Goldman Sachs and
22 announce its settlement?

23 A Yes. Yes.

24 Q How far in advance did you know about
25 that?

1 A Let me think about this. At least a
2 day, because I remember the day before knowing.

3 Q Which was a Wednesday.

4 A Right. We -- no. That -- yeah, the day
5 it settled was Wednesday, correct?

6 Q Thursday was the day it was at least
7 announced.

8 A Okay. It was the same day as the
9 signing ceremony of the bill.

10 Q Correct.

11 A Yes, which I'm thinking was Wednesday,
12 but I guess it was Thursday.

13 Q Thursday, right.

14 (b)(6),(b)(7)(C) : It was a Thursday.

15 THE WITNESS: Oh, okay, sorry. Yeah.

16 BY MR. KOTZ:

17 Q Now, were you aware of the allegations
18 that we're looking into, which initiated from the
19 Hill, from Congressman Issa, that were provided
20 immediately after the SEC filed an action against
21 Goldman claiming that the action against Goldman
22 by the SEC was related to the financial reform
23 legislation.

24 A Yes, I'm aware of those.

25 Q And you think that folks in the SEC and

1 the chairman's office were generally aware of
2 those allegations?

3 A Sure. We received the letter.

4 Q Right. So, at the time that the SEC
5 settled with Goldman --

6 A Mm-hmm.

7 Q -- did the SEC know that the date that
8 they were finalizing the settlement and announcing
9 it was, as you say, the same day that the seminal
10 point in the legislation occurred?

11 A Certainly we were aware of that. My
12 understanding was that no one, at least that I
13 knew that I worked with, knew when the signing
14 would be. The settlements were moving along as --
15 between Enforcement and Goldman, and --

16 Q But I remember reading in a paper that
17 week that Thursday was looking like the day that
18 the Senate was going to vote and that they had the
19 votes and it looked like it was going to pass.

20 A Right. Right.

21 Q Isn't that right?

22 A Oh, wait, the Senate vote or the
23 signing? Sorry. The Senate vote was the week
24 before the signing.

25 Q Right.

1 A So --

2 Q On that Thursday, the same day the SEC
3 announce its settlement, I believe the Senate
4 passed the legislation, then it went to the
5 President subsequent.

6 A That's right. That's right. Wait. I'm
7 confusing now between the signing and when the
8 Senate passed the bill.

9 Q Right. Right.

10 A But I believe the Senate passed it --

11 Q On Thursday.

12 A -- on Thursday and then the --

13 Q The President signed it in a couple
14 days.

15 A Yes, because I remember thinking how
16 ironic it was that it's the same day.

17 Q Right. Right. So, given that there
18 were these allegations out there, why do you think
19 the SEC chose to announce the settlement on the
20 same day as the financial reform legislation
21 passed the Senate?

22 A My understanding, just from what I've
23 overheard, and I wasn't involved in the decision
24 on the timing, but was that the settlement talks
25 had been progressing and then the settlement was

1 ready to be announced, and then once there was the
2 date that the Senate would vote, the timing of the
3 settlement wouldn't be changed simply to avoid
4 appearances, because then that would actually be
5 changing because of political reasons. So --

6 Q Mm-hmm. Was there any discussion about
7 that possibility: Hey, maybe let's not issue the
8 settlement on the same day, given the previous
9 allegations, you know, in connection --

10 A No. In fact, I said do you realize that
11 this is probably going to be -- you know, because
12 the Senate -- the votes were working out and it
13 wasn't -- we -- no one knew for sure when the
14 Senate vote would be -- I remember this -- as we
15 talk about it, I remember more. The Senate was
16 going to invoke cloture again at 60 votes and then
17 time would tick. And some Senate -- there was a
18 lot of talk on the Senate would this -- would the
19 actual vote occur Saturday or Friday or Monday or
20 -- and I said -- one thing I've always thought is
21 once the Senate gets its 60 votes and the
22 writing's on the wall, they often tend to just
23 move along and get it done quickly. And I said
24 this is -- looks like it's going to happen at the
25 same time as the settlement. And I had this

1 discussion with [REDACTED] and he's like we can't
2 change anything; that's -- you know, whatever
3 happens happens.

4 Q Were you aware that in addition to the
5 article that came out shortly after the SEC
6 brought its action against Goldman, which gave
7 details of the vote, there was an article that
8 came out shortly after the SEC settled with
9 Goldman that gave details of the vote?

10 A I'm sorry, say --

11 Q In connection with the Goldman -- the
12 SEC's filing of the Goldman action, shortly after
13 the SEC filed its action there was a news article
14 which gave nonpublic information about the vote on
15 the Goldman case.

16 A Yes.

17 Q And is it fair to say that there were
18 generally concerns within the SEC because of that
19 about leaks?

20 A I think that -- yes.

21 Q And then, in fact, the vote on the
22 settlement was eventually leaked as well.

23 A Yes.

24 Q Were you also aware that a day or two
25 before the SEC announced the Goldman settlement

1 that there were news reports that the SEC and
2 Goldman were getting close to settling?

3 A Yes. I saw those.

4 Q And do you know if there was concern at
5 that point that the information about the Goldman
6 settlement would leak out before the SEC had an
7 opportunity to announce it?

8 A I'm not aware specifically of that
9 concern. There very well could have been.

10 Q Okay.

11 A I mean, I -- just my own -- I didn't
12 hear this from anyone, but I know that's often the
13 reason that we have to disclose things very soon
14 after they happen -- is because there's often
15 leaks and, you know, it's better for the
16 Commission to put out its release rather than
17 leaks coming without full information.

18 Q So, why is it better for the Commission
19 to put out its information before leaks?

20 A I mean, I'm speculating.

21 Q But is one of the reasons that it could
22 be better for the Commission, that if you have a
23 settlement like this with another party, you want
24 to kind of frame the settlement in your terms
25 rather than having the other party frame the

1 **settlement? In other words, Goldman could frame**
2 **the settlement a different way.**

3 A That would be one reason, but I don't
4 think that's the only reason.

5 Q **Right.**

6 A And again we're getting into public
7 relations, which is not my forte.

8 Q But was it beneficial to you in terms of
9 your interactions with the Hill that the SEC
10 brought a big case like Goldman? I mean, you can
11 see from this communication with this chief of
12 staff to Senator Kaufman.

13 A Certainly it makes the agency look
14 better.

15 Q And so does the level of press attention
16 that the agency get regarding a positive story --
17 does that have a beneficial relationship with your
18 relations with the Hill?

19 A My personal relations or --

20 Q **Relations on behalf of the SEC.**

21 A I think that Senators and members of
22 Congress certainly appreciate that we bring cases.
23 I -- I think, yes.

24 Q And so would it behoove the agency to
25 try to get as much positive press as it can out of

1 a big announcement like Goldman?

2 A Yes.

3 Q And given the intense press interest
4 when the Goldman case was first brought, was it
5 envisioned that the SEC would get a lot of
6 positive attention from the settlement?

7 A I don't know. I mean, I think that
8 certainly there would be attention, and I don't
9 know that anyone knew whether it would be
10 favorable or not favorable --

11 Q Right.

12 A -- until it happened.

13 Q But it was clear there would be
14 significant attention, given all the attention
15 that was in connection with the filing of the
16 case.

17 A Sure.

18 Q All right. All right, why don't we take
19 a minute and see if we have anything else.

20 A Okay.

21 MR. KOTZ: All right, and then -- so,
22 why don't we go off the record?

23 (A brief recess was taken.)

24 MR. KOTZ: Back on the record.

25 BY MR. KOTZ:

1 Q All right, you wanted to correct
2 something?

3 A Yeah, it's not so much a correction as
4 an addition. You had asked if I knew of any
5 communications with the White House on
6 self-funding, and I said that I thought the chief
7 of staff probably did contact them. But I also
8 know that Chairman Schapiro called the White House
9 to ask for their support on self-funding, so.

10 Q Do you know when that occurred?

11 A It would have been -- I know that she
12 did it before -- sometime after the Senate passage
13 of the Senate's Bill but -- and during the
14 conference negotiations. I don't know exactly
15 when.

16 Q And you're not aware of any information
17 that the chairman shared at the White House at
18 that time or any other time about the SEC's case
19 against Goldman.

20 A Oh, I'm not -- no. I -- I wasn't on the
21 call, but I'd -- no, I'm not aware.

22 Q And just generally, you're not aware of
23 any information indicating that the SEC's
24 investigation of Goldman Sachs or the timing of
25 its filing of its action against Goldman Sachs was

1 affected in any way by factors not related to the
2 merits of the investigation.

3 A Okay. I don't remember the -- I'm
4 definitely not aware of anything --

5 Q Okay.

6 A -- other than the merits.

7 MR. KOTZ: Okay, gotcha. That's all we
8 have. The one thing I would ask, and this is
9 important in order to preserve the integrity of
10 our investigation, that you not discuss the
11 content of your testimony with anyone.

12 THE WITNESS: Okay.

13 MR. KOTZ: All right.

14 THE WITNESS: Okay.

15 MR. KOTZ: With that, we're off the
16 record.

17 (Whereupon, at 12:02 p.m., the examination was
18 concluded.)

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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 46 pages is a complete, true and accurate transcript of the testimony indicated, held on July 27, 2010, at 11:15 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:

8/3/10

Official Reporter:

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

Diversified Reporting Services, Inc.

PROOFREADER'S CERTIFICATE

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In the Matter of: OIG-534
Witness: Number 21
File Number: OIG-534
Date: Tuesday, July 27, 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)

8/3/10

(Proofreader's Name)

(Date)

Chapter Break

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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

WITNESS: Number 22

PAGES: 1 through 43

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

DATE: Tuesday, July 27, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 12:42 p.m.

ORIGINAL

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

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9 Washington, D.C. 20549

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WITNESS

EXAMINATION

4

EXHIBITS:

DESCRIPTION

IDENTIFIED

1

April 16, 2010, E-mail Chain,

to

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April 19, 2010, E-mail Chain,

to

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April 19, 2010, E-mail Chain,

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April 12, 2010, E-mail,

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April 13, 2010, E-mail,

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April 14, 2010, E-mail,

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1 PROCEEDINGS

2 MR. KOTZ: We are on the record at 12:42 p.m. on
3 July 27, 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 (b)(6),(b)(7)(C)

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 Can you state and spell your full name
14 for the record, please?

15 A (b)(6),(b)(7)(C)

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

17 Q (b)(6),(b)(7)(C), my name is David Kotz. I'm
18 the Inspector General of the United States
19 Securities and Exchange Commission. I have with
20 me colleague (b)(6),(b)(7)(C) from the Office of the
21 Inspector General. This is an investigation by
22 the Office of Inspector General, Case Number
23 OIG-534. I'm going to ask you certain questions.
24 You'll be providing answers under oath. The court
25 reporter will record it and later transcribe

1 everything that is said. Please, therefore,
2 provide verbal answers to the questions as a nod
3 of the head or another nonverbal response won't be
4 picked up by the court reporter.

5 Also, so the record will be clear,
6 please let me finish my question before you
7 provide your response. In addition, it is
8 important that you understand the questions and
9 give accurate answers. If there's anything you
10 don't understand or anything you do not know or
11 are not sure about, please let me know.
12 Otherwise, I will assume that you heard and
13 understood the question.

14 Do you understand those instructions?

15 A Yes.

16 Q I'll give you perjury warning. As you
17 can see, your response to the statements given
18 today are provided after you've sworn an oath and
19 will be taken down verbatim by the court reporter.
20 This is an official U.S. Government law
21 enforcement investigation. The claims asserted in
22 this case are serious ones. It is very important
23 you tell me everything you know about the matter
24 at hand and are completely forthcoming and
25 truthful with me.

1 I'm formally advising you that your
2 testimony today is subject to the laws of perjury.
3 Providing false or misleading testimony under oath
4 is a very serious offense. If the evidence shows
5 the testimony you have given is false, we may
6 refer it as appropriate.

7 Do you understand those instructions?

8 A Yes.

9 Q Okay, great. All right. Why don't we
10 start with a little background? And then we will
11 get into some specific areas. Could you describe
12 your education beginning with college, please?

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

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

15 Q (b)(6),(b)(7)(C)

16 A

17 Q

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

19 A (b)(6),(b)(7)(C)

20 Q

21 A

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

23

24 Q (b)(6),(b)(7)(C)

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

1 A (b)(6),(b)(7)(C)

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

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

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

9 Q (b)(6),(b)(7)(C)

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6 Q

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11 Q

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13 Q

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15 A (b)(6),(b)(7)(C)

16 Q

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

18 A (b)(6),(b)(7)(C)

19 Q

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

21 A (b)(6),(b)(7)(C)

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

23

A

I came to the SEC.

24

Q

And what was your first position with

25

the SEC?

1 A What's the title of that? [REDACTED]

2 [REDACTED]

3 Q How long did you serve in that position?

4 A Until [REDACTED] of [REDACTED]

5 Q And what were your duties as a

6 [REDACTED]

7 A Interact with Congress, inform them of
8 what's going on, answer any questions, work as
9 liaison between them.

10 Q And then --

11 A Congress and the SEC.

12 Q -- in [REDACTED] in [REDACTED] you got a new
13 title?

14 A [REDACTED]

15 Q And that's the position you serve in
16 today?

17 A Yes.

18 Q And so what are your duties as [REDACTED]

19 [REDACTED]

20 A Basically the same thing, be the liaison
21 to Congress and the SEC.

22 Q And there are [REDACTED]

23 [REDACTED] is that right?

24 A Yes.

25 Q And do you guys have certain areas that

1 are divided up among [REDACTED]?

2 A Not really. We have become experts on
3 all of it.

4 Q All right. Who is your current
5 supervisor?

6 A [REDACTED]

7 Q All right. Did there come a time when
8 you became aware of the existence of an
9 investigation by the SEC into the sale of
10 collateralized debt obligations by Goldman Sachs
11 that was referred to as the "ABACUS
12 investigation?"

13 A Yes.

14 Q When was that?

15 A The night before we reported it, which
16 I'm --

17 Q So it was filed on April 16th on a
18 Friday.

19 A Right.

20 Q So you heard about it on April 15th?

21 A Yes.

22 Q And you didn't know before that that the
23 SEC had a Goldman investigation?

24 A No.

25 Q That makes things a little bit easier.

1 Did you --

2 BY [REDACTED]:

3 Q I'm sorry. How did you learn about it?

4 A [REDACTED], [REDACTED], asked me if I
5 was going to be in tomorrow because I have the
6 list of congressional contacts so I could send the
7 e-mail to the Hill.

8 MR. KOTZ: All right. Let me show you a
9 document, which I believe may be that e-mail.
10 We're going to mark it as Exhibit 1. It's an
11 e-mail exchange between you and [REDACTED]
12 4/16/02 9:15 a.m.

13 (Exhibit No. 1 was marked for
14 identification.)

15 THE WITNESS: Yep.

16 BY MR. KOTZ:

17 Q And so you're explaining to [REDACTED]
18 about relations with Capitol Hill with respect to
19 this issue.

20 A Mm-hmm.

21 Q What did you mean by that?

22 A If -- Capitol Hill and members of
23 Congress do not take kindly to finding out and
24 being asked about an issue and being surprised by
25 it and not seeing it. So at the same -- we have

1 -- we usually at the same time that we release it
2 to the press, we release it at the exact same time
3 to the Hill, so they actually hear about it in
4 their mailbox from us instead of the Hill.

5 Q And, well, you're saying in here that
6 you actually wanted to send it to Capitol Hill
7 before you sent it to the press.

8 A Actually I just needed the -- you know,
9 the minute before is -- because I needed to set up
10 the e-mail --

11 Q I see.

12 A -- to make sure, so when I find out it's
13 going, I can just hit Send.

14 Q I see. So that you're ready to go?

15 A I'm ready to go.

16 Q I see. Was there any discussion about
17 giving anyone in Congress a heads-up even before
18 it was filed?

19 A Not to -- not to my knowledge.

20 Q Does that happen sometimes if there's a
21 particular member of Congress who's interested in
22 a case that you could give them kind of an early
23 heads-up?

24 A I -- it could happen. I haven't been
25 witness to it happening.

1 Q Did you understand anything in
2 particular about this Goldman case when you were
3 notified about sending it to the --

4 A No.

5 Q Did you understand that it was a big
6 case for the SEC?

7 A I did understand it was going to be a
8 big case and a lot of the Hill would probably be
9 interested.

10 Q Now, how did you understand that? Did
11 somebody tell you or --

12 A That -- no, just that the Hill -- this
13 would be something the Hill would -- they've been
14 interested in everything else we've done recently,
15 so.

16 Q And Goldman Sachs is obviously a
17 well-known company.

18 A Yes.

19 Q So you knew just by virtue of the fact
20 that the SEC was charging Goldman Sachs was
21 something that it would be something of interest
22 to the Hill?

23 A Yes.

24 Q All right. And did you have any
25 understanding of why the SEC filed the case the

1 day it did?

2 A No.

3 Q Did you know that there was some
4 testimony and some documents that we've seen about
5 the fact that historically the SEC has not filed
6 big cases on Friday because of the concern that
7 Friday going into Saturday is a slower news day?
8 Were you aware of that issue?

9 A No. I know that we usually don't like
10 -- because the Hill and the press get mad if they
11 think we're trying to cover something up on a
12 Friday because we've seen that before, but I
13 didn't know that we don't file a case. I know
14 sometimes we don't announce press releases on
15 those days, but that's about it.

16 Q And did you know if that issue came up
17 at all with respect to Goldman Sachs?

18 A No.

19 MR. KOTZ: All right. Let me show you
20 the next document. We're going to mark it as
21 Exhibit 2, an e-mail exchange between you and [REDACTED]
22 [REDACTED] 4/19/10, 10:17 a.m.

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

25 BY MR. KOTZ:

1 Q It looks like there's an e-mail to you
2 from someone named Courtney Geduldig?

3 A Mm-hmm.

4 Q And that's with Senator Corker's office?

5 A Yes.

6 Q And they were asking for what the vote
7 was on the Goldman action?

8 A Yes.

9 Q You were asking [REDACTED] whether
10 you're giving out the information. And [REDACTED]
11 [REDACTED] says, "Check with GC. My understanding is
12 that we are not giving it out."

