

1 it is. I don't know for sure.

2 Q So you were talking about Mary
3 Schapiro's presser, which I assume is a press
4 conference?

5 A Right.

6 Q And the Quadrangle announcement?

7 A Right. And I think I was probably -- if
8 I had to guess, which I know you don't want guess
9 -- but I would guess that -- that I'm expressing
10 concerns about scheduling the New York pension
11 case at the same time that we're doing the
12 self-funding. And so it sounds like my last
13 information is it's all still fomenting and now
14 I'm being told this is the order that we're going
15 in.

16 Q Right. But if you're talking about the
17 Mary Schapiro's press conference and the
18 Quadrangle case, then Myron's response doesn't
19 make any sense because he's talking about Goldman.
20 You're talking about two pressers on the same day
21 and he's -- so what if Geez is on Friday. What
22 about your question about the two pressers? What
23 are you going to do about it? It looks like --

24 A Right. Asked -- my view is when it's
25 asked and answered, it's been asked and answered.

1 Like, if -- unless I can come -- like, in other
2 words, I'm being told here this is the sequencing
3 of these two.

4 Q Do you think that Myron understood that
5 you were referring to Chairman Schapiro's press
6 conference an Quadrangle? Because he's talking
7 about Goldman.

8 A Yeah, I -- we communicate fairly well
9 and I don't think there's a lot of
10 miscommunication. There might have been a phone
11 call or a hallway conversation where we've been
12 discussing all of these things and I'm offering my
13 last two cents and informing which way it goes.
14 And at -- you know, my view always is, is once a
15 decision has been made, unless it's going to be
16 damaging to the agency in some way, like not what
17 preference is, but, like, once it's asked and
18 answered, then let's make this work.

19 Q And so why would two pressers not be
20 favorably received on the Hill?

21 A Because you have -- the Hill event was
22 organized by supporters on the Hill of the
23 self-funding provision. The Quadrangle matter is
24 an important matter involving -- that's going to
25 be -- it's not going to add to the self- funding,

1 it's going to subtract to the self-funding. So we
2 were participating in a Hill event at the
3 invitation of the Hill and we're also putting out
4 an event that's distracting.

5 Q But that argument was not accepted and
6 they decided to do that anyway?

7 A Well, it may not have been possible to
8 accept that argument. Like if -- if -- if -- if
9 they're definitely going to have a news conference
10 in New York and if they're definitely -- the
11 senators, this is the time to have it, you have --
12 you know.

13 Q Do you remember any conversations with
14 Myron about that situation?

15 A That's the type of thing that we talk
16 about all the time, just sort of --

17 Q But, I mean, in this particular
18 situation, do you remember a conversation you had
19 with Myron where you kind of expressed that point
20 other than this e-mail?

21 A No.

22 Q All right. Now, do you remember any
23 concern about the fact that Attorney General
24 Cuomo's office would be unhappy if the Goldman
25 case was announced the same day as the Quadrangle

1 case?

2 A I've never heard that or not that I can
3 recall.

4 Q Do you think that that sounds like that
5 could have been a factor, that they were going
6 forward? They had this Quadrangle case, if they
7 announced the Goldman case on Thursday, the same
8 day as the Quadrangle case, it would take a lot of
9 the attention and Attorney General Cuomo's office
10 would be upset that they kind of put another case
11 out on the same day that they put their case with
12 him and it overshadowed it?

13 A I have not heard that. As a piece of
14 analysis from the Enforcement Division, forget
15 about the external parties, if I'm the Enforcement
16 Division and I have two cases, I have to give -- I
17 have to -- I have to get my work for both of them,
18 and then I also if I want to fairly and
19 effectively communicate our action because it
20 has -- value and potential violators know --
21 things, it wouldn't make a lot of sense for the
22 Enforcement Division to announce two big cases
23 simultaneously.

24 Q And do you know why the decision was
25 made to announce the Quad case on Thursday and the

1 Goldman case on Friday rather than vice versa?

2 A No.

3 Q So that decision was made by someone
4 other than you and you were never told why?

5 A It -- I would have provided my input
6 beforehand of the various considerations. I don't
7 know whether that was -- happened here, but that's
8 the usual pattern is, is that I give them the
9 range of scenarios of what this will --

10 Q And do you remember any discussions that
11 you had about these scenarios, when to file
12 Quadrangle, when to file Goldman?

13 A I believe there was a Wednesday
14 afternoon or midmorning meeting in Rob Khuzami's
15 office where we discussed the various pieces that
16 were coming through. And I don't recall walking
17 out of that room with an answer.