13 A Mm-hmm.

14 Q Did you check with GC?

15 A I did.

16 Q And what did GC say?

17 A No. In the past, there have been some
18 times when during their vote they have approved to
19 release the vote just in the vote. That's why I
20 asked if we have or we haven't because I know the
21 vote has to be voted on for them to release it,
22 so.

23 Q And who in GC did you talk to?

24 A I think it was [REDACTED]

25 Q Now, [REDACTED] says, "Note that there

1 may be a press story on this tomorrow."

2 Do you know what he was referring to?

3 A Not -- I just assumed there might be a
4 press story about what the vote was.

5 Q So, I mean, did it kind of put you in a
6 little bit of an uncomfortable situation having to
7 say to a staffer from a senator that you can't
8 tell them, knowing that tomorrow it's going to be
9 in the newspaper?

10 A No.

11 Q Did you inform the staff member that
12 there would be a press story about it?

13 A No.

14 Q Do you know how the information got out
15 such that there was a press story?

16 A No.

17 BY [REDACTED]:

18 Q I think you mentioned there had been
19 situations where the Commission voted to release
20 the vote?

21 A Mm-hmm.

22 Q How often does that happen, roughly,
23 since you're been here?

24 A Twice, I think.

25 Q And what were the circumstances?

1 A Both -- they were during the crisis in
2 2008, and one was -- and the other one was a
3 member -- a member of the staff was going to be at
4 a hearing and we knew he was going to be asked
5 what the vote was on a certain issue. And
6 Congress would push him on it and him saying I
7 can't release the vote would have been
8 uncomfortable, so we actually got the Commission
9 to okay him, if they asked, releasing that
10 information, so in preparation, so.

11 And the other time Chairman Cox asked
12 the Commission to release a vote on something that
13 they did, and I don't remember the exact nature of
14 it, but.

15 MR. KOTZ: Let me show you another
16 document, Exhibit 3. It looks like this is the
17 communication between you and at least one of the
18 individuals in GC.

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

21 BY MR. KOTZ:

22 Q It looks like you sent David Becker,
23 who's the general counsel, an e-mail.

24 A Yeah.

25 Q And Mr. Becker responds, "I don't

1 believe we have. I wouldn't be surprised if a
2 Commissioner or 2 has or will."

3 Do you know what he might
4 be referring to there?

5 A If a -- whether or not we are releasing
6 the information to the Hill or releasing what the
7 vote is.

8 Q Right. But what did he mean by "I
9 wouldn't be surprised if a Commissioner or 2 has
10 or will?"

11 A I'm -- I -- I -- I can only assume.

12 Q You assume that he was referring to the
13 fact that a commissioner or two might reveal what
14 the vote was?

15 A Yes.

16 Q Do you know why he would think that?

17 A No.

18 Q Did you ever follow up and talk to him
19 about that further?

20 A No.

21 MR. KOTZ: All right. Let me show you
22 another document, Exhibit 4. This is the further
23 e-mail exchange between you and the woman from
24 Senator Corker's office.

25 (Exhibit No. 4 was marked for

1 identification.)

2 THE WITNESS: Yep.

3 BY MR. KOTZ:

4 Q And so you responded, "It was voted on
5 in a closed meeting so I don't know."

6 A Mm-hmm.

7 REPORTER: Was that a yes?

8 THE WITNESS: Yes.

9 BY MR. KOTZ:

10 Q And that was essentially your way of not
11 providing the information because you weren't
12 supposed to?

13 A Yes.

14 BY [REDACTED]:

15 Q Did you, in fact, know what the vote was
16 at the time you wrote that?

17 A Yes.

18 BY MR. KOTZ:

19 Q And then, I guess, it looks like you
20 suggested that she call you?

21 A Yes.

22 Q And did you talk to her?

23 A Yes.

24 Q What was the nature of that
25 conversation?

1 A To let her know that closed meetings are
2 closed, explained closed meetings to her.

3 Q So to give her a little more information
4 than just the e-mail as to why you can't reveal?

5 A Yes.

6 Q Was she satisfied with that?

7 A Yeah.

8 Q Were there any other folks from Capitol
9 Hill who made requests about the vote?

10 A Yes. Someone from Senator Shelby's
11 office did, if I remember correctly.

12 Q And did you give the same response?

13 A Yes.

14 Q Were you surprised to see in the
15 newspaper the next day that the vote was revealed
16 after you had not given it to Congress?

17 A No.

18 Q No, because you had had that heads-up?

19 A No, this place leaks like a sieve.

20 Q All right. Were you aware that the
21 Senate Permanent Subcommittee on Investigations
22 was looking into Goldman Sachs around the same
23 time that the SEC had its investigation of Goldman
24 Sachs?

25 A Yes.

1 Q Did you have any communications with
2 anyone at the SEC about the PSI work?

3 A No. Well, my co-worker that I knew he
4 was going to -- he was talking to them, yeah, (b)(6),(b)
(7)(C)

5 Q But were you involved in any
6 communications with them?

7 A No.

8 Q Were you involved in any discussions
9 about how that might affect the Goldman
10 investigation at the SEC?

11 A No.

12 Q Were you aware of the fact that SEC's
13 Goldman Sachs investigation was put on the
14 calendar and then taken off the calendar, then put
15 on the calendar and then taken off the calendar?

16 A No.

17 Q Did you have any communications with
18 anyone at the SEC about the filing of the
19 complaint against Goldman Sachs before it was
20 filed?

21 A No.

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

1 journalists prior to the complaint being filed?

2 A No.

3 Q I assume you're aware of the financial
4 reform regulatory legislation that advanced
5 through Congress and was recently signed into law?

6 A Yes.

7 Q And you spent a significant time working
8 on that?

9 A Yes.

10 Q Did you ever have any communications
11 with anyone at the White House about --

12 A No.

13 Q Let me just get the whole question so
14 you can have the answer. Did you have any
15 communications with anybody at the White House
16 about the financial regulatory reform legislation?

17 A No.

18 Q Do you know if anyone at the SEC did?

19 A Not to my knowledge.

20 Q But you, I assume, did have numerous
21 communications with members of Congress and/or
22 staff members of Congress regarding the financial
23 regulatory reform legislation.

24 A Yes.

25 Q In any of those conversations did the

1 topic of the SEC's action against Goldman Sachs
2 ever come up?

3 A After.

4 Q After the SEC filed its case.

5 A After -- after it actually filed its
6 case, yes.

7 Q How did it come up after the SEC filed
8 its case?

9 A I got numerous questions on was this
10 timed? Why did you do this then? Things like
11 that.

12 Q What kind of questions about was it
13 timed? What do you mean, was it timed?

14 A Did you do this to -- this is curious
15 timing. Did you do this to help get reg reform
16 through?

17 Q And what did you answer to those
18 questions?

19 A Especially through the committee. I
20 wish we were that good.

21 Q All right. But just for the record, you
22 don't --

23 A No.

24 Q -- believe it was timed for that reason?

25 A No.

1 Q Do you think that the filing of the
2 action against Goldman Sachs had an impact on
3 financial regulatory reform?

4 A Not really.

5 Q Did seem to -- that there was sort of a
6 momentum, the momentum had sort of stopped on the
7 bill and then after this action came out, the
8 momentum sped up. Is that not correct?

9 A In my opinion, no.

10 Q Do you think it had any impact at all on
11 the financial regulatory reform?

12 A No. In public opinion maybe, but not
13 with members of Congress.

14 Q Is it fair to say that the SEC was very
15 much interested in having financial regulatory
16 reform pass?

17 A Some parts of it, yes.

18 Q But on the whole would you say the SEC
19 was generally in favor of the legislation?

20 A The chairman has testified that, yes,
21 she -- she was in favor of it.

22 Q Were there sort of ebbs and flows in the
23 legislation as it went through that sometimes it
24 looked like it was more likely to pass, other
25 times it looked like it was less likely to pass?

1 A Sometimes, yes.

2 Q Was there any kind of disappointment or
3 discouragement within the SEC during the times
4 when it didn't look like it was going to pass?

5 A At points, yes.

6 Q Was there any point where anybody had
7 the idea that if the SEC brought a high-profile
8 case that would help things?

9 A No.

10 MR. KOTZ: All right. Let me show you
11 another document. Mark it as Exhibit 5.

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

14 BY MR. KOTZ:

15 Q This is an e-mail exchange between you,
16 [REDACTED], [REDACTED], and [REDACTED]
17 4/12/10, 12:20 p.m. And so you say here,
18 "Senate ag is telling GOP staff that the soonest
19 the bill could be introduced is Wednesday."

20 A Mm-hmm.

21 Q I assume this refers to the financial
22 regulatory reform?

23 A Yes.

24 MR. KOTZ: All right. Let me just show
25 you the other documents. We can kind of put them

1 all out there together.

2 THE WITNESS: Okay.

3 MR. KOTZ: Next is Exhibit 6. This is
4 an e-mail between you and [REDACTED], [REDACTED]
5 [REDACTED], and Ricardo Delfin, 4/13/10, 2:54 p.m.

6 And then the next one we're going to
7 mark as Exhibit 7. This is an e-mail between you
8 and those individuals plus Didem Nisanci,
9 4/14/10, 12:19 p.m.

10 (Exhibit Nos. 6 and 7 were marked for
11 identification.)

12 BY MR. KOTZ:

13 Q All right. So these are three e-mails
14 where you're providing information about what the
15 status of the bill is?

16 A Mm-hmm.

17 Q Is that yes?

18 A Yes.

19 Q And who is Ricardo Delfin?

20 A He is -- I think his title is senior
21 counsel to the chairman.

22 Q How come you were sending e-mails to
23 him?

24 A Because he has been -- monitoring the
25 legislation for the chairman.

1 Q And why did you send it to Didem, the
2 chief of staff?

3 A Because she is also monitoring for the
4 chairman.

5 Q Now, this also happens to be two days
6 before the SEC filed its Goldman case. Do you
7 know if there was any connection between these
8 folks wanting to know about the timing of this
9 bill and the timing of the Goldman case?

10 A No. We have been monitoring every
11 nuance of the bills.

12 MR. KOTZ: All right. We'll mark the
13 next document as Exhibit 8, which is an e-mail
14 from [REDACTED] to a variety of people, dated
15 4/19/10, 10:14 p.m.

16 (Exhibit No. 8 was marked for
17 identification.)

18 BY MR. KOTZ:

19 Q And the first e-mail is an e-mail from
20 you to [REDACTED] with two questions. And why
21 were you asking these questions?

22 A I had received these questions from --
23 from members of Congress. It's in preparation for
24 Mary's testimony, if I remember correctly.

25 Q When was her testimony?

1 A It was -- I would have to look that up,
2 but it would have been -- it looks like it would
3 have been the 20th, April 20th.

4 Q And was that important testimony?

5 A I -- any time that the -- she testifies
6 before Congress is important.

7 Q Do you remember what the subject of that
8 testimony was?

9 A I don't.

10 Q Something to do with Lehman?

11 A Maybe.

12 Q And what was the issue with Lehman?

13 A Why it failed.

14 Q So that was somewhat of a vulnerability
15 for the SEC?

16 A Yes.

17 Q So it was important in that respect?

18 A Yes.

19 Q Do you know whether there was any
20 specific interest in trying to have the Goldman
21 case filed prior to Mary giving that testimony?

22 A No.

23 Q All right. In any of your conversations
24 has anyone at the SEC ever mentioned the financial
25 regulatory reform legislation in connection with

1 the Goldman Sachs investigation or in connection
2 with the filing of an action against Goldman
3 Sachs?

4 A No.

5 Q Do you have any reason to believe that
6 the SEC action against Goldman Sachs or the timing
7 of that action was to advance or related to
8 financial regulatory reform?

9 A No.

10 Q Are you aware of any information
11 indicating that the SEC's action against Goldman
12 Sachs or the timing of that action --

13 A No.

14 Q -- was to advance financial regulatory
15 reform?

16 A No.

17 Q Just let me finish the thing --

18 A Sorry.

19 Q -- so we can have a clean transcript.
20 Are you aware of any information indicating that
21 the SEC coordinated its action against Goldman
22 Sachs with the Executive Office of the President,
23 the White House, or any of its employees?

24 A No.

25 Q Are you aware of any information

1 indicating that anyone with the SEC shared any of
2 the information concerning its Goldman Sachs
3 investigation with the Executive Office of the
4 President, the White House, or any of its
5 employees prior to the complaint being filed?

6 A No.

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

11 A No.

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

18 A No.

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

25 A No.

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

9 A No.

10 Q Did you have any communications with the
11 Democratic National Committee, the Democratic
12 Senate Campaign Committee, or the Democratic
13 Congressional Campaign Committee regarding
14 financial regulatory reform?

15 A No.

16 Q Are you aware of any information
17 indicating anyone with the SEC shared any
18 information concerning its Goldman Sachs
19 investigation with the U.S. Department of
20 Treasury, the Federal Reserve, or any of their
21 employees prior to the complaint being filed?

22 A No.

23 Q Were you aware of the issue relating to
24 the SEC not providing Goldman notice right before
25 it filed the case against them?

1 A No.

2 Q Are you aware of that issue?

3 A No.

4 Q Are you aware of the issue relating to
5 the fact that the SEC didn't inform the New York
6 Stock Exchange that it intended to file a
7 complaint against Goldman and there was a market
8 impact from the complaint?

9 A I'm aware there was a market impact. I
10 didn't know that they were supposed to let the New
11 York Stock Exchange know.

12 Q Are you aware of any issue regarding
13 whether the SEC should be announcing an action
14 against a publicly traded company, like Goldman,
15 during the trading hours given the effect on
16 Goldman stock?

17 A No.

18 Q Were you surprised at how much coverage
19 the SEC's action against Goldman got?

20 A Yes.

21 Q Did you assume that there would be some
22 coverage?

23 A Yes.

24 Q But you were surprised at how much?

25 A Yeah.

1 Q Were you aware of whether the SEC
2 engaged in any settlement discussions with Goldman
3 Sachs prior to its filing its complaint?

4 A Only what was in the news.

5 Q What about after the complaint was
6 filed? Were you aware of those settlement
7 discussions?

8 A I was only -- after the complaint was
9 filed was when I was aware of that through the
10 news.

11 Q But other than through the news --

12 A No.

13 Q -- were you aware about the intricacies
14 of the Goldman settlement?

15 A No.

16 Q Are you aware of why the Goldman
17 settlement was finalized and announced on the day
18 it was?

19 A A little bit.

20 Q So tell me what you know about that.

21 A That the Court needed to have the eight
22 -- the 8th -- whatever the date was, Monday was
23 the last day they could file something. And so
24 that's one of the reasons why they were doing it
25 that day. That's it.

1 Q Were you aware that on the same day that
2 the SEC finalized and announced its settlement,
3 that was the day that the financial regulatory
4 reform legislation passed through the Senate?

5 A I am aware that's the same day, yes.

6 Q Were you aware of any conversations as
7 to why those two things occurred on the same day?

8 A No.

9 Q Were you aware before the SEC announced
10 and finalized its settlement with Goldman Sachs
11 that there had been allegations from Congress
12 regarding concerns about the timing of the initial
13 action against Goldman Sachs, that it was done to
14 encourage financial regulatory reform?

15 A Yes.

16 Q Given that, were you surprised that the
17 SEC would then announce a settlement on the same
18 day as the seminal act in the financial regulatory
19 reform case?

20 A Yes.

21 Q Do you know why that happened?

22 A I was told that's just the way the dates
23 worked out. They brought the action as soon as
24 they could and this is when they -- the Commission
25 could vote on it.

1 Q You mean the action memo?

2 A Yeah.

3 BY [REDACTED]:

4 Q Who told you that?

5 A [REDACTED]

6 Q [REDACTED]

7 A [REDACTED] yes.

8 BY MR. KOTZ:

9 Q Did you or anyone else say to him can't
10 we do it on a different day? Do you see how this
11 is going to look?

12 A I think I said it. Well, I didn't say
13 can we do it on a different day? I said we're
14 going to get yelled at by Congress for this, and
15 they said that we can't stop it, speed it up, or
16 slow it down because that would be then wrong.

17 Q That was [REDACTED] said that?

18 A Yes.

19 Q And did you understand that he had had
20 communications with other folks about this?

21 A I assumed so.

22 Q Now, this was the Thursday that both
23 things happened, if you remember. And were you
24 aware generally that week that the financial
25 regulatory reform vote was going to occur on

1 **Thursday?**

2 A We weren't sure.

3 Q But, I mean, there were press reports
4 that that was the day that it looked like they
5 were going to vote, right?

6 A Yes, but that was also when Senator Byrd
7 (b)(6),(b)(7)(C) and so we did not know if that vote --
8 the vote had actually been scheduled for earlier,
9 so we were not sure if that was going to be the
10 day.

11 Q But there were some reports that the
12 vote was going to occur on that Thursday?

13 A Yes. But there were actually more
14 reports that it was going to be earlier in the
15 week.

16 Q And so when did you find out that the
17 SEC was going to finalize and announce its
18 settlement?

19 A The night before.

20 Q So that would be Wednesday night?

21 A Yes.

22 Q So this conversation that you had that
23 Congress is going to yell at you, that occurred on
24 Thursday?

25 A I think it occurred Thursday -- the day

1 that we were actually doing it, when the chair --
2 when they were going to vote on it.

3 Q So was that the day it was announced?

4 A Yes.

5 Q Thursday.

6 A Yes.

7 Q So did you have that conversation before
8 it was announced or after?

9 A Before.

10 Q With the idea that perhaps before it was
11 announced they would reconsider the timing?

12 A No, that -- I was just complaining that
13 I was going to get several phone calls from irate
14 congressmen because of this.

15 Q And did you?

16 A No, actually.

17 Q But Congressman Issa did send a letter
18 to the chairman.

19 A Yes.

20 Q And a letter to me.

21 A Yes.

22 Q All right. Why don't we take a minute
23 and see if we have anything else?

24 A Sure.

25 MR. KOTZ: Okay. Off the record.

1 (A brief recess was taken.)

2 BY MR. KOTZ:

3 Q Back on the record. Do you have any
4 knowledge as to who might have provided the
5 information to a reporter about the particular
6 vote that occurred in the Commission when they
7 approved the Goldman case?

8 A No.

9 Q Were you aware that prior to the SEC
10 announcing its Goldman settlement, a day or two
11 before there were news reports that the SEC and
12 Goldman were getting close to a settlement?

13 A Yes.

14 Q And was that a concern within the SEC
15 that this information was getting leaked out
16 again?

17 A Not that I'm aware of.

18 Q You said the SEC leaks like a sieve. Is
19 it kind of a general concern and more particularly
20 lately because of all of the leaks?

21 A During my three years here, that's been
22 a concern the entire time.

23 Q But have there been other cases where
24 votes like that were leaked?

25 A Yes. I remember several times under

1 Chairman Cox.

2 Q And do you remember any particular
3 concern with respect to the announcement of the
4 Goldman settlement about concerns about leaks
5 given that the vote was previously leaked?

6 A Just that as soon as the vote was
7 finished Rob Khuzami was going to do a press
8 conference right afterwards and then we were -- at
9 the same time, we were letting the Hill know.

10 Q So there was an interest in ensuring
11 that the settlement be announced immediately after
12 the vote so to avoid too much time going by where
13 there could be leak?

14 A The -- they were not specifically saying
15 that it would be a leak, but they said just so
16 that it was -- it was out to the public as soon as
17 possible.

18 Q But then, of course, the vote on the
19 settlement leaked, too, didn't it?

20 A Yes.

21 Q And you don't have any idea who might
22 have leaked that?

23 A No.

24 MR. KOTZ: All right. I don't have
25 anything further.

1 There's one thing I would ask, and this
2 is important, to preserve the integrity of our
3 investigation that you not discuss the content of
4 your testimony with anyone.

5 THE WITNESS: Sure.

6 MR. KOTZ: Okay. We're off the record.

7 (Whereupon, at 1:19 p.m., the examination was
8 concluded.)

9 * * * * *

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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 41 pages is a complete, true and accurate transcript of the testimony indicated, held on July 27, 2010, at 12:42 p.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:

8/3/10

Official Reporter:

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

Diversified Reporting Services, Inc.

PROOFREADER'S CERTIFICATE

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In the Matter of: OIG-534
Witness: Number 22
File Number: OIG-534
Date: Tuesday, July 27, 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)

8/3/10
(Date)

Chapter Break

UNITED STATES SECURITIES AND EXCHANGE COMMISSION



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

WITNESS: Number 23

PAGES: 1 through 37

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 2:03 p.m.

Diversified Reporting Services, Inc.

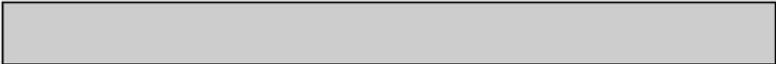
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APPEARANCES:

On behalf of the Securities and Exchange Commission:

H. DAVID KOTZ, ESQ., Inspector General



Office of the Inspector General
Securities and Exchange Commission
100 F Street, N.E.
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On behalf of the Witness:

SCOTT FRIESTAD, PRO SE

1 C O N T E N T S

2

3 WITNESS:

EXAMINATION

4 Scott Friestad

4

5

6 EXHIBITS:

DESCRIPTION

IDENTIFIED

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E-mail chain dated 4/14/2010

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E-mail chain dated 4/18/2010

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E-mail dated 4/19/2010

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SEC Administrative Regulations

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

2 MR. KOTZ: We are on the record at 2:03 p.m. on
3 August 13, 2010 at the United States Securities and Exchange
4 Commission.

5 I'm going to swear you in.

6 Will you please raise your right hand?

7 Whereupon,

8 SCOTT W. FRIESTAD

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 Scott William Friestad, S-c-o-t-t, W-i-l-l-i-a-m,
16 F-r-i-e-s-t-a-d.

17 Q Okay. Mr. Friestad, 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 the Inspector General, (b)(6),(b)(7)(C). This is an
21 investigation by the Office of Inspector General, case number
22 OIG-534. I'm going to ask you certain questions, and you'll
23 be providing answers under oath.

24 The court reporter will record and later transcribe
25 everything that is said. Please therefore provide verbal

1 answers to the questions, as a nod of the head or another
2 non-verbal response won't be picked up by the court reporter.
3 Also, so the record will be clear, please let me finish my
4 question before you provide your response.

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

11 A Yes. I do.

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

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

1 A Yes. I do.

2 Q Okay. Great. We'll start with a little bit of
3 background. Could you describe your education, beginning
4 with college?

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

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

7

8

9

10 Q Okay. (b)(6),(b)(7)(C)

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

12 A (b)(6),(b)(7)(C)

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

14

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17

18 Q (b)(6),(b)(7)(C)

19 A

20 Q

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

22 A (b)(6),(b)(7)(C)

23 Q

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

25 A (b)(6),(b)(7)(C)

1 Q [REDACTED]

2 A [REDACTED]

3 Q [REDACTED]

4 [REDACTED]

5 A [REDACTED]

6 Q [REDACTED]

7 A [REDACTED]

8 and I started working at the SEC in January of 1995.

9 Q All right. [REDACTED]

10 [REDACTED]

11 A [REDACTED]

12 Q [REDACTED] Okay. So January 1995 you joined
13 the SEC. And could you kind of run through the different
14 positions you've had at the SEC from then until now?

15 A Sure. I was a staff attorney when I started in
16 January of 1995. I had a series of promotions through the 15
17 plus years I've been here. I became a branch chief in 1998.
18 I became an assistant director in 2000. I was an associate
19 director in 2005. I became deputy director in 2008. And my
20 current position is associate director.

21 Q When did you go to your current position?

22 A Last summer, maybe last July.

23 Q And generally, I assume that your duties have been
24 similar, except as the positions got higher you had more
25 responsibility. Is that fair?

1 A Generally fair. I mean, you know, I have more
2 responsibility from more people, more cases, and that sort of
3 thing. And I guess as I moved up through the ranks also took
4 on more responsibility for more division-wide issues, rather
5 than just case-specific issues from time to time.

6 Q Okay. And the cases all related to the SEC's
7 enforcement of companies for securities violations.

8 A Correct.

9 Q Okay. Now, who do you currently report to?

10 A Rob Khuzami.

11 Q What are your duties now in connection with the
12 position you're in as of last summer?

13 A Well, it's sort of a dual role. I mean I'm
14 associate director. I also have a title of special advisor
15 to the director. That's not particularly well-defined, but I
16 get tasked to be on different committees and so certain
17 special projects and sort of provide advice generally about
18 enforcement matters that are not necessarily within my
19 associate director group.

20 For example, I get involved a fair amount in
21 reviewing and dealing with issues that come up with cases
22 that are in the regions, other home office associate director
23 groups, dealing with sometimes Congressional inquires,
24 sometimes GAO or IG inquires, sometimes -- just a variety of
25 projects that are sort of not case or investigation specific.

1 Q Okay. Did there come a time when you became aware
2 of the investigation by the SEC into the sale of
3 collateralized debt obligations by Goldman Sachs, known as
4 the Abacus investigation?

5 A Yes.

6 Q When did you first become aware of that, do you
7 think?

8 A I believe -- I don't know when I first became aware
9 of it. The first that I recall sort of focusing on it was
10 sometime in maybe April or so of 2009.

11 Q All right. What was your efforts to focus on it?

12 A I was deputy at the time, deputy director at the
13 time. And I have a recollection that I met with Cheryl
14 Scarboro and (b)(6),(b)(7)(C) and maybe some other staff to talk
15 about the status of the case and what was going on, and just
16 sort of what some of their thinking was about where they were
17 at that stage of the investigation.

18 Q What was the sense you had in April of 2009 about
19 how far away they were from actually having the case ready to
20 be recommended to the Commission?

21 A I don't recall specifically where they were. My
22 recollection is that they felt like they were getting close
23 to making a Wells call to the company.

24 Q Right.

25 A And, in fact, it may have been in that context that

1 they came to talk. I don't recall for sure.

2 Q Okay. What about subsequent to that? Do you
3 remember any further conversations about the Abacus case?

4 A Periodically, but less so. You know, because
5 shortly after that -- I mean shortly meaning, you know,
6 within the next few months -- I stopped being the deputy
7 director, and as a result I had less sort of a role or
8 responsibility for cases that were not in my associate
9 director group.

10 Q Right.

11 A And, you know, I was just generally aware that the
12 matter was still open and being pursued. I heard, you know,
13 sort of hallway conversation about, you know, they were
14 making progress, that they were either getting Wells
15 submissions in or, you know, having internal debates about
16 the merits of the investigation, who should be charged, you
17 know, what charges should be brought, that type of thing.
18 But not a formal role per say.

19 Q Did you understand that the Abacus investigation
20 was considered sort of a national-priority investigation for
21 the SEC?

22 A Yes. I did.

23 Q Okay. Did you have any communications with the
24 Chairman's office, briefing her or her office about the
25 Abacus case?

1 A I don't recall specifically. If I did it was at
2 that timeframe, you know, the April/May sort of 2009
3 timeframe. Because I'm the one who put together our initial
4 priority report. And my recollection is that was one of the
5 cases I included in it at the time. And so we had some
6 conversations with the Chairman's office about some of the
7 matters. I don't recall specifically if we did about that
8 one or not.

9 Q Why did you include the Goldman Abacus case on the
10 priority list?

11 A It was a sub-prime case; it involved a big Wall
12 Street firm; it involved big dollars, a big dollar loss. It
13 seemed like there were some novel issues involved in the
14 case, and I think my general sense was that it was
15 potentially, at that time -- because we weren't sure where it
16 was going to land, where it was going to end up -- but at
17 that time it was potentially a programmatically significant
18 case.

19 Q And how many others were on that list that you
20 prepared?

21 A I only have a rough guess. I would guess maybe 70
22 to 75 cases.

23 Q Okay. Was there any kind of priority among them,
24 or they were all kind of in the same category?

25 A No. There wasn't any effort to rank them in any

1 form or fashion.

2 Q And were you aware that his Goldman Abacus case was
3 put on the closed Commission calendar in December of 2009 and
4 then taken off the calendar?

5 A I don't recall that.

6 Q Okay. Were you aware that in January, in late
7 January, it was again put on the calendar and then taken off
8 the calendar?

9 A I probably was aware of it, but I don't have a
10 specific recollection of that.

11 Q Do you recall then becoming more aware of the
12 Abacus Goldman case in the April 2010 timeframe, when it was
13 about to be filed?

14 A Yes.

15 Q Okay. And so what do you remember about that?
16 What was your role in terms of the case being filed or
17 recommended to be filed?

18 A I view it as sort of a minor role. I mean I was at
19 very few, if any, internal meetings discussion the proposed
20 charges. We tend to have, as you know, a standard meeting.
21 It's called a to be calendared meeting, where cases that are
22 about to be put on the calendar are discussed. I have a
23 recollection that we -- that that was around that period of
24 time on a to be calendared agenda that I was -- that I
25 attend. And usually something like that is probably going to

1 be what we call executive session, and so it's a pretty
2 limited group of people who are there. And I have some
3 recollection that we had a meeting like that about Goldman at
4 or about that time, late March, early April, something like
5 that.

6 Q But you weren't involved directly in the
7 investigative efforts?

8 A No. I was not.

9 Q And you were not involved in the decisions on when
10 to file?

11 A No. I was not.

12 MR. KOTZ: Okay. All right. Let me show you an
13 e-mail. I'm going to mark it as Exhibit 1. It's an e-mail
14 exchange, 4/14/2010. There's an e-mail from Myron Marlin to
15 Stephen Cohen, [REDACTED] and Didem Nisanci that's at
16 4/14/2010, 6:08 p.m.

17 (Exhibit No. 1 was marked for
18 identification.)

19 BY MR. KOTZ:

20 Q And at the bottom of the page is an e-mail from
21 you.

22 A Okay.

23 Q Wednesday, April 14, 2010, 5:03 p.m.

24 A Okay.

25 Q So which reporter was it that you determined knew

1 about the recommendation being on the calendar?

2 A I don't recall for sure, but it was I believe a
3 reporter from Bloomberg.

4 Q Okay. If I said the name do you think you would
5 remember?

6 A I think -- I know it was one of two people. I
7 don't recall which of them it was.

8 Q Who were the two people?

9 A It was either Josh Gallo or David Shear.

10 Q Okay. And how did you come to learn this
11 information?

12 A The individual called me, and I believe it was that
13 morning, early afternoon, somewhere around that time period.

14 Q And I assume they didn't indicate how they knew
15 this information?

16 A No.

17 Q Did you ask them?

18 A No.

19 Q You would assume that they wouldn't tell you
20 anyway?

21 A Correct.

22 Q Okay. And what was their follow-up? Why were you
23 sending this to Khuzami, Reisner, McKown, Lench, and [REDACTED]

24 A Because I knew they all were involved with the
25 Goldman case, and I thought it was important to let them know

1 about the issue. To be clear -- I just want to make one
2 thing clear, because this e-mail doesn't reflect it. The
3 person didn't tell me they knew it was Goldman. The way that
4 it was described to me was that there was an interesting or
5 important CDO case on the calendar today. I knew it was
6 Goldman, because I knew what was on the calendar that day,
7 and so I was sort of putting -- trying to put two and two
8 together. But the person who I spoke with didn't refer to it
9 as the Goldman case or anything like that, just so you know.

10 But my point was I was concerned about the fact
11 that anything was known publicly about it, and wanted to make
12 sure that people around here knew that there was something
13 out in the public domain. And I tend to know from experience
14 that when reporters know things they keep fishing and trying
15 to gather more and more details and information, and that, as
16 my e-mail reflects, the longer time lag there is between an
17 enforcement recommendation being approved and it ever
18 becoming public, the greater the risk that there's something
19 that will leak in the meantime. And that was -- I was trying
20 to let people know that there was a risk of that in this
21 situation, because of what I had heard.

22 Q Now, did this reporter try to get information out
23 of you about the case?

24 A Not -- no. And I -- as is typical, I was mainly
25 just listening and not responding with information.

1 Q Right. Do you have any follow-up conversations
2 with anybody about this?

3 A The only conversation contemporaneously that I had
4 with anyone about it was Lorin Reisner that I recall. And in
5 fact I remember I sent this during the Commission meeting,
6 while we were at the table, just because it was on my mind,
7 and I wanted to make sure I let people know. And as the
8 meeting was breaking up Lorin asked me who it was, and I
9 believe I told him it was a Bloomberg reporter. But there
10 was no one else that I recall having -- anyone else asking me
11 for information about this.

12 MR. KOTZ: Okay. All right. Let's move on to the
13 next document. We'll mark this Exhibit 2, an e-mail at the
14 top of the page from you to Joan McKown, 4/18/2010, 11:04
15 a.m.

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

18 BY MR. KOTZ:

19 Q You can start from the bottom of the exchange, an
20 e-mail from Kara Scannell to John Nester.

21 A Okay.

22 Q Okay. There's a reference here to the enforcement
23 manual. Does the enforcement manual say anything
24 specifically about informing defendants that they're going to
25 be charged before the filing?

1 A I don't have the manual memorized, so I'm not sure.

2 Q Okay.

3 A I don't think that's a requirement, to my
4 knowledge. I mean I think it's a general practice, you know,
5 in terms of how we deal with people. But I don't think that
6 there's any requirement that we have to do that.

7 Q What is the general practice in the enforcement
8 division, to your understanding?

9 A Well, it depends on the case. I mean if there's a
10 case that, for example, we're coordinating with the criminal
11 folks we never would provide that type of heads up. A case
12 that's a civil case only, in most cases, particularly one
13 where that's not being settled, you know, it's going to be a
14 contested case, where you've gone through the Wells process,
15 someone's put in a Wells submission, you're generally going
16 to provide the party with notice that the Commission has
17 essentially rejected their arguments in the Wells submission
18 and has approved the staff's recommendation, and that we're
19 planning to go ahead and bring the case. So sometime between
20 when the Commission authorizes the case and when you would
21 file the case you would call the lawyers for the parties and
22 let them know that.

23 Q And what would be the purpose of doing that?

24 A Generally -- it depends. Some cases you know are
25 going to be litigated. Sometimes it's just a courtesy. In

1 other cases, there are close factual or legal issues
2 involved, and the party who made the Wells submission was
3 hoping that their arguments would prevail. But, you know,
4 from experience, that if those arguments haven't been
5 persuasive that they might be interested in settling the
6 case. And so it's a chance to give them an opportunity to
7 send those kinds of signals if -- you know, before having a
8 contested case filed against them.

9 Q And did you learn that in the Goldman case that
10 that was not the approach that was used?

11 A Eventually I learned that. Yes.

12 Q Okay. Do you know why that was not the approach
13 used?

14 A I don't.

15 Q Okay. And when you say, "No. That's
16 inconceivable," what were you referring to in this e-mail
17 string?

18 A Well, I'm referring to Joan's comment, which
19 immediately proceeds it, which is that (b)(6),(b)(7)
20 interpret as (b)(6),(b)(7)(C) one of the staff working on the
21 case, hadn't spoken to Goldman Sachs since September, which
22 at that point is -- how many months? -- seven or eight
23 months, you know, from the time. I learned later that that
24 was at or around the time when they sent in their Wells
25 submissions. And my -- I'm saying that's inconceivable. It

1 means to me it's inconceivable that the staff, in a case like
2 this, would not have had any communications with a company or
3 their counsel for seven or eight months.

4 Q Do you know if that actually was true?

5 A I don't believe it's true.

6 Q So your "That's inconceivable" was based on the
7 assumption in Joan's e-mail?

8 A It's based on the assumption that that was
9 factually true.

10 Q Okay. Do you know if there has been a change in
11 policy or practice in the SEC, such that you're not to give
12 those kinds of heads up to defendants anymore after the
13 Commission approves the recommendation to go forward with the
14 case in a contested civil action?

15 A I don't recall hearing that.

16 Q Do you know why that approach was not used in the
17 Goldman case?

18 A No.

19 Q Did you ever look into why that approach was not
20 used in the Goldman case?

21 A I'm not sure I know all the facts of the Goldman
22 case about what communications did or didn't happen.

23 Q Okay.

24 A So I -- most what I learned I read in the paper.

25 Q So you never kind of inquired to see what happened

1 and whether there's a change in policy on that?

2 A I was concerned about the story that was written --
3 initially reported in the Journal, because that -- I was
4 concerned that if that was true that would -- that something
5 had broken down. When I later learned enough to have some
6 comfort that it had some facts wrong, the concern lessened,
7 so I didn't take a lot of steps to drill down to find out
8 exactly what happened.

9 Q Okay. Do you know why the SEC filed its Goldman
10 case on Friday? I guess it was the 16th of April.

11 A No.

12 MR. KOTZ: Okay. All right. Let me show you a
13 document. I'll mark it as Exhibit 3, an e-mail from you to
14 Joan McKown, 4/19/2010, 6:40 p.m., and it has an attachment
15 to it.