18 Q But what was the discussion in that
19 room?

20 A It would be the type of things of --

21 Q But try to remember specifically. What
22 was the discussion? What were the things that
23 were being discussed as coming out that week?

24 A I'm just trying to think if I can
25 remember anything specific. It would -- yeah, I

1 -- I like -- I just can't recall anything
2 specific, but that would be the reason for me to
3 be at a meeting.

4 Q All right. But the different matters
5 that were discussed, I assume -- tell me if this
6 is right -- were the Goldman case, Quadrangle
7 case, the self-funding press conference, the
8 issuance of the Stanford Report.

9 A Those would be the types of things we --

10 Q But were those things discussed in that
11 meeting?

12 A I don't recall whether all four, three,
13 two, or one were, but that would be --

14 Q All right. Well, it'd have to be more
15 than one or there wouldn't be need for much
16 discussion, right, if there was only one thing
17 going on?

18 A Oh, no, we have meetings on even single
19 items.

20 Q All right. So what do you remember
21 about that meeting? Nothing?

22 A Only I think that me, Myron, Steve
23 Cohen, Rob, and Lorin were there. But that's not
24 even a perfect recollection because that's such a
25 common --

1 Q Do you remember if people disagreed or
2 was there general consensus on the approach to
3 use?

4 A No, at those meetings it's usually just
5 airing it out and figuring out what our options
6 are, not so much, oh, I think that's a terrible
7 idea; that's a good idea. It just sort of, oh,
8 that's a good point, I hadn't thought of that.
9 There more of like collective bringing
10 intelligence to the table and figuring out --

11 Q And do you remember anything you
12 particularly said?

13 A No.

14 Q But you didn't walk out of that meeting
15 thinking that you guys had come to some kind of
16 conclusion?

17 A No, I don't believe that we did because
18 that's not always the case. There's usually some,
19 all right, why don't you find out from the
20 attorneys where they -- like, there's a lot of
21 times at these meetings sort of --

22 Q All right. But Rob Khuzami and Lorin
23 Reisner, you would think they would know where
24 they are at that point.

25 A I don't have any basis for figuring out

1 what they would know or not know on a micro or
2 macro level at any moment.

3 MR. KOTZ: All right, let me show you
4 the next document and we'll mark it as Exhibit 7,
5 e-mail exchange between Stephen Cohen, [REDACTED]
6 [REDACTED], Myron Marlin, and you, 4/15/10.

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

9 BY MR. KOTZ:

10 Q And so Myron sends an e-mail Thursday,
11 April 15, 2010, at 2:38 in the morning, saying,
12 [REDACTED] here's the timeline as I know it." And
13 this lays out a very specific timeline for both
14 Thursday and Friday.

15 A Okay.

16 Q And so do you participate in this,
17 coming up with this timeline at all?

18 A And actually when you mentioned this, at
19 the Wednesday -- I don't have a -- can -- can I go
20 back to your previous question about that meeting?

21 Q Sure, sure.

22 A The types of things that we would
23 discuss is if we did it on a Friday, how could we?
24 Because Rob was going to be New Orleans. And then
25 I would say, well, we could do a conference call

1 as opposed to a news conference. If we can't do a
2 Washington news conference, we would lose the
3 television coverage as a result of that because
4 television generally can't use telephone
5 conversations.

6 Q Right.

7 A As it turned out, we had to make a
8 separate accommodation on the fly that Friday to
9 accommodate television cameras later on that day
10 where Rob was at his conference. So those are the
11 types of parameters that go in the meetings. It's
12 sort of like what are all the moving pieces and
13 how does the moving of one affect the timing of
14 the other? If Rob is down in New Orleans, that
15 changes the mix. Can you still proceed?

16 Q But this timeline that Myron laid out
17 and sent to you at 2:38 in the morning --

18 A Right.

19 Q -- did you have any input into
20 specifically how this would go? Because this is a
21 very, very detailed timeline.

22 A Right. We may have been coming to the
23 consensus throughout the course of the day, and
24 then I don't know what time this was sent Thursday
25 morning. There may have been other -- I get asked

1 all the time, what if we do this this way instead?

2 Q Right. But what I'm asking for is
3 specifically what happened in this case. So Myron
4 Marlin sends a timeline at 2:38 Thursday morning.

5 A Mm-hmm.

6 Q The question is did he discuss with you
7 this timeline or you get this timeline -- I assume
8 you didn't get it at 2:38 in the morning, but you
9 got it sometime in the morning on Thursday.