16 (Exhibit No. 3 was marked for
17 identification.)

18 THE WITNESS: Okay.

19 BY MR. KOTZ:

20 Q In the first part of your e-mail you say, "Wow,
21 this amazing. I can't understand why someone would do this.
22 It's just going to add fuel to the fire (speculation) this
23 was politically motivated." What did you mean by that?

24 A I believe that's a reference to the article that
25 Joan forwarded -- Joan McKown forwarded to me, which is a

1 report that the Commission had voted 3-2 on the staff's
2 recommendation regarding Goldman.

3 Q All right. And so when you say, "I can't
4 understand why someone would do this," you're saying I can't
5 understand why someone would leak this information?

6 A Correct.

7 Q Okay. And then you also say, "I'm hearing that the
8 Chairman's Office is denying that there was any connection
9 between the decision to file the case on Friday and the
10 decision to release the Stanford IG report the same day.
11 They had better be careful, because they may get asked for
12 e-mails, etc., from Congress or pursuant to a FOIA request."
13 What did you mean by that?

14 A I recall reading an article somewhere, where
15 someone had asked about the decision to file the case on
16 Friday and the release of -- to issue the Stanford report,
17 your IG report, on Friday. And I recall that the article
18 said something about it being coincidental. And I wasn't
19 sure that was factually accurate.

20 Q How come?

21 A Because I knew -- I knew before Friday that both
22 were going to happen on Friday?

23 Q How did you know that?

24 A I believe I heard from Joan McKown.

25 Q So what did you hear exactly?

1 A They both were going to be planned to be filed on
2 Friday or become public on Friday.

3 Q At what timeframe did you learn that? How much
4 before Friday?

5 A I don't recall. It was probably sometime that
6 week, maybe Wednesday or Thursday of that week. I don't -- I
7 just don't recall for sure. But I mean not a long time in
8 advance, but sometime in advance of Friday.

9 Q And so Joan McKown told you that?

10 A I don't recall for sure, but that's my best guess.

11 Q And do you know how she knew that?

12 A I don't for sure, but I know she -- I believe she
13 was working on the IG report, redaction issues and some other
14 issues with -- working with the general counsel's office on
15 that, I believe. And so in that capacity, I believe had some
16 idea of what the plan was for releasing it from a timing
17 standpoint.

18 Q And was there an indication that that was
19 coordinated on purpose to release both on the same day?

20 A Say that again.

21 Q Did you get the indication that it was -- that
22 there was a reason that the decision was made to release both
23 the Goldman case and the Stanford IG report on the same day?

24 A I don't recall a reason being articulated as to
25 why.

1 Q Do you have an understanding of what the reason
2 might be?

3 A I have a guess.

4 Q What would that be?

5 A That it was perceived that the Stanford report was
6 going to generate negative publicity, and that the Goldman
7 case would result in some positive publicity, and whoever
8 decided made the decision that it made sense to have both
9 become public on the same day.

10 Q And do you know if the decision, with respect to
11 the Goldman case, was delayed -- its release was delayed to
12 coincide with the Stanford IG report, or was the Stanford
13 release delayed to coincide with the Goldman report, or how
14 it worked?

15 A Say that again.

16 Q Well, you want to file two matters on one day. So
17 you could either delay one to make sure or you could delay
18 the other. Do you know, you know, any of the specifics of
19 how it was worked out?

20 A I don't. I wasn't really involved in the decisions
21 on either, other than to observe that both were heading
22 towards becoming public at the same time. And but I don't
23 know -- I mean I'm not aware of someone intentionally, for
24 example, delaying something to hold it up for something else.

25 Q Okay. And you say, "They better be careful. They

1 may get asked for e-mails, etc. from Congress or pursuant to
2 FOIA request." Were there particular e-mails that you had in
3 mind here?

4 A No. I just assumed that -- I assumed it was not
5 coincidental. I assumed there were communications between
6 and among some people within the Commission about the issue
7 of filing both on the same day. And my concern was that
8 people not say things publicly that might be false.

9 Q You made the assumptions, but were you aware
10 specifically of that?

11 A No. No. No. I just -- no. I was not. I was
12 not -- as I -- to my knowledge, part of any or aware of any.
13 I was only aware that there was a plan to have both announced
14 on Friday.

15 Q Did you have any other conversations with anyone
16 else, other than this conversation I think you have with Joan
17 about this issue?

18 A About the issue that's in the e-mail?

19 Q Yeah.

20 A I probably had discussions with other people about
21 the article that I was referencing.

22 Q Okay.

23 A Where a public statement was made that it was
24 coincidental. I believe that was a Financial Times article,
25 if I recall. And I probably mentioned it to other people,

1 but I don't recall who I would have spoken with.

2 Q Do you remember what the other folks reaction was?
3 Were their reactions similar to you, that they kind of didn't
4 believe it was coincidental?

5 A I think that's generally the case. Yes.

6 Q Okay. You don't remember anything, anybody
7 specific?

8 A No. It wasn't. Who I'm referring to are not
9 people who were involved in any decision to --

10 Q Okay. So it wasn't people who handled the Goldman
11 case or anything?

12 A Correct. Correct.

13 Q It was just general --

14 A Maybe some of my staff or, you know, people who I
15 work with otherwise.

16 MR. KOTZ: All right. Let me show you another
17 document. We're going to mark this Exhibit 4, SEC
18 Administrative Regulations, Public Affairs, Press Relations
19 Policies and Procedures.

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

22 BY MR. KOTZ:

23 Q Are you familiar generally with this document?

24 A I'd say I'm generally familiar with it.

25 Q Okay. Let me bring your attention to page 6 of 12,

1 under 15C, Notification of Defendants. Read that provision.

2 A Myself?

3 Q Sure.

4 A Okay.

5 Q Were you aware, generally, of this provision?

6 A I don't recall reading it before, but it's
7 consistent with my general philosophy about how we should
8 operate.

9 Q Okay. Now, is this the same as the heads up to
10 give an opportunity to settle, or is this a little different,
11 that, whether you would give an opportunity to settle or not,
12 you would at least notify them before the case is filed, so
13 they don't read about it in the paper?

14 A This seems to suggest the latter.

15 Q Okay.

16 A That regardless of prospects of settlement, you
17 should make an effort to do this. And that's, I think, in my
18 earlier answer what I said to, is even in cases I know are
19 not going to settle it's the practice to do that just as a
20 courtesy is I think how I described it.

21 Q Okay. So generally, based on your experience in
22 various different positions at the SEC, you understand that
23 it is a practice to ensure that the defendant knows that the
24 SEC filed its complaint before the complaint is filed and
25 they learn about it in the press.

1 A I'm sorry. Can you say that one more time.

2 Q Sure. Based on your experience at various levels
3 in the enforcement division, its your understanding that it
4 is the practice of the enforcement division to notify
5 defendants that the SEC is bringing an action against them
6 before the action is brought, so that they don't learn about
7 it in the press.

8 A Correct.

9 Q Okay. Now, are you aware of whether this was done
10 in the Goldman case?

11 A I don't know.

12 Q Okay. If you were to learn --

13 A The way they reacted when we filed the case seems
14 to suggest that it didn't happen. But I don't know for sure.

15 Q Assuming it didn't happen, assuming that no effort
16 was made to reach out to Goldman prior to the Goldman -- the
17 action against Goldman being brought, and the only effort to
18 reach out was after the SEC brought its action, I mean would
19 that concern you, in terms of the general practice of
20 courtesy that the enforcement division uses?

21 A I would want to know the reason why.

22 Q Okay.

23 A And depending on what the answer is, I might have a
24 concern. But, you know, if there was a good reason not to,
25 you know, that -- I would be okay with that. But generally,

1 I would -- it would be concerning, you know, if it didn't
2 happen without a good reason.

3 Q You were aware of the impact on the market and
4 Goldman's stock when the SEC announced its action against
5 Goldman Sachs?

6 A I'm aware there was a fairly sizable stock price
7 drop. Yes.

8 Q Are you aware of traditionally whether there was
9 any consideration given to filing an action after trading
10 hours, so as not to cause a fluctuation in the market or in a
11 particular company's stock?

12 A That's actually generally not the practice.

13 Q Okay. How come?

14 A Well, most cases we file don't have an impact on a
15 company's stock price.

16 Q Right.

17 A And so it doesn't come up a lot. It's also a case
18 that, you know, you keep -- our practice is to usually file
19 cases first thing in the morning, you know, when the courts
20 open. At least, you know, that's sort of what you strive
21 for. And in part I think that is -- it's just our practice
22 to usually file the cases in the morning.

23 Q What about informing the New York Stock Exchange in
24 advance that you're going to file an action that could
25 potentially have an effect on the stock market. Have you

1 heard about that?

2 A I've done it before. Sure.

3 Q You have?

4 A Sure.

5 Q What were the situations in which you did that?

6 A I just did it a couple of weeks ago, when we filed
7 the CitiGroup case.

8 Q How come?

9 A Just to give them a heads up.

10 Q And is it generally the practice of the enforcement
11 to do that in a case where you think there's going to be a
12 significant market impact from the filing?

13 A I didn't know there was going to be a significant
14 market impact. There's usually not a way -- it's hard to
15 predict that or handicap that. It's really more it's news,
16 and it could effect the stock or trading in the stock. And I
17 think it's a -- for a company like that, that's followed as
18 closely as it is for that type of news, it's important to
19 just -- so that they're not caught flat-footed to try to
20 provide that type of notice.

21 Q And so is it your understanding that it is sort of
22 enforcement's practice to do that in cases where there's at
23 least a potential impact? Or is that just your practice?

24 A I'm not sure if it's a division-wide practice.
25 It's something that I've done many times before. I don't

1 know that I've done it in every case that we have involving a
2 public company. But if it's something that I think is going
3 to get a fair amount of attention and scrutiny, that tends to
4 be the types of factors I would consider in deciding to make
5 that type of a call.

6 Q Do you think that it would have been appropriate to
7 give the New York Stock Exchange a heads up in the case of
8 the Goldman lawsuit? Would that have been a situation where
9 you might have done that?

10 A I don't think anyone foresaw the reaction to the
11 Goldman case that actually occurred. But I think it was
12 anticipated it would be viewed as a significant case, and all
13 things being equal, I think it's the type of case that
14 generally I would have erred on the side of providing notice.

15 Q Anyone else you give notice to, other than the New
16 York Stock Exchange?

17 A Sometimes. It depends on the entities. You know,
18 if we're suing -- like with the CitiGroup case, to use that
19 as an example, I think we called the Fed. I think it's one
20 of our practices when we're dealing with a large financial
21 institution to -- we're expected to provide notice to those
22 folks, so that they're aware of the action, impending action.

23 Q Anyone else?

24 A Well, we have different practices. I mean
25 sometimes, for example, if I was filing a case involving a

1 large issuer in a region, you know, like maybe in Los
2 Angeles, I might call the regional director in our Los
3 Angeles office to give them a heads up that --

4 Q But that's people within the SEC.

5 A Correct.

6 Q I'm talking about people outside.

7 A Oh. Outside the SEC? Once in a while, if it's a
8 case that we've been coordinating with other regulators, the
9 states, SRO, maybe criminal authorities who are not filing
10 cases the day we're filing, but we've been coordinating
11 throughout the course of the investigation with them. I
12 probably would give a heads up to those counterparts that we
13 were filing a case that day.

14 BY (b)(6),(b)(7)(C):

15 Q Is an access request necessary in those situations,
16 where you're informing another regulator, or another
17 governmental body, or regulatory body, that you're about to
18 file a case?

19 A Well, in the last case I was describing, dealing
20 with criminal authorities or the states, that probably
21 happened earlier in the investigation. You know, that's why
22 we're working together in that, collaboratively in that vein.
23 And almost always you're going to have received an access
24 request earlier in the case. The only exception to that is
25 probably like the Federal Reserve example I gave. You know,

1 we tend not to have parallel proceedings with them, you know,
2 from an investigative standpoint. The notice there is not
3 pursuant to an access request in that example. But ones to
4 the SROs or to the states or to the criminal authorities
5 there likely would be an access request that had been granted
6 earlier on.

7 BY MR. KOTZ:

8 Q What about FSA?

9 A The FSA rarely, because we rarely have matters with
10 them. But if we do, then they sort of fall into the category
11 of, you know, the states, or the SROs, or the criminal
12 authorities, that if it's something we worked on together
13 with them we likely would. Sometimes if we have this -- you
14 know, another category of cases, FCPA cases, there's a
15 process for some of those cases, where we notify the State
16 Department, who will notify foreign counterparts about the
17 impending enforcement action, sort of as, I think, a
18 diplomatic measure, that, you know, if we're going to be
19 suing a German company, a UK company, or some other foreign
20 issuer, or foreign citizen that we will contact them, and
21 they will provide those types of notices. And our Office of
22 International Affairs usually is involved in that
23 notification process.

24 Q What about the White House? Would you ever give
25 the White House a heads up that the enforcement division is

1 about to file a case?

2 A I'm not sure I would say never. I don't know that
3 I've ever heard of such an example.

4 Q Okay. What about folks in Congress? Have you ever
5 heard of that example?

6 A None come to mind.

7 Q Now, you were aware that the SEC eventually filed a
8 settlement with Goldman Sachs in July of 2010?

9 A Yes.

10 Q Did you have any involvement in that process?

11 A No.

12 Q Okay. Do you have any idea why the settlement was
13 filed and announced on the day it was?

14 A No.

15 Q Okay. You are aware of, I assume, financial
16 regulatory reform, the legislation that went through Congress
17 in this past year?

18 A Yes.

19 Q Okay. Did you have any involvement from the SEC in
20 discussions about that?

21 A Yes.

22 Q Okay. Did you have any communications with staff
23 or members of Congress about it?

24 A Not that I recall.

25 Q Did anybody at the SEC ever mention the financial

1 regulatory reform legislation in connection with the Goldman
2 Sachs investigation or in connection with the filing of an
3 action against Goldman Sachs before the case was filed?

4 A Can you say that again?

5 Q Has anyone at the SEC ever mentioned the financial
6 regulatory legislation in connection with the Goldman Sachs
7 investigation or in connection with the filing of an action
8 against Goldman Sachs prior to being it filed?

9 A Not that I'm aware of.

10 Q Do you have any reason to believe that the SEC's
11 action against Goldman Sachs, or the timing of that action,
12 was related to or specifically to advance financial
13 regulatory reform?

14 A Not that I'm aware of.

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

19 A No.

20 Q Are you aware of any information indicating that
21 the SEC coordinated its action against Goldman Sachs with
22 either, the White House, its employees, members of Congress,
23 Congressional employees or Democratic committees?

24 A I'm not aware of anything like that.

25 Q Are you aware of any information indicating that

1 the SEC coordinated the timing of the settlement with Goldman
2 Sachs with the White House, members of Congress,
3 Congressional employees, or Democratic committees?

4 A No.

5 Q Is there anything else related to the issues that
6 we asked you about that you want to add?

7 A I can't think of anything.

8 MR. KOTZ: Okay. All right. Great. So I don't
9 have any further questions. I would ask, to preserve the
10 integrity of the investigation that you not discuss the
11 content of your testimony with anyone.

12 THE WITNESS: Okay.

13 MR. KOTZ: And with that, we're off the record.

14 (Whereupon, at 2:51 p.m., the examination was
15 concluded.)

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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 35 pages is a complete, true and accurate transcript of the testimony indicated, held on August 13, 2010, at 2:03 p.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:

8/19/10

Official Reporter:

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

Diversified Reporting Services, Inc.

PROOFREADER'S CERTIFICATE

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In the Matter of: OIG-534
Witness: Witness Number 23
File Number: OIG-534
Date: Friday, August 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)

8/19/10

(Proofreader's Name)

(Date)

Chapter Break

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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

ORIGINAL

WITNESS: Number 24

PAGES: 1 through 38

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

DATE: Thursday, July 29, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 2:01 p.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, Inspector General

5 (b)(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

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C O N T E N T S

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WITNESS

EXAMINATION

[REDACTED]

4

EXHIBITS:

DESCRIPTION

IDENTIFIED

1

April 16, 2010, E-mail Chain,
Marlin to Nester

14

2

April 16, 2010, E-mail Chain,
[REDACTED] to Lench

23

P R O C E E D I N G S

1
2 MR. KOTZ: We are on the record at 2:01 p.m. on
3 July 29, 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

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

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

14

for the record?

15

A Yes.

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

16

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

17

Q (b)(6),(b)(7)(C), **my name is David Kotz,**

18

I'm the Inspector General of the United States

19

Securities and Exchange Commission. I have with

20

me my colleague from the Office of the Inspector

21

General, (b)(6),(b)(7)(C) **This is an investigation**

22

by the Office of Inspector General, Case No.

23

OIG-534. I'm going to ask you certain questions

24

and you will be providing answers under oath. A

25

court reporter will record and later transcribe

1 everything that is said. Please, therefore,
2 provide verbal answers to the questions, as a nod
3 of the head or another non-verbal response won't
4 be picked up by the court reporter.

5 Also, so the record will be clear,
6 please let me finish my question before you
7 provide your response. In addition, it is
8 important that you understand the questions and
9 give accurate answers. If there's anything you
10 don't understand or anything you do not know or
11 are not sure about, please let me know.
12 Otherwise, I will assume that you heard and
13 understood the question.

14 Do you understand those instruction?

15 A I do.

16 Q Great. All right, let me give you the
17 perjury warning. As you can see, your response to
18 the statements given today are provided after
19 you've sworn an oath and will be taken down
20 verbatim by the court reporter. This is an
21 official U.S. Government law enforcement
22 investigation. The claims asserted in this case
23 are serious ones. It is very important you tell
24 me everything you know about the matter at hand
25 and are completely forthcoming and truthful with

1 me.

2 I'm formally advising you that your
3 testimony today is subject to the laws of perjury.
4 Providing false or misleading testimony under oath
5 is a very offense. If the evidence shows the
6 testimony you've given is false, we may refer it
7 as appropriate.

8 Do you understand those instructions?

9 A Understood.

10 Q Great. All right, I'm going to get into
11 a little bit of background and then ask you some
12 more substantive questions.

13 Could you please describe for me your
14 education, beginning with college?

15 A (b)(6),(b)(7)(C)

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

17

18

19 Q (b)(6),(b)(7)(C)

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

21 A (b)(6),(b)(7)(C)

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

23 Q (b)(6),(b)(7)(C)

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

25 A (b)(6),(b)(7)(C)

1 (b)(6),(b)(7)(C)
2

3 Q (b)(6),(b)(7)(C)

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

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

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

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

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

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

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

12 Q (b)(6),(b)(7)(C)
13 A

14 (b)(6),(b)(7)(C)
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18 Q (b)(6),(b)(7)(C)
19 A

20 (b)(6),(b)(7)(C)
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23 Q (b)(6),(b)(7)(C)

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

25 A (b)(6),(b)(7)(C)

1

[REDACTED]

2

Q

[REDACTED]

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Q

[REDACTED]

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[REDACTED]

21

Q

[REDACTED]

22

A

[REDACTED]

23

Q

you started

24

with the SEC?

25

A

[REDACTED] of [REDACTED].

1 Q [REDACTED]

2 [REDACTED]

3 A [REDACTED]

4 Q [REDACTED] so what was your
5 first job at the SEC in [REDACTED]?

6 A [REDACTED].

7 Q And what were your duties as a [REDACTED]

8 [REDACTED]

9 A To assist in enforcement investigations.
10 To do market surveillance in conjunction with the
11 various SROs. To testify in court as a securities
12 expert. To sit in on testimony with guys like
13 [REDACTED] to answer the street questions and the
14 trading questions, that type of thing.

15 Q How long were you a [REDACTED]
16 [REDACTED]

17 A I think I technically still am, but I'm
18 considered a [REDACTED]

19 [REDACTED]

20 Q I see.

21 A So that's my title, whatever the --

22 Q Do you know when you became a

23 [REDACTED]

24 A I'm going to guess that was [REDACTED]

25 -- I became a [REDACTED]

1 Q You became [REDACTED]?

2 A Right.

3 Q Are you still a [REDACTED]

4 A I'm not, I'm [REDACTED] of

5 Market Surveillance.

6 Q All right, so initially you were a

7 [REDACTED] --

8 A Correct.

9 Q -- and then you became a [REDACTED]

10 A Correct.

11 Q Do you know what year you became a

12 [REDACTED]?

13 A If I started here in [REDACTED] I'm going to

14 guess that was [REDACTED]

15 Q So, in approximately [REDACTED] you became a

16 [REDACTED] and so what were your duties as a

17 [REDACTED]

18 A It was the same basic duties. I just
19 had oversight of a group of analysts that did the
20 same type of work.

21 Q And then at some point you were promoted

22 from [REDACTED] to [REDACTED]

23 A To [REDACTED], correct.

24 Q When did that occur?

25 A I think that was [REDACTED] somewhere in that

1 area.

2 Q And so, what's your official title as

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

4 A (b)(6),(b)(7)(C). Actually,

5 we've just been renamed, we're now the Office of

6 Market Intelligence. So, I'm (b)(6),(b)(7)(C)

7 (b)(6),(b)(7)(C) I think is

8 the new title, but I'm still kind of --

9 Q How many people do you supervise as (b)(6),(b)(7)(C)

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

11 A At the high, I think I had six -- and it

12 was usually five.

13 Q And how many people do you supervise as

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

15 A There are 15 in my office now.

16 Q And some of them are (b)(6),(b)(7)(C) and

17 some of them are (b)(6),(b)(7)(C)

18 A That's correct.

19 Q And so what -- I know you've kind of

20 mentioned it, but just tell me generally -- what

21 is the function of that particular office that you

22 head up?

23 A It is basically a support function to

24 Enforcement for securities-related matters,

25 different types of securities, option expertise,

1 trading expertise.

2 Q And who do you report to?

3 A I report to [REDACTED], [REDACTED]

4 [REDACTED] Market Intelligence.

5 Q And this is just recently?

6 A Yeah, yeah. A couple of months.

7 Q Who did you report to before [REDACTED]

8 [REDACTED]

9 A Before that it was Scott Freestad,
10 associate director.

11 Q I see. All right, did you ever become
12 aware of the existence of an investigation by the
13 SEC into the sale of collateralized debt
14 obligations by Goldman Sachs known as the ABACUS
15 Investigation?

16 A I did.

17 Q When did you learn of that?

18 A I don't have a recollection of the date.
19 I mean, I heard about the case, I think, through
20 here. I read about it in the papers. I don't
21 know. I had no direct role in the case, so I'm
22 not sure what my --

23 Q As part of your duties in Market
24 Surveillance to provide assistance, you did not
25 provide assistance to the Enforcement Division in

1 connection with the ABACUS case?

2 A I did not.

3 Q So you heard about it just by virtue of
4 knowing that the SEC had an investigation?

5 A Yes. Or in the press. I'm not sure
6 whether I heard about internally or externally.

7 Q Did you know before the SEC brought its
8 action against Goldman, that is was about to bring
9 its action?

10 A I did not.

11 Q You know, generally, there was an
12 investigation, but you didn't know they were about
13 to actually bring action?

14 A Yes. I actually read about the filing
15 of the case in the newspaper -- or on Bloomberg.
16 Whatever the Friday it was that they announced it.

17 Q Right. So did you have any
18 understanding that this ABACUS Investigation was
19 considered a national priority investigation for
20 the SEC?

21 A I did not.

22 Q And you weren't aware of the different
23 things that happened in the ABACUS case -- it
24 getting put on the calendar, taken off the
25 calendar, et cetera?

1 A I had nothing to do with it.

2 Q All right, but then on the day that the
3 Goldman case was brought -- that Friday that you
4 mentioned -- that's when you did play some role
5 and so I want to show you an e-mail, to ask you
6 about that.

7 A Sure.

8 MR. KOTZ: So we're going to mark as
9 Exhibit No. 1 an e-mail exchange between Myron
10 Marlin and John Nester, dated 4/16/10, 3:55 p.m.

11 THE WITNESS: Okay.

12 (Exhibit No. 1 was marked for
13 identification.)

14 BY MR. KOTZ:

15 Q And so, who is James Duffy?

16 A James Duffy is the -- I think he's the
17 Chief Executive Officer of New York Stock
18 Exchange, Inc. -- Regulation, Inc.

19 Q And tell me generally what does the New
20 York Stock Exchange do?

21 A Trades stocks.

22 Q And have you had interactions with Mr.
23 Duffy?

24 A It was the first time I ever talked to
25 him.

1 Q But you did talk to him as Exhibit No. 1
2 shows, on Friday, April 16th, 2010 -- the day that
3 the Goldman case was filed.

4 A I did.

5 Q And what was that conversation?

6 A He -- actually, before I had a
7 conversation with him, I received a call -- and
8 I'm blurry on who it was because I deal with a lot
9 of people at the Exchange, but I believe it was a
10 gentleman by the name of [REDACTED] of New York
11 Stock Exchange Regulation [REDACTED] I
12 deal with on a daily basis for surveillance
13 matters -- called me and asked who Mr. Duffy could
14 speak to about some issues he had about the timing
15 of the filing of the Goldman case. And it was
16 kind of a, you know, a vague question.

17 I said, have him call me. I'd be happy
18 to, you know, talk with him about whatever issues
19 he has and point him in the right place because
20 [REDACTED] couldn't really answer my question about what
21 he wanted to talk about.

22 Q Right.

23 A So, I told [REDACTED] to have Mr. Duffy call
24 me, which he did -- surprisingly, because usually
25 a person of that height doesn't call me. He'll

1 call the director directly, or call the chairman
2 directly.

3 Q So what occurred in the conversation
4 between you and Mr. Duffy?

5 A Mr. Duffy had concerns about the
6 intra-day release by the Commission of the Goldman
7 matter because, in his opinion -- which I didn't
8 disagree with -- caused or may have added to
9 excess volatility in the marketplace by doing an
10 intra-day release of an enforcement case of this
11 magnitude.

12 Q Right. And did Mr. Duffy also talk
13 about the fact that the NYSE wasn't given a head's
14 up that this was coming down the pike? And that
15 they noted that there are times when they consider
16 whether they should halt trading in the securities
17 of a listed company because of certain news?

18 A I don't recall him mentioning that.

19 Q But he was concerned that the SEC
20 brought the Goldman case during the trading hours?

21 A That was the crux of his concern, yes.

22 Q And that was because Goldman is a traded
23 company.

24 A That's correct.

25 Q And the news of the announcement of the

1 **SEC action against Goldman, had an impact on**
2 **Goldman's stock?**

3 A That's right. His concerns were
4 multi-focused. One, Goldman's a publicly traded
5 company, so it had a volatility effect on the
6 price of Goldman itself.

7 Second, they're big in the financial
8 industry, so there's derivative action that occurs
9 in the market place off of just the action by
10 Goldman, or CitiGroup, or any other major player
11 in the financial industry has broader market
12 impact than just on the individual security. And
13 that was his two major concerns.

14 Q And so was there a concern that
15 investors would be potentially harmed by virtue of
16 the effect that this announcement had on the
17 stock, since it was announced during trading
18 hours?

19 A It wasn't discussed, but I think that
20 was the implication.

21 Q And do you agree -- did you or do you
22 share these concerns that were expressed to you by
23 Mr. Duffy?

24 A I think I did with him -- I won't say, I
25 think -- I did agree with him. I'm a huge

1 proponent of off hours announcements, at least in
2 major announcements and I voiced that to him.
3 And, you know, cautioned him that that and two
4 dollars will get him, you know, a cup of coffee at
5 Starbucks. But I was -- I was open to his
6 concerns and I, as my e-mail mentioned -- I sent
7 it to the head of our Enforcement -- I didn't know
8 if I could just send it to Lorin, but I sent it to
9 Lorin, with his concerns, and asked that they have
10 a conversation with him because that's what I felt
11 the level that conversation should have occurred.

12 **Q Now if you file a complaint, right? And**
13 **you file it -- you have to file it while the court**
14 **house is open.**

15 A Yes.

16 **Q So how do you do that not during trading**
17 **hours?**

18 A My understanding is that the -- and I
19 followed up on this because I didn't know what the
20 rules were about the filing of the case because I
21 had the same concern about did we have
22 availability to do this off hours? My
23 understanding is that we had until 4:30 during the
24 day to file that case in court. So we have a
25 window of a half an hour, if you want to play it

1 that tight, to file the case between 4:00 and 4:30
2 to take out excess volatility in the marketplace,
3 if you wanted to.

4 **Q Is there a general policy within the SEC**
5 **about these types of things?**

6 A I don't know. I don't know.

7 **Q But you have in the past advocated for**
8 **filing these kinds of cases at off hours?**

9 A Advocate might be a strong word. If I'm
10 asked, which I think would be infrequent, that
11 would be my recommendation.

12 **Q And has anybody expressed to you the**
13 **reason why that view would not be taken? Why the**
14 **SEC would not want to file it in off hours?**

15 A No.

16 **Q All right, so you sent this to Lorin**
17 **Reisner, who is the deputy director of**
18 **Enforcement.**

19 A Uh-huh.

20 **Q Yes?**

21 A Yes. I'm sorry.

22 **Q And was there any further conversation**
23 **about it?**

24 A About this matter?

25 **Q Yes.**

1 A With Mr. Duffy, no.

2 Q But about the filing of the Goldman case
3 and when it was filed?

4 A No, I think I gave them this information
5 and that's the last I heard about it.

6 Q When you say you followed up, who did
7 you follow up with?

8 A Oh, I'm sorry. I checked with -- and
9 I'm trying to remember the attorney that I checked
10 with on that. I just wanted to see if it was
11 possible --

12 Q Oh, I see.

13 A -- to have -- to file the case off
14 hours. I didn't know what the timing was.

15 Q So you talked with one of the attorneys
16 who worked on the enforcement case?

17 A I don't know. I don't think it was
18 anybody --

19 Q It was an attorney --

20 A An attorney in Enforcement.

21 Q -- who would be able to give you
22 information about filing cases.

23 A Yes. Filing cases, that's correct.

24 BY [REDACTED]:

25 Q I see. And you mentioned that there was

1 a window after the Stock Exchange closed. Did you
2 also see whether there was a window, essentially,
3 before it opened? That is, with the court house
4 opening at 8:30 and the Stock Exchange opening
5 later than that?

6 A I didn't. I mean, I might of.

7 Q Yes.

8 A But since it was intra-day, I think I
9 was just focusing -- was it possible to do it
10 later?

11 Q Yes.

12 A And, yeah. I --

13 Q And in your opinion, based in your
14 experience, would it be equally effective, or more
15 or less effective to file the action before market
16 hours -- that is, you know, let's say the 8:30 to
17 9:30 slot versus after hours -- let's say the 4:00
18 to 4:30 slot?

19 A I would -- personally, I would think
20 that filing it after hours would have less of an
21 impact on the market because it would give the
22 marketplace more time to digest, than if you filed
23 at 8:30 in the morning and the market opened an
24 hour later. You still have unanswered questions.
25 Whereas, you file it at 4:00, you've got

1 the whole night to gather other information, so
2 that's just --

3 BY MR. KOTZ:

4 Q What do you think of the idea of giving
5 the New York Stock Exchange a heads-up, so they
6 can make a decision whether to halt trading? That
7 way you could file at any time you wanted, but the
8 NYSE could halt trading if they determined that
9 was appropriate.

10 A That sounds like a rational response.
11 That if you halt trading in time, and the filing,
12 to give the information time to disseminate,
13 you're going to limit volatility.

14 BY (b)(6),(b)(7)(C):

15 Q And this may seem like an obvious
16 question, but it's good to ask so I'll understand,
17 is it in the Commission's interest to limit
18 volatility, or is volatility ever a concern to the
19 Commission?

20 A It's a concern to me because it makes a
21 lot more work for me. Volatility causes lots of
22 alerts on the exchanges. It causes lots of alerts
23 and red flags in my office, so it makes a -- you
24 know, intra-day reviews are a lot more difficult
25 to get your hands around than full-day reviews --

1 just from the information we get here in the
2 building. So there's technical issues that
3 intra-day offer -- that intra-day releases cause
4 -- that make the investigations more difficult to
5 do and the reviews more difficult to do.

6 MR. KOTZ: All right, let me show you
7 another document. We're going to mark it as
8 Exhibit No. 2. This is an e-mail chain between
9 you and Ken Lench, 4/16/10, 12:50 p.m.

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

12 BY MR. KOTZ:

13 Q So this is, I guess, shortly after a
14 press release was issued about Goldman Sachs.

15 A Right.

16 Q And you said you received a call from
17 NYSER, who is that?

18 A New York Stock Exchange Regulation.

19 Q What do you recall about that call?

20 A Okay, I don't remember the source of my
21 info, or whether it was our own surveillance, but
22 due to -- with the intra-day and the difficulty of
23 identifying anomalous activity in the surveillance
24 area -- when they announced intra-day, I believe I
25 personally reviewed on Bloomberg intra-day trading

1 to see if there was any anomalous, long -- short
2 side option activity or aberrational volume spikes
3 in the underlying stock of Goldman -- or in the
4 stock of Goldman Sachs -- prior to whatever time
5 the announcement was on Friday, the 16th, I guess,
6 from your date.

7 And I did note from Bloomberg Reports
8 that there seemed to be a flurry of activity -- at
9 least in the stock -- prior to the intra-day
10 announcement by SEC about the filing of this case.

11 Q Okay.

12 A Which is my office's job. That's what
13 we look for.

14 Q So that would be unusual that there
15 would be trading before the announcement?

16 A Sure.

17 Q Obviously there'd be a lot of trading
18 after the announcement.

19 A Sure, and that's, what we look for.

20 Q And so, did you find significant
21 situations of individuals who potentially sold
22 short prior to the announcement?

23 A I didn't. Typically, what we do -- the
24 SROs, per congressional mandate are required to
25 surveil for their own marketplaces. So, what I do

1 in this case -- especially on the intra-day offer,
2 on an intra-day announcement -- since I can't
3 parse sections of a day from information that I
4 have in the SEC here, I'll contact the SRO, they
5 have access to their intra-day audit trail and
6 they can help us get through the portion of the
7 trading, or the portion of the day that we want to
8 look at, instead of where the SEC has to look at
9 the entire day of trading. It has a lot of noise
10 that we don't have to review.

11 So that would be my conversation (b)(6),(b)(7)(C)

12 (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C), who (b)(6),(b)(7)(C)
13 Insider Trading Group at New York Stock Exchange
14 Regulation.

15 **Q And so what happened further from that?**
16 **Was there an investigation opened as a result?**

17 A They -- I'm not sure if they opened an
18 investigation. They opened a review where they
19 were going to look at the trading -- the anomalous
20 trading activity that I noted from my side here.

21 **Q Who was going to look at it?**

22 A (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) group

23 --

24 **Q Okay.**

25 A -- the New York Stock Exchange

1 Regulation. I'm not sure who the eventual analyst
2 that ended up doing it.

3 Q What about the SEC? Did the SEC open up
4 anything?

5 A I think they did. And the reason I'm
6 saying, I think -- and I haven't gone through all
7 of this -- but at the time I brought this
8 information to Kenny's -- to Ken Lench's
9 attention, and Lorin Reisner's attention, an issue
10 arose to me that since the SEC was the public
11 knowledge of this filing going out in the public,
12 Ken Lench, (b)(6),(b)(7)(C), or anybody else who worked
13 on that case were potential witnesses --

14 Q Right.

15 A -- in an insider trading investigation.

16 Q Right.

17 A And Lorin had asked that Kenny Lench's
18 group look at the insider trading --

19 Q I see.

20 A And I went to Lorin and said, you might
21 not want to do that, they're potential witnesses.
22 You might want to assign a third party that hasn't been
23 involved in the ABACUS deal to do the insider trading
24 review.

25 Q Right.

1 A And he did, but I'm not sure -- I think
2 I knew at the time who was doing it, but as I sit
3 here today I don't remember who ended up doing the
4 review.

5 (b)(6),(b)(7)(C) : Do you know if it was even
6 home office?

7 THE WITNESS: It was home office.

8 BY MR. KOTZ:

9 **Q And do you know was it particular**
10 **individuals that were being investigated or --**

11 A No, it just would have been a general --
12 you know, we have anomalous activity, coordinate
13 with New York Stock Exchange Regulation. If they
14 find anything anomalous in, you know, in the SEC
15 employee's trading -- that type of thing, you
16 know.

17 **Q Was there any hint that any SEC**
18 **employees had traded?**

19 A No, no.

20 (b)(6),(b)(7)(C) : At least did you notice any
21 Goldman executives or employees selling --

22 THE WITNESS: Yeah, I never saw the --
23 we print this -- we never got a referral, which is
24 the typical way that an SRO would send that
25 information to us. So, I never saw the -- who was

1 behind the online anomalous trading.

2 BY MR. KOTZ:

3 Q Do you have an understanding of the
4 significance of the third Friday of each month for
5 expiration of options?

6 A Intimately.

7 Q Explain that to me, if you could?

8 A Sure. At least until July 1st of this
9 year, options trade in monthly cycles and the way
10 it works is, once an option is issued by OCC, it
11 has an expiration date. And they're typically
12 referred to by the underlying security, its
13 expiration month, and its strike price.

14 And the expiration month just ties it to
15 when it going to cease to exist. So, for example,
16 we're in July now, so any July expiration series
17 option -- technically, the last trading day would
18 be the third Friday of the month. Technically, it
19 expires on Saturday after that. That's the true
20 expiration, but people just use Friday because
21 that's the last real time you can actually trade
22 out of your option position, but you technically
23 can exercise it on Saturday. So, that the --

24 Q And do you understand that April 16th,
25 the day that the SEC filed the Goldman case was

1 **the third Friday of that month?**

2 A I was not aware of that.

3 Q **Assuming that it was the third Friday of**
4 **that month, would the volatility in the market**
5 **caused by the SEC's announcement have an even**
6 **greater impact because of the expiration of**
7 **options on that day?**

8 A Great question. My knee-jerk reaction
9 is to say, yes it would. But, typically, people
10 that are trading out of the expiring series of
11 options are done getting out of them by -- before
12 Friday. They're getting out earlier in the week,
13 so they're not waiting until the last day to trade
14 out of it. Unless your option is in the money and
15 they're contemplating exercising, then it doesn't
16 matter when they do it.

17 But if you're going to roll out your
18 calendar protection, under the option series, your
19 typically doing that, you know, maybe not Monday,
20 but Tuesday, Wednesday, you're starting to work
21 towards your next expiration series, so --

22 Q **But, to the extent that people haven't**
23 **done that and they wait until Friday, they could**
24 **have potentially been affected by the volatility**
25 **in the market?**

1 A Sure. Sure. But they could also be
2 affected positively. If you're on the short side
3 of the market, if you're long puts or short calls,
4 you are very happy that the SEC did an outside
5 intra-day and not after the close when it can't
6 trade any more.

7 Q Right, but the point is that, you know,
8 there was volatility in the market, essentially,
9 caused by the SEC's announcement, or action. And,
10 you know, perhaps there could have been an effort
11 to reduce that. Whether it benefits some and is
12 negative towards others, or vice versa, you know,
13 it was volatility that wasn't caused by normal
14 market conditions. It was volatility caused by a
15 particular announcement.

16 A Right.

17 Q And is it fair to say it could have had
18 a greater impact because it was done on the third
19 Friday of the month?

20 A It could have. It could have. I'm not
21 sure if --

22 Q Do you know if that issue was ever
23 raised, in terms of when these discussions that
24 you had are followed up, that it was the third
25 Friday of the month?

1 A Not until you mentioned it to me, I had
2 no idea.

3 Q Were you aware of the fact that the SEC
4 had settled its complaint and announced that
5 before the SEC officially announced it's settling
6 it's --

7 A I was not.

8 Q Are you aware of whether, in connection
9 with the announcement of the SEC's settlement with
10 Goldman, whether any head's up was given to the
11 New York Stock Exchange?

12 A I don't know.

13 Q Do you know if that was done during the
14 intra-day trading that was announced?

15 A I don't know.

16 Q Have you never --

17 A I mean, I'm assuming from Mr. Duffy's
18 call that it didn't happen, or he wouldn't have
19 been calling.

20 Q Did you ever hear back from Mr. Duffy?

21 A I did not. I just spoke to him that one
22 time.

23 Q And do you know if anybody ever called
24 Mr. Duffy back?

25 A I don't.

1 **Q Did you indicate to Mr. Duffy that he**
2 **should be speaking to somebody more senior in the**
3 **SEC about this issue?**

4 A Absolutely.

5 **Q Why did you do that?**

6 A Well, Mr. Duffy is a very high powered
7 person at the New York Stock Exchange. I was more
8 than welcome to hear his concerns. That [REDACTED]
9 [REDACTED] couldn't verbalize to me what his issue
10 was, and I wanted to get a feeling for what his
11 issue was before I made a recommendation on what I
12 thought he should do, so I offered my services in
13 that way and took the call. And once I heard what
14 level his concern was at, I had no qualms about
15 pointing him to our Director.

16 **Q And so, is that why you sent it to Lorin**
17 **Reisner, because Lorin Reisner is the deputy**
18 **director of Enforcement?**

19 A Yeah. I mean, I'm actually surprised
20 that I sent it to Lorin and not to Rob. I -- if
21 you would have asked me would I show him this, I
22 would have said that I'd send that to Rob.

23 **Q But then Lorin forwarded it to Rob, as**
24 **you can see in the e-mail.**

25 A Okay, okay.

1 Q But you don't know if anyone -- Rob or
2 Lorin or anyone else -- ever called Mr. Duffy
3 back?

4 A I do not.

5 Q And you never heard from him again?

6 A From Mr. Duffy? No.

7 Q And did you hear from anyone else at the
8 New York Stock Exchange about this particular
9 issue?

10 A No.

11 BY [REDACTED]:

12 Q Just one follow-up on this. First, that
13 options expiration Friday, in your experience has
14 that ever been a consideration in the SEC's
15 decisions to -- any decision as to when to file a
16 complaint that is to avoid that day, or whether
17 that's ever a factor?

18 A I don't know. Usually, you know, as you
19 know, most of my involvement in the cases are at
20 the very early stages -- the preliminary, the
21 triage stage. By the time we get to, you know --
22 we'll be -- I'll be involved in the middle part of
23 cases, sometimes when it's at trial. Maybe
24 testifying as an expert, but usually by the time
25 we get to filing, I'm 25 cases down the road and

1 it's so far out of my hands at that point that I'm
2 just not even involved in the case anymore, so I
3 have little input as to timings, or questions, or
4 Commission meetings. I'm just plowing ahead in
5 new issues.

6 **Q Based on your experience on how the**
7 **markets work, do you think it should ever be a**
8 **consideration as to whether to file on an option**
9 **expiration Friday?**

10 A Yeah, I think that's -- yes, obviously I
11 do. I think that's a little narrow. I think I
12 would take it broader. And it should definitely
13 be a consideration of Enforcement to even file
14 intra-day, being the expiration or not. Personal
15 opinion, I just don't think we need to throw the
16 excess noise in the marketplace unless that's your
17 goal.

18 I mean, sometimes we want to make a case
19 and we want to make a big splash when we file it.
20 And if that's your goal, file it intra-day. I
21 mean, it depends on what your goal is, right?

22 **Q That makes sense.**

23 A That's way above my pay graded side.

24 BY MR. KOTZ:

25 **Q Are you aware of whether the SEC has**

1 policies about informing entities after the SEC
2 has a recommendation approved by the Commission to
3 go forward with an action to inform the entities
4 -- give them sort of a head's up before they
5 actually file the case?

6 A I'm not aware of any policies like that.

7 Q Okay.

8 A I would think that that would --
9 probably wouldn't exist.

10 Q But you aren't involved, generally, in
11 those decisions?

12 A No, no.

13 MR. KOTZ: Okay, anything else?

14 (b)(6),(b)(7)(C): I don't think so.

15 MR. KOTZ: All right, we don't have any
16 further questions. The one thing I would ask in
17 order to preserve the integrity of our
18 investigation that you not discuss the content of
19 your testimony with anyone.

20 A Great.

21 Q Okay?

22 A Great.

23 MR. KOTZ: Okay, thank you very much.

24 THE WITNESS: Thank you.

25 MR. KOTZ: We appreciate your time.

1 THE WITNESS: Not a problem.

2 MR. KOTZ: Nice meeting you.

3 THE WITNESS: Nice to meet you, too.

4 MR. KOTZ: Nice to see you, (b)(6),(b)(7) Take
5 care.

6 THE WITNESS: Thanks, guys. Thank you.

7 (Whereupon, at 2:34 p.m., the examination was
8 concluded.)

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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 36 pages is a complete, true and accurate transcript of the testimony indicated, held on July 29, 2010, at 2:01 p.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:

8/5/10

Official Reporter:

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

Diversified Reporting Services, Inc.

PROOFREADER'S CERTIFICATE

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In the Matter of: OIG-534
Witness: Number 24
File Number: OIG-534
Date: Thursday, July 29, 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)

8/5/10

(Proofreader's Name)

(Date)

Chapter Break

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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

WITNESS: Number 25

PAGES: 1 through 157

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

DATE: Friday, July 30, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 9:34 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, Inspector General

5 (b)(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

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C O N T E N T S

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2			
3	WITNESS		EXAMINATION
4	John J. Nester		5
5			
6	EXHIBITS:	DESCRIPTION	IDENTIFIED
7	1	November 6, 2009, E-mail Chain,	
8		[REDACTED] to Cohen	25
9	2	December 22, 2009, E-mail,	
10		[REDACTED] to Nester	27
11	3	December 24, 2009, E-mail, [REDACTED]	30
12	4	March 4, 2010, E-mail,	
13		Nester to Lench	34
14	5	April 13, 2010, E-mail,	
15		Nester to Duberly	37
16	6	April 14, 2010, E-mail,	
17		Marlin to Nester	53
18	7	April 15, 2010, E-mail,	
19		Cohen to [REDACTED]	63
20	8	April 15, 2010, E-mail,	
21		Marlin to [REDACTED]	72
22	9	April 15, 2010, E-mail,	
23		Reisner to [REDACTED]	79
24	10	April 16, 2010, E-mail,	
25		Nester to [REDACTED] et al.	81

1	EXHIBITS:	DESCRIPTION	IDENTIFIED
2	11	April 16, 2010, E-mail,	
3		Story to Nester	86
4	12	April 14, 2010, E-mail,	
5		Marlin to Cohen, et al.	88
6	13	April 18, 2010, E-mail,	
7		Cohen to Marlin	92
8	14	April 19, 2010, E-mail,	
9		Westbrook to Nester	99
10	15	April 17, 2010, E-mail,	
11		Cohen to Khuzami, et al.	103
12	16	SEC Administrative Regulations	107
13	17	April 16, 2010, E-mail,	
14		Nester to Marlin	114
15	18	May 16, 2010, E-mail,	
16		Nester to [REDACTED]	117
17	19	June 17, 2010, E-mail,	
18		Reisner to Cohen	118
19	20	July 14, 2010, E-mail,	
20		Nester to [REDACTED] and Lench	126
21	21	July 14, 2010, E-mail, Nester	127
22	22	July 14, 2010, E-mail,	
23		[REDACTED] to Reisner, et al.	133
24	23	July 15, 2010, E-mail, Nester	135
25			

1 PROCEEDINGS

2 MR. KOTZ: We are on the record at 9:34 a.m. on
3 July 30, 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 JOHN J. NESTER

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

11 EXAMINATION

12 BY MR. KOTZ:

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

15 A John, J-o-h-n, J. for Joseph,
16 J-o-s-e-p-h, but I always just go by John J.; and
17 Nester, N-e-s-t-e-r.

18 Q Mr. Nester, my name is David Kotz. I'm
19 the Inspector General of the United States
20 Securities and Exchange Commission. I have with
21 me my colleague, [REDACTED] from the Office of
22 Inspector General. This is an investigation by
23 the Office of Inspector General, Case Number
24 OIG-534. I'm going to ask you certain questions
25 and you'll be providing answers under oath. The

1 court reporter will record it and later transcribe
2 everything that is said. Please, therefore,
3 provide verbal answers to the questions, as a nod
4 of the head or another nonverbal response won't be
5 picked up by the court reporter. Also, so the
6 record will be clear, please let me finish my
7 question before you provide your response.

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

14 Do you understand those instructions?

15 A Yes.

16 Q I'll give you perjury warning. As you
17 can see, your response to the statements given
18 today are provided after you've sworn an oath and
19 will be taken down verbatim by the court reporter.
20 This is an official U.S. Government law
21 enforcement investigation. The claims asserted in
22 this case are serious ones. It is very important
23 you tell me everything you know about the matter
24 at hand and are completely forthcoming and
25 truthful with me.

1 I'm formally advising you that your
2 testimony today is subject to the laws of perjury.
3 Providing false or misleading testimony under oath
4 is a very serious offense. If the evidence shows
5 the testimony you have given is false, we may
6 refer it as appropriate.

7 Do you understand those instructions?

8 A Yes.

9 Q Okay, great. All right, let's start
10 with a little bit of background. Could you
11 describe your education for me beginning with
12 college?

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

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

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

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Mm-hmm, and the first week of January '97, I came here. First in the Office of Investor Education in which I was hired as the media director for investor communication. But basically the theory was the SEC had traditionally been only covered in the Wall Street Journal and the New York Times in the Business sections,

1 things that mainstream Americans don't -- wouldn't
2 generally read at the time. At the time you had
3 more and more people entering the markets because
4 of the transition to 401(k)s instead of defined
5 benefit plans. So my job was to try to take the
6 investor education messages to the masses in
7 places where they weren't getting them in the
8 Business page, per se.

9 **Q How long did you do that for?**

10 A Until February of 2001. I came over
11 from Public Affairs to help out because after
12 Chairman Leavitt left, his public relations --
13 public affairs director left, [REDACTED]
14 [REDACTED] Investor Education and she and I went
15 over to help out in Public Affairs. And then she
16 eventually went back to Investor Education and I
17 stayed.

18 **Q So what was your first position in**
19 **Public Affairs?**

20 A Public affairs specialist.

21 **Q How long did you do that for?**

22 A In July of '05, when Chairman Donaldson
23 left, Cindy Glassman was acting chairman for a
24 month and she -- and -- and Chairman Donaldson's
25 public affairs person left when Chairman Donaldson

1 left, so Commissioner Glassman, who was acting
2 chairman, made me the acting director of Public
3 Affairs. And then in February of '06, Chairman
4 Cox made me the permanent director. And I'm the
5 first one, to my knowledge, in the history of the
6 agency who's not a political appointee in this
7 position.

8 Q Right. And so is that -- this position
9 no longer have a political aspect to it?

10 A Yeah, there's no political appointees in
11 my office.

12 Q But there were historically?

13 A Yes.

14 Q And so --

15 A Sometimes more than one. Always the
16 director and then sometimes a deputy director.

17 Q All right. And so since February 2006,
18 you have been the head of the Public Affairs
19 Office?

20 A Mm-hmm.

21 Q Yes?

22 A Yes. I'm sorry.

23 Q And so what are your duties in that
24 office?

25 A The -- the main function of the office

1 is to make sure that accurate information is
2 presented to the public about the agency's works
3 and to also minimize inaccuracies or correct
4 inaccuracies. My job is to then oversee the staff
5 in fulfillment of those duties. So a lot of the
6 work obviously entails talking to reporters,
7 helping them -- helping explain stories that we're
8 doing. Obviously a lot of it is drafting or
9 editing the press releases; we do about 200 or so
10 a year. We have some other functions that are
11 probably less interesting to you, but for
12 informing the staff we do all the news clips and
13 all those things that --

14 Q How many people do you have under you in
15 your division?

16 A Currently I have [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 So I guess that's about seven or eight. I have
21 two open positions right now. That's why I'm
22 fuzzy on exactly what my exact status is because
23 I'm in a position of flux.

24 Q And so the folks under you are [REDACTED]

25 [REDACTED]

1 A One or two -- well, one's the

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

3 Q Right.

4 A And then one is a (b)(6),(b)(7)(C). That's

5 (b)(6),(b)(7)(C). The others are classified as (b)(6),(b)(7)(C)

6 (b)(6),(b)(7)(C), but some of them have

7 unofficial titles. And, of course, then (b)(6),(b)(7)(C)

8 (b)(6),(b)(7)(C), but -- and (b)(6),(b)(7)(C) our

9 (b)(6),(b)(7)(C), but I think his official

10 form says (b)(6),(b)(7)(C).

11 Q And who do you report to?

12 A I report to the chairman, but that
13 really implies reporting to the entire Chairman's
14 Office. Like, in other words, I work with them
15 very closely.

16 Q Who does your evaluations or, you know,
17 approves your leave?

18 A I do my evaluations with Myron, who
19 works in the Chairman's Office as her director of
20 communications, but I think the ultimate signatory
21 is Didem.

22 Q So what does Myron do? How does his
23 duties relate to your duties?

24 A He's on the chairman's staff and she
25 obviously has several counselors for investment

1 management and broker-dealers. And his job is --
2 is for communications, so he will, as I do,
3 participate in meetings as a division is preparing
4 to announce what we're going to do, you know, on a
5 rule-making or a, you know, guidance letter on the
6 website or something like that, so.

7 Q He is a political or not?

8 A I -- you know, I do not know.

9 Q But there are times when you run things
10 by him?

11 A Mm-hmm.

12 Q Yes?

13 A Yeah, and -- and -- and it's -- it's a
14 very consultory relationship, two heads better
15 than one.

16 Q And he came in with Mary Schapiro?

17 A Shortly after, right.

18 Q Has he had a background with her?

19 A Not that I'm aware of. I do know that

20

21

22

23 Q Do you know what he was doing before he
24 came to the SEC?

25

A

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

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5 Q And do you see as part of your duties to
6 try to obtain favorable coverage for the SEC?

7 A Well, the way you ask it I would answer
8 it in a slightly different way. We are obligated
9 to inform the public of our actions. We are proud
10 of our actions, so they go hand in hand. We want
11 people to know about the things that we have done
12 that we believe are beneficial to the public.

13 Q Right. So you want to see the press
14 cover the SEC in a favorable way?

15 A I want to see them cover it in an
16 accurate way. I want our actions to be the
17 favorable things. I want to communicate it
18 accurately.

19 Q Right. But you believe that your
20 actions are favorable, so you want it covered that
21 way by the press, right?

22 A Right, because then it would be
23 accurate.

24 Q And so if there's a particular action
25 that the SEC takes that you believe is good and

1 should get coverage, do you make efforts to
2 maximize the amount of coverage for something that
3 the SEC does that's important?

4 A Yes, because the object is to educate as
5 many of the public as we can about the work that
6 we've done.

7 Q Right. And so if there's information
8 that would come out about the SEC that some may
9 view as negative, would you try to make efforts to
10 minimize the press of that to the extent you can?

11 A Not so much in that way you express it.
12 There may be two things that we did in a
13 particular action and, for whatever reason, half
14 of it is being covered and the other half which
15 might balance the story is not being -- isn't
16 getting out. So we will make efforts to try to
17 get the full story out.

18 Q But what if there's a story that comes
19 out that's just negative of the SEC? I mean, the
20 SEC doesn't always do everything perfectly.

21 A Right.

22 Q So would you try to make efforts to
23 ensure that the press minimizes that coverage, you
24 know, not improperly, but just because you want
25 them to focus on something else which you view as

1 **more important or --**

2 A Well, it's often difficult
3 contemporaneously to determine how an action will
4 be ultimately judged. But just say if it later
5 becomes accepted that the SEC didn't perform as
6 well as it could, we don't go out trying to
7 justify our actions. We'd go out to say what
8 we've done -- what we're doing differently to
9 prevent its recurrence.

10 Q Right. But do you also -- I mean, did
11 you make determinations, let's say, as to when
12 announce information or otherwise to ensure that
13 sometimes there would be more coverage or
14 something and sometimes there would be less
15 coverage of something?

16 A I'm -- I'm -- I'm familiar that people
17 ask that of us all the time, but, you know, a good
18 example is the timing of your report with the
19 Goldman Sachs one. Those were happening -- like,
20 there was a whole body of, you know, the building
21 working on the IG Report and its dissemination to
22 the public, and there's a whole other Enforcement
23 Division there. We -- to sort of say I don't want
24 to do this one on that day is getting -- is doing
25 the exact same thing that people were accusing you

1 for.

2 Q Right. Well, I'm not asking about that.

3 A Okay.

4 Q I'm just saying in general. So let's
5 say you have a report that our office issues or
6 another report that's negative, and there's
7 nothing else going on in that day, you know.

8 A Right.

9 Q Would you either release it on a
10 particular day or make efforts to ensure or to try
11 to get less coverage? And then on the other side,
12 if there's a story that's very positive that would
13 come out, you'd want to increase coverage?

14 A I'm trying to think of the best way to
15 express this. We -- it's -- it's generally not
16 likely that you're going to be able to change the
17 timing of something else. You know, either Corp
18 Fin has its letter to companies ready or not. Or
19 if -- you know, or an Enforcement action, the
20 commission -- there's a schedule, so there's not
21 really much you can do to control that.

22 And then the second thing is, is like,
23 it would be nibbling around the edges because
24 today there are so many media sources and so many
25 media outlets that it all gets out. So I think in

1 the '40s and the '50s, there was this sort of
2 thing you put thing out at 5:30 on a Friday
3 because it wasn't a weekend medium. But there --
4 the media cycle is always going, so it's --

5 Q All right. Well, we're get into this in
6 a minute.

7 A Okay.

8 Q But let me ask you now, I mean, we've
9 had a lot of testimony, a lot of people have
10 testified about an internal debate in the agency
11 about whether to issue announcements of an
12 Enforcement case on Friday.

13 A Mm-hmm.

14 Q And so we have a lot of testimony that
15 there was a lot of discussion internally about
16 whether that's a good idea or not. Some had the
17 view you never announce an Enforcement case on
18 Friday because you're not going to get the
19 coverage that you would get from Saturday.

20 A Right.

21 Q Others thought it makes no difference
22 nowadays. Where --

23 A I'm of the latter view, which is, as I
24 just said, like, it's 24/7 now. The old cycles
25 aren't applicable.

1 Q But, I mean, those discussions clearly
2 went on. I mean, we've had, I don't know, 10, 15
3 people testify about all the discussions --

4 A Right. Mm-hmm.

5 Q -- internally about when you want to
6 release something as to when that will maximize
7 press coverage.

8 A Right. And my general advice when I'm
9 participating in those meetings is those cycles
10 don't apply as much anymore. My -- what I
11 generally always say is, like, you have to do
12 what's right for your program. Given a choice, it
13 might be better here or there, but you have to do
14 what's right with your program and then I will do
15 what we can to get it out to the public.

16 Q Right. But part of what you provide is
17 to let people know what is better from a press
18 coverage point of view. I mean, they're obviously
19 concerned about their program and what you bring
20 to the table is if you do it this way, this will
21 be the effect or here's an idea?

22 A Right, I -- I -- I might give them the
23 full range of scenarios of how it may differ, like
24 whether the networks would be able to cover
25 something if it was a certain time of day compared

1 to whether the wires would. So, like, you just
2 say if you want to get your message out to the
3 most people of the accomplishments that you've
4 made, here are your options and here are the
5 upsides and the downsides.

6 Q Gotcha, okay. At some point I assume
7 you became aware of the existence of an
8 investigation by the SEC into the sale of
9 collateralized debt obligations by Goldman Sachs,
10 known as the ABACUS Investigation.

11 A Right.

12 Q When did you become aware of that?

13 A To my -- the best of my recollection,
14 two or three weeks before we did it. And it was
15 --

16 Q And when you say "we did it," you mean
17 file the action?

18 A File. File and then announcement it.

19 Q So do you generally become aware of,
20 say, high-profile Enforcement cases as they go
21 along or generally you don't find out until, you
22 know, it's just right before something is going to
23 break?

24 A The -- the typical is two days. Because
25 there's nothing that the Public Affairs Office

1 can't accomplish to facilitate the announcement of
2 it. That takes more planning than that. So
3 beforehand, it really is not relevant to -- we
4 have other things to do.

5 Q Right.

6 A In fact, in that one you mentioned, the
7 first time I heard of it was described to me as
8 ABACUS, which meant nothing to me.

9 Q So you didn't realize it was Goldman
10 Sachs?

11 A Right. So I said what's that? Oh, it's
12 Goldman Sachs collateral.

13 Oh. And then, again, because it's not
14 going to be something that I'm going to be editing
15 or typing, you move right on.

16 Q But it was about two weeks, the filing
17 was on the 16th of April.

18 A Mm-hmm.

19 Q So you think it was about the beginning
20 of April sometime that you first heard about
21 the -- ABACUS case?

22 A Right.

23 Q And what was the context in which you
24 heard of it?

25 A Myron and I on a near daily basis

1 consulted at the beginning of the day and the end
2 of the day on things that he knows that are coming
3 up, maybe from the divisions or whatever office,
4 and I -- you know, we talk about the things the
5 reporters are coming to us about. And then, you
6 know, when he's telling me about things that are
7 coming in, that are coming up, to the extent that
8 any preparations are necessary, Enforcement
9 actions are, you know -- a lot of them are pretty
10 much the same. Some are different. So he
11 apparently had just recently learned of it because
12 that's why it would have come up in that -- I
13 presume that's why it would have come up in that
14 conversation.

15 **Q And so he mentioned to you that this**
16 **Goldman case was potentially coming soon?**

17 A Mm-hmm.

18 **Q Yes?**

19 A He mentioned first that ABACUS was
20 coming soon.

21 **Q Right.**

22 A And I said what's that?

23 **Q Right.**

24 A And then he said Goldman.

25 **Q And did he indicate at that time how**

1 long it would take before the SEC would file the
2 action?

3 A I don't recall having that conversation.
4 I -- I probably would have said something like is
5 it happening today or tomorrow? And if the answer
6 was in the negative, then I'd -- okay, then that's
7 good know. What else you got?

8 Q But from your perspective, you need to
9 know when the Commission's going to be ready to
10 file because that's when you role comes in?

11 A Mm-hmm.

12 Q Yes?

13 A Yes.

14 Q Sorry, didn't mean to --

15 A I know, I know.

16 Q All right. So I assume that then later
17 on, as it got closer, you had more conversations
18 about the Goldman ABACUS case. What do you
19 remember?

20 A I don't remember exactly which day, but
21 I presume it might have been Monday or Tuesday
22 that we're definitely -- have it on the Commission
23 calendar and we have to plan for the announcement
24 because there's going to be a lot of interest.

25 Q All right. Well, let me get into some

1 e-mails.

2 A Mm-hmm.

3 MR. KOTZ: All right, I'm going to start
4 with Exhibit 1. This is back in November of 2009.

5 And this is an e-mail communication between [REDACTED]
6 [REDACTED] and Stephen Cohen, 11-6-2009, 10:04 a.m.

7 We're going to mark it as Exhibit 1.

8 (SEC Exhibit No. 1 was marked for
9 identification.)

10 THE WITNESS: Mm-hmm.

11 BY MR. KOTZ:

12 Q If you see on the second page there's an
13 e-mail from Greg Gordon to [REDACTED] wondering if
14 Chairwoman Schapiro would talk with me about a
15 series and about whether "the SEC's going to
16 investigate whether Goldman Sachs knowingly dumped
17 risky or toxic securities backed by risky
18 mortgages on pension funds."

19 A Right.

20 Q And then [REDACTED] sends it to you.
21 You ask him to send it to Myron. Myron asks him
22 to send it to Steve. Do you remember this issue?

23 A Not in particular, but I -- this is a
24 frequent way that communication occurs in the
25 office.

1 Q And so why would you send it to Myron?

2 A Because I don't know anything, maybe
3 he's seen the Commission calendar. And then I
4 presume then he doesn't know anything, so then he
5 asks -- Myron would be for the does Chairman
6 Schapiro want to do an interview on anything? A
7 lot of times when we get -- when we get requests
8 for the chairman, we know right off the bat she
9 will not be able to discuss what they're asking,
10 but there may be something that's of a broader
11 nature that shows that we're, you know, on the
12 beat.

13 Q Right. But Myron would make the
14 decision -- I assume with the chairman and the
15 Chairman's Office -- about whether she would do an
16 interview?

17 A Right. And it doesn't appear that it
18 got to that, but a lot of times that would come
19 back to do you think she should do an interview,
20 if it really seems like something.

21 Q And why would he say that to Stephen
22 Cohen?

23 A He's the enforcement -- one of the two
24 Enforcement counselors in the Chairman's Office.

25 Q I see. And so because the reporter is

1 talking about a matter that is related to
2 Enforcement, Stephen Cohen would give his opinion
3 on it?

4 A Right.

5 Q And so when you first heard about the
6 Goldman investigation, did you remember, oh, you
7 know, there was various news efforts to do stories
8 on that?

9 A Those efforts had been underway for the
10 past two years. Yes, I mean, it's a -- it's a
11 regular feature of our work that people are asking
12 us for comment. Actually Chairman Cox in his
13 testimony before the House Financial Services
14 Committee, in -- in '07, said we had about a dozen
15 CDO investigations underway. And ever since then,
16 we've been getting increase.

17 MR. KOTZ: All right, let me show you
18 another document we're going to mark as Exhibit 2.
19 This is an e-mail between you and [REDACTED]
20 [REDACTED] sends an e-mail to you with a copy --
21 and to Cheryl Scarborough, dated 12/22/09, 1:26
22 p.m.

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

25 BY MR. KOTZ:

1 Q Now, if you recall there was a New York
2 Times piece that came out around Christmas, and
3 there was a lot of consternation on the part of
4 the investigators in the Goldman Sachs ABACUS case
5 about this article.

6 A Mm-hmm.

7 Q Did you this article? It was a big
8 article by Louise Story in the New York Times
9 about Goldman and CDOs.

10 A Only in retrospect did I become aware.
11 Like, I probably read it at the time, but when
12 April came along or sometime after April, after we
13 filed the case, I went back and reread the story
14 because we maintain an archive of the clips.

15 Q So in this e-mail you're saying, "After
16 talking to [REDACTED] it sounds like this may be
17 yours." This is to Cheryl Scarborough and [REDACTED]
18 [REDACTED] who were the two folks who worked on the
19 ABACUS case. You say, "Has either Goldman or [REDACTED]
20 disclosed anything on yours, particularly as it
21 pertains to inquiry below?"

22 So you must have known at that time that
23 Scarborough and [REDACTED] had a Goldman case?

24 A I know that Cheryl at the time -- this
25 is before they reorganized -- was the head of the

1 working group that all the CDO investigations.

2 Q So why did you send it to [REDACTED]

3 A Someone probably told me over the phone,
4 I don't know, but, yeah.

5 Q So do you recall that [REDACTED] and Cheryl
6 and others were concerned that information about
7 their ongoing investigation was going to be in
8 this story by the New York Times?

9 A That's a regular occurrence in our
10 office. When we get a call from a reporter asking
11 about a case, and you see where I ask has the firm
12 disclosed anything? The point of that question
13 is, is they may have done it in an 8-K filing or
14 some other kind of filing and I need to know the
15 facts.

16 Q Right, and [REDACTED] says pretty sure
17 no.

18 A Right.

19 Q So is there other efforts done to try to
20 find out how this information got out?

21 A No.

22 Q How come? If the Enforcement Division
23 is concerned that there's information out there
24 about their ongoing investigation, why wouldn't
25 you try to figure out how that information got out

1 **there?**

2 A Because it's not something that I can
3 control. There are so many parties who could
4 provide information. Defense Council,
5 respondents, it just would not be a productive use
6 of our time. What we want to do is know what's
7 out there. Because if something is damaging --
8 here's just a hypothetical example. If there is a
9 cooperation witness in an investigation and
10 there's going to be information presented about
11 him, like that's a different dynamic than just
12 somebody who's writing a story about what's going
13 on.

14 MR. KOTZ: All right, let me show you
15 another e-mail, which is the actual story. We'll
16 mark this as Exhibit 3. It's an e-mail between
17 (b)(6),(b)(7)(C) sending it to a variety of people,
18 dated 12/24/09, 8:37 a.m.

19 (SEC Exhibit No. 3 was marked for
20 identification.)

21 BY MR. KOTZ:

22 **Q This is a New York Times page 1 article.**

23 A Yeah, this is the one I referenced a
24 moment ago. I didn't remember it
25 contemporaneously because we get about stories a

1 day.

2 Q All right. But this was a pretty big
3 story, page of the New York Times. You don't get
4 25 stories that are on page 1 of a major
5 newspaper, do you?

6 A No, but in -- you're correct, but in the
7 many years I've been here, we get a lot of page 1
8 stories about investigations that we have
9 underway.

10 Q So you don't remember at the time, there
11 was a page 1 story of the New York Times about
12 Goldman ABACUS. You didn't realize at the time
13 that the SEC had an investigation of that?

14 A I wouldn't need to know one way or the
15 other.

16 Q Right, I didn't ask you if you needed
17 to. I asked you if you were aware.

18 A I can't recall whether I knew or not.
19 It would seem plausible and reasonable to me
20 because we are investigating large institutions
21 and they're one of the largest institutions. So
22 that wouldn't be anything that I would say, like,
23 that doesn't sound right.

24 But -- and reporters typically will call
25 as soon as a story like that runs and say can you

1 confirm or deny it. And our standard response is
2 we can neither confirm or deny the existence or
3 nonexistence of investigations. And so like what
4 I have to do after a story like that runs doesn't
5 make any difference which -- which the allegation
6 is or what the respondent is, our response is
7 going to be the same.

8 Q All right. So it isn't particularly
9 relevant for you that the New York Times is doing
10 a story about the exact matter that the SEC is
11 doing an investigation of?

12 A Not my perspective, from Public Affairs.

13 Q But are there occasions, as in this
14 case, where the Enforcement lawyers are concerned
15 about that and they express that to you?

16 A On a frequent basis they -- they tell me
17 that, you know, I'm very upset because this is
18 getting out there into the public.

19 Q But there's nothing you can do about it?

20 A Correct.

21 Q So it's kind of -- talking about it.

22 A No, because I might have -- you know,
23 maybe I do have knowledge. Maybe -- maybe someone
24 says to me -- or a reporter says I've got it from
25 an attorney at a firm, so then I might be able --

1 so there are -- it's worthwhile them asking and
2 it's worthwhile them probing, but most of the time
3 it doesn't pay a result.

4 Q Right. And do you ever go back to
5 reporters and say how did you get this
6 information?

7 A No.

8 Q Because you know they're not going to
9 tell you?

10 A That's correct.

11 BY [REDACTED]:

12 Q What prompted you to look at this
13 article again after the case was filed?

14 A Oh, somebody along the lines was saying
15 that this was one that they had read about --
16 written about before, so I just -- I do that a
17 lot, just sort of see what was previously out
18 there.

19 BY MR. KOTZ:

20 Q Do you know who [REDACTED] is?

21 A No. No, I don't, but the name sounds
22 familiar.

23 Q All right, let me show you the next
24 document. We're going to mark it as Exhibit 4.
25 It's an e-mail exchange between you and Ken Lench,

1 3/4/10, 3:52 p.m.

2 (SEC Exhibit No. 4 was marked for
3 identification.)

4 BY MR. KOTZ:

5 Q So you're communicating with Gretchen
6 Morgenson, it looks like, about trying to arrange
7 an interview with the chairman?

8 A Right. That's from the day Mary came on
9 board, I arranged for her to meet with all the
10 reporters who covered us on a regular basis in a
11 get-to-know-you session. Floyd Norris actually
12 came down from the New York Times, and he's the
13 one who writes about us and Gretchen is another
14 one, and we couldn't work it out. And so the
15 standing instructions have been anytime Mary goes
16 to New York and -- and Gretchen has said I'd --
17 I'd love to do it, but this week doesn't work for
18 me, so it just -- we frequently, you know -- not
19 frequently, but probably twice a year have an
20 occasion to try to see if we can finally have that
21 get-to-know-you session.

22 Q And one of the things Gretchen asks you
23 in her e-mail is, or she says, "It's my
24 understanding the SEC did not bring
25 cases/settlement with Goldman or Morgan Stanley on

1 ARS as it did with other firms. Am I right about
2 that? If so, why were there no cases brought
3 against these firms?"

4 Do you know what she's getting at? What
5 is her --

6 A Oh, when -- like any reporter, they will
7 ask questions when they're speaking to an
8 official. And so then, as you see my next thing,
9 I ask, "Are there any answers that we can give?"
10 Are there things that we've put in the public
11 record someplace or that people have addressed in
12 speeches? So I'm counting on them to tell me
13 whether there's any answers that are public.

14 Q All right. And then the answer you get
15 is, "Yes, except 2:00 to 4:00 in the afternoon."

16 And then you come back and say, "I meant
17 answers to our questions about ARS."

18 And then the answer is, "Oops." And
19 then it looks like he gave you a phone number so
20 you can talk to Ken Lench.

21 A Right, right.

22 Q And so what did Ken Lench say?

23 A I don't recall. I don't even recall
24 whether I ever made the call back to him. But as
25 a general matter, if I talked to him I would work

1 through -- was is there anything that we could be
2 helpful on? Nonpublic stuff we cannot.

3 Q So in this case, I mean, Gretchen is
4 kind of insinuating the SEC doesn't bring cases
5 against entities like Goldman Sachs and yet, at
6 the same time, the SEC had an investigation
7 against Goldman Sachs. So on some level it would
8 have been useful to tell Gretchen Morgenson
9 actually you're wrong; in fact, we have an ongoing
10 case. Right?

11 A Yeah, but we can't do that.

12 Q And so do you know whether the chairman
13 met with Gretchen Morgenson at this time?

14 A She did not.

15 Q She did not?

16 A She hasn't yet.

17 Q Oh, because the schedules haven't worked
18 out?

19 A That's -- I don't recall when the last
20 time we tried it, but I think it was like a year
21 ago.

22 Q Was there like a phone call or anything?

23 A I usually -- because I have the longest
24 relationship with Gretchen for the current cast of
25 characters because the Chairman's Office --

1 Q No, I'm saying did the chairman have a
2 phone call with Gretchen?

3 A Not that I'm aware of. And we weren't
4 -- like the original purpose was to actually meet
5 people and we didn't do them by telephone.

6 MR. KOTZ: Okay. I'll show you the next
7 document we're going to mark as Exhibit 5, an
8 e-mail exchange between you and Paulette Duberly,
9 4/13/10, 4:55 p.m.

10 THE WITNESS: Mm-hmm.

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

13 BY MR. KOTZ:

14 Q So you e-mail Paulette Duberly, "Do our
15 recent ABS proposals get at any of the issues
16 raised in the article?" What are you talking
17 about?

18 A Well, without knowing what the article
19 is.

20 Q Right, but what's an ABS proposal?

21 A Asset-backed securities. And the
22 Commission had -- I believe had already by that
23 time proposed the ABS proposal. And Paulette
24 Duberly is the person who is the most responsible
25 in Corp Fin for that issue. So you're asking her

1 if there's anything going on that is relevant to
2 this article that was written?

3 A Right.

4 Q All right. And she says, "I would argue
5 that our current disclosure rules would have
6 required disclosure of the conflicts." Do you
7 know what she's referring to, "conflicts?"

8 A Well, without knowing the article, but
9 the conflicts would be -- I would assume -- a
10 conflict of interest that a firm might have in
11 selling a product. And we would argue that under
12 existing law, that's violative behavior.

13 Q And then she says, "There is an
14 Enforcement case that is being heard at the closed
15 Commission meeting tomorrow that is very similar
16 to the story. Maybe if that gets announced
17 quickly you could send the reporter to that. It
18 is the ABACUS 2007-AC1 case."

19 A Right.

20 Q And so do you know how the ABACUS case
21 was similar to the story?

22 A No. But ABACUS was an asset-backed
23 security case.

24 Q Okay. So she's basically saying that
25 you could give information about the ABACUS case

1 to the reporter?

2 A After it's filed.

3 Q Right.

4 A If it gets announced quickly, the ABACUS
5 case, then I could say, well, here's one that's
6 responsive.

7 Q And so if a reporter writes an article,
8 you would send them information that's responsive?
9 I don't understand.

10 A Yeah.

11 Q After the article's written?

12 A This may be a reporter asking about
13 another article he's seen.

14 Q I see. Because normally you would give
15 information before they write the article, not
16 after they write the article, right? After they
17 write the article, it's kind of --

18 A Well, if someone writes an article that
19 has omissions --

20 Q Right.

21 A -- we would contact the reporter again.

22 Q Right, but this is not a case of
23 omissions.

24 A Yeah.

25 Q This is --

1 A ProPublica is not the Financial Times,
2 so this reads as if he saw an article on
3 ProPublica.

4 Q I see. And so he would want to maybe
5 write a related article?

6 A Mm-hmm.

7 Q Yes?

8 A And then he'd want to expand it a little
9 bit to not just copy someone else's work.

10 Q I see. And so you --

11 A And so he'd reach out.

12 Q You could give him an example and that
13 he could include that in the article?

14 A Yeah, if we have one that's public that
15 we can provide.

16 Q Right. Now, do you remember if you did
17 send this reporter the information about the
18 ABACUS case?

19 A Well, I would not, so --

20 Q No, no. But she says -- I mean,
21 eventually it did get announced, right?

22 A Right.

23 Q She said, "Maybe if that gets announced
24 quickly, you could send the reporter to that."
25 Well, this is --

1 A Oh, I --

2 Q -- 4/13, it got announced on the 16th.

3 A Right. I think I probably would have.

4 There's a lot of times where we get a lot of
5 requests that we can't answer immediately. And so
6 one of the mechanisms I use is I -- you know, is
7 people, if they really need something, they --
8 it's their -- they will come back to me and I
9 would just guess that he probably saw that case
10 when it got announced.

11 Q So you wouldn't need to send it to him?

12 A Right.

13 Q It got a lot of coverage. You would
14 think he would have saw it.

15 A Right.

16 Q Okay.

17 A Financial Times wrote about it.

18 Q Right, okay. All right. So going back,
19 you remember on Monday hearing that I guess this
20 was the week that the Goldman case was going to
21 come out.

22 A Right.

23 Q And do you understand that the Goldman
24 case would be a significant case for the SEC, you
25 know, from a press perspective?

1 A I know it's going to be a significant
2 case. I didn't know it was going to be as covered
3 as it turned out to be.

4 Q Now, from a press perspective explain to
5 me why you knew it was going to be a significant
6 case.

7 A There is considerable interest in
8 stories and Enforcement actions related to the
9 subprime -- the financial crisis, so right off the
10 bat. In any case, if -- if a defendant or
11 respondent is well-known, that increases media
12 interest. So in here you have two of them: A
13 well-known name and a charge related to the
14 financial crisis.

15 Q So you find out on Monday that it's
16 going to happen this week and you know that
17 there's things you have to do because of that?

18 A Right. And just -- you've said "Monday"
19 a couple times. I don't recall whether it was
20 Monday or Tuesday, but it was plus or minus then.

21 Q Okay. So Monday or Tuesday, the
22 beginning of the week. And so what do you recall
23 then? Because obviously it's important for you to
24 know the day that it actually gets announced
25 because you have to be ready with the press

1 **releases, et cetera.**

2 A Right. It may have been in a series of
3 meetings or communications because there were
4 several things going on that week. We did an
5 Enforcement action with the state attorney general
6 in New York regarding the New York pension plan
7 and our pay-to-play cases.

8 Q **Was that Quadrangle?**

9 A Quadrangle.

10 Q **Is that what you called it?**

11 A I just called it pay-to-play, New York
12 pension. But we --

13 Q **But it's the same as the Quadrangle**
14 **case?**

15 A Is Quadrangle the one with Mr. Ratner?

16 Q **Yes.**

17 A Okay. Yes. Yes. So we had that one.

18 Q **All right, so you had a few things going**
19 **on.**

20 A And then I could -- that -- that same
21 morning we did the Cuomo case. We also --
22 Chairman Schapiro participated in a news
23 conference on Capitol Hill calling for
24 self-funding. And then on a separate track, your
25 report is being prepared for release.

1 Q The Stanford Report?

2 A Right.

3 Q All right. So in terms of the Goldman
4 case, which is our focus here, what do you recall
5 about what happened that week in terms of your
6 learning when the Goldman case would go out?

7 A Well, obviously it's not going to go out
8 before the Commission acts.

9 Q Right.

10 A And --

11 Q So did you have an understanding of when
12 the Commission was scheduled to act that week?

13 A Yeah, I believe the Commission acted on
14 Wednesday. I couldn't -- without knowing for
15 sure, but that's my understanding that it did.

16 Q Right.

17 A And so it would be announcing sometime
18 after that. And we did it, obviously. And then
19 meanwhile, Enforcement had another high-profile
20 one that was dealing with the New York attorney
21 general, so they were going to have to manage
22 their workload.

23 Q Now, from a press perspective, will you
24 recommend that a case be announced as soon as
25 possible after the Commission approved it?

1 A All things being equal, yes. But there
2 are some times where it's just not possible.

3 Q All right. But just looking at the case
4 in and of itself, why would you give that advice?

5 A There are a number of things. As I said
6 at the beginning, our job is to accurately portray
7 -- to communicate the Commission's work. It is a
8 fairly common occurrence that news of our actions
9 precedes our announcements.

10 Q Right.

11 A Those reports can be accurate. They can
12 also be inaccurate. And then people start to make
13 judgments based on inaccurate statements. And
14 then, by the time we make a formal announcement,
15 you start -- that -- you're starting off where
16 some of your efforts are directed at correcting
17 the misperceptions or the inaccuracies in the
18 marketplace before you even begin to communicate
19 what it is and the benefit of what you did.

20 Q And is it also fair to say that the
21 story is a different story or even a smaller story
22 because some of the information relating to the
23 case has already been public?

24 A Yes, in some instances; no in others.
25 And there's so many parameters to -- to these

1 judgments. If one news outlet has been the one on
2 a story, sometimes other news outlets actually
3 don't want to cover that story as much because it
4 requires them to write in "as first reported in"
5 rival publication. So sometimes the official
6 announcement, which always will have greater
7 detail than the limited amount that was available
8 in the marketplace -- so it can cut both ways.

9 Q But from your perspective as a press
10 person, you think it's best if as soon as possible
11 after the SEC approves the action that it's
12 announced by the SEC?

13 A Assuming we're prepared to announce it,
14 yes, right.

15 Q And that you would do whatever you need
16 to do to prepare so that you are ready to go as
17 soon as the Commission approves it?

18 A That's correct.

19 Q And is it also because you're concerned
20 that information will leak out prior to the
21 announcement? I mean, is that what you were
22 saying before?

23 A Right, it's a fairly common occurrence
24 that information is -- it happened yesterday. I
25 was getting -- I got myself two calls from

1 reporters asking about a case that we hadn't yet
2 announced for a couple hours. And then -- so I
3 didn't -- because I was working on other matters,
4 somebody actually apparently published a story to
5 that effect and then a couple more come in because
6 now they've seen this. That's a very common
7 occurrence.

8 And so, you know, it just makes perfect
9 sense that the authority who -- the body that has
10 the best grasp of the facts and the information
11 ought to be the first one that informs the public
12 because it's going to be accurate and complete.

13 Q All right. So all things being equal,
14 just from your perspective, you would have
15 preferred that the Goldman announcements, say,
16 occur on Thursday because that was, I guess, the
17 day after the Commission approved it?

18 A Or even the day that the Commission
19 approved it if we were -- if we were prepared to
20 do that.

21 Q So even Wednesday possibly?

22 A Possibly.

23 Q All right. And so what happened? Were
24 you prepared to do that on Wednesday or Thursday
25 in this case?

1 A As I recall the Enforcement Division
2 wasn't prepared. They --

3 Q So from your perspective, from the press
4 perspective, you had everything ready to go?

5 A I don't have anything ready to go until
6 they have their materials.

7 Q I see.

8 A Like, I --

9 Q So you have to wait for them.

10 A They have to file something in court
11 before we can announce. They haven't completed --
12 and then meanwhile, they're -- they're not going
13 to work on the press release while not working on
14 the -- like, they have to -- they have things they
15 have to do.

16 Q I see. So, all right. So --

17 A So we will be ready in any -- we will --
18 we will position ourselves so we're ready for any
19 eventuality, but it still depends on --

20 Q Right. So you can be ready very
21 quickly?

22 A Yes.

23 Q Enforcement says all right, we're going
24 to be ready to file the complaint Wednesday
25 afternoon. You'll be ready to go to announce it

1 **that day.**

2 A Correct. As a general rule unless it's
3 something complicated that we're just -- we don't
4 feel confident that we have the answers that we'll
5 need to respond to reporters. But that doesn't
6 happen that often because usually we refer the
7 people to the people who brought the case.

8 Q But in this case, if Enforcement had
9 said to you even on Wednesday, immediately after
10 the Commission had approved it, we're ready to
11 file the complaint, you would have been okay to
12 announce it on Wednesday?

13 A Yeah, I would have given them -- I would
14 have said what time is the meeting? What time is
15 this item? What time does the meeting end?
16 Because I can't issue a press release -- I have to
17 -- I pre-circulate them to the commissioners. I
18 can't pre-circulate the press release as a general
19 matter while they're sitting, you know, at a
20 Commission meeting.

21 Q Right.

22 A So I will go through, like, all of the
23 -- then if I'm going to have an event, like a news
24 conference or a conference call, I have to give
25 reporters an hour's notice. So I have to sort of

1 -- I have to figure out the timeline. Can we make
2 this even happen today?

3 Q All right. So how long do you need?
4 After the Commission has filed its complaint or
5 after the Commission has let you know that they're
6 ready to file the complaint, how long do you need
7 in order to do what you need to do to be ready for
8 the announcement?

9 A It varies, but if they've already
10 drafted a press release, I'm a -- I'm a little bit
11 more prepared. If no press release has been
12 drafted, I've got to account for that.

13 Q So what's the range? From like an hour
14 to three hours or what?

15 A I think three hours is very fast. But
16 if you've planned it out, you can accomplish that.
17 And that's because you have to give an hour notice
18 to the commissioners to review it and you have to
19 give an hour's notice for the media to be able to
20 assemble.

21 Q Right. And so --

22 A If it's a printed press release it's
23 much easier to do it in a three-hour time period.

24 Q All right. So in this case, in the case
25 of the Goldman ABACUS case, Enforcement wasn't

1 **ready, you said?**

2 A Right.

3 Q **And so why? What was going on?**

4 A They had two cases that were demanding
5 their attention --

6 Q **And when you say "they," who do you**
7 **mean, "they?"**

8 A Oh, I'm sorry, Enforcement Division.

9 Q **But, I mean, who in the Enforcement**
10 **Division? Because not the same people are working**
11 **on the two cases, right?**

12 A I think both of these cases, because
13 they were high-profile, would involve the
14 participation of the director and the deputy
15 director.

16 Q **So that's who you're talking about, the**
17 **director and the deputy director? Not the actual**
18 **Enforcement folks who were the hands-on guy in the**
19 **ABACUS case.**

20 A Right, because they are going to review
21 to make -- because, you know, both of these
22 instances, that complaint has to be an exact
23 expression of what we allege or what we assert, so
24 I presume they put higher level -- well, I'm
25 fairly confident they put higher level reviews

1 because I've seen it on important matters.

2 Q So did somebody inform you from the
3 Enforcement Division we're not ready? Or how did
4 that come about?

5 A I -- I think it was more presented to me
6 as I think we're going to do it Thursday or -- or
7 no, Thursday was the day of the announcement. I
8 think we're going to do it Friday because Monday
9 would be too long.

10 Q All right. But what about Wednesday or
11 Thursday?

12 A They hadn't happened yet.

13 Q Well, Wednesday the Commission had
14 approved it. So how -- and there's a lot of
15 e-mail exchange that we found where initially the
16 intention was to file it on Thursday. And then it
17 seems like something shifted and then the decision
18 was made to file it on Friday.

19 A Right.

20 Q Do you know what that was?

21 A I know that I was not a participant in
22 whatever the final decision was made of the
23 ordering of events.

24 Q Did you learn of why the decision was
25 made not to file it on Thursday?

1 A Yes, because I've -- I've just explained
2 it's my impression that it's because they had to
3 choose -- "they" being the Enforcement Division --
4 how they were going to schedule their work.

5 Q And so they chose to file the Quadrangle
6 case on Thursday and the Goldman case on Friday?

7 A Mm-hmm.

8 Q Yes?

9 A Yes.

10 MR. KOTZ: All right, let me show you an
11 e-mail from Myron Marlin to you, dated 4/16 -- I'm
12 sorry, 4/14/10, 10:12 a.m. We're going to mark
13 it as Exhibit 6.

14 (SEC Exhibit No. 6 was marked for
15 identification.)

16 BY MR. KOTZ:

17 Q And so you say, "Since doing two
18 pressers same day might not be favorably received
19 on Hill. Maybe we just throw Rob on CNBC, et
20 cetera, on the Enf action."

21 And then Myron responds, "Geez is now
22 Friday. Quad is Thursday."

23 A Right. So that appears like I'm being
24 informed of the decision that has been made of the
25 timing and the sequencing of the events.

1 Q Right. And "Geez" I assume is Goldman?

2 A Yes.

3 Q And "Quad" is the other case we were
4 talking about with Cuomo.

5 A Quadrangle.

6 BY (b)(6),(b)(7)(C):

7 Q And who told you that it was due to
8 essentially the workload of Robert Khuzami and
9 Lorin Reisner that was the reason for the
10 postponement of the Goldman filing?

11 A Well, I -- I said I am assuming because
12 I know that they are involved in these.

13 BY MR. KOTZ:

14 Q But you don't know for sure it was
15 because of the workload?

16 A No, I'm under the impression that it is,
17 but once -- once the decision has been made on
18 sequencing, then my job is then to, you know, help
19 out with the execution.

20 BY (b)(6),(b)(7)(C):

21 Q I just want to be clear if someone
22 actually told you that or is that just an
23 assumption on your part?

24 A No, I -- I think I've had conversations
25 with people that said, like, how come we can't do

1 them both on the same day? Why can't we -- or
2 someone might -- or the flipside, like, you know,
3 why couldn't we do this one? Because they're not
4 ready. Like, I -- those are such common
5 conversations and that's why a few moments ago I
6 kept saying about, like, when we're prepared to
7 announce. There's plenty of times we're not yet
8 prepared to announce.

9 BY MR. KOTZ:

10 Q But it looks like in your e-mail there
11 was at least an initial assumption that the two of
12 them might come out on the same day because you
13 were giving advice about doing two pressers same
14 day.

15 A I believe the second one refers to Mary
16 Schapiro's press conference on the Hill with
17 Charles Schumer.

18 Q That's one and the other one would be
19 what?

20 A There's a press conference with Attorney
21 General Cuomo.

22 Q So when you're talking about these two
23 pressers, neither of those pressers related to
24 Goldman?

25 A There's nothing here that indicates that