10 A Right.

11 Q And you see, okay, that's the timeline.
12 Or did you have input into how this timeline would
13 be constructed?

14 A I didn't -- I would have had input
15 continuously. But, like, when it's sort of
16 crystallized here, people --

17 Q All right, but --

18 A Like, I didn't sit down -- I know it.

19 Q No, but you kept saying "I would have"

20 --

21 A Right, I understand.

22 Q -- but what I need to know is what
23 happened in this case.

24 A Right.

25 Q Or you don't remember. You don't

1 remember, you don't remember.

2 A Right.

3 Q What do you remember about input that
4 you had into this timeline that Myron Marlin
5 created that he sent to you at 2:38 in the
6 morning?

7 A This is probably his assessment of where
8 we all seem to be now in terms of what will work
9 best.

10 Q So you had agreed with the approach of
11 self- funding and Quad on Thursday; Goldman and
12 Stanford I guess basically on Friday. Would that
13 have been something that you concurred with in
14 this case?

15 A Well, I know you don't like me to say
16 "would have been," but that would be something --
17 like, I -- it does not seem to be that he's
18 addressing any objections I might have had along
19 the way.

20 Q Right. But I'm asking what you remember
21 in this case.

22 A Right.

23 Q Do you remember concurring with this
24 approach?

25 A I -- if I disagreed with the approach, I

1 would have let somebody know.

2 Q All right. But again, I'm just asking
3 you if you remember. If you don't remember, you
4 don't remember.

5 A I -- I -- I know, I -- I don't -- I
6 don't recall, like, how this document got created
7 and whether it was a compilation of conversations
8 throughout the day. I did not sit down and -- and
9 go --

10 Q But do you recall any conversations, a
11 specific recollection of any conversation you had
12 with Myron or anyone else during this time period
13 where you discussed what should the timing be?

14 A Absolutely. We --

15 Q Okay. So in those conversations what do
16 you specifically recall was said?

17 A That's what I don't recall. The timing,
18 all of the options were presented to us by --
19 obviously they've been presented to us. We've got
20 to figure out a way to assemble it.

21 Q So you don't have any specific
22 recollections of anything that was said during
23 that time period about when we should announce
24 these several matters?

25 A Correct. Not in a deliberative manner.

1 It's more of a -- these things are --

2 Q Do you have any recollections generally
3 that one person thought we should do it this way
4 or you thought we should do it that way?

5 A I don't have any memories generally
6 except for the way it often works is I will
7 provide my best advice in terms of what we can
8 accomplish for --

9 Q All right. But again, it's irrelevant
10 how it might work.

11 A Right.

12 Q I'm only interested in how it worked in
13 this particular case.

14 A Right.

15 Q All right. So Stephen Cohen responds,
16 "Why file GS tomorrow at 9:30? Sometimes things
17 are not always that smooth when filing. Why not
18 give it a little more lead time, 9?"

19 A Right.

20 Q Now, one of the things we found in other
21 e-mails was a specific direction to the individual
22 who was filing it that it had to be filed at 9:30
23 a.m. You know, no other time, and it was made
24 very clear, 9:30 a.m. Do you know why that was?

25 A No, but I -- I do not know. They make

1 the decision.

2 Q Well, who would have made that decision?

3 A Well, the Enforcement Division. They're
4 the ones responsible for a filing.

5 Q Right. But from what we see, the
6 Enforcement Division just wanted to file it that
7 morning. They were ready to file it, they were
8 going to file it, and the clerk's office opened
9 earlier. Someone else made the decision that they
10 were to file at 9:30 for another reason.

11 A Okay. As opposed to -- I thought you
12 were --

13 Q As opposed to 8:30 or 9:00. But it was
14 very specifically directly, 9:30 a.m.

15 A Yeah. The -- the parts of the timeline
16 that I would have been involved in is we've
17 already made a determination -- and I haven't even
18 read this carefully, but I assume we're already
19 talked about a Rob conference call. We have to
20 make -- we have to give the media an hour's notice
21 before we can accomplish Rob's conference call.
22 We can't notify the media of the action we've
23 taken unless it's filed in court. So all of those
24 things, one event flows from the next. So why it
25 seems Cohen is asking whether we could file it

1 earlier than 9:30, I don't know where the decision
2 for 9:30 came, but it was clear it had to be by
3 9:30 ideally for the rest of it to be carried out.

4 Q Right. And so you want to make sure
5 that there's time between the filing and the press
6 conference?

7 A Mm-hmm.

8 Q Yes?

9 A Yes.

10 Q But not too much time between the filing
11 and the press conference, right? Because once
12 it's filed couldn't it be reported on?

13 A Yes, it could.

14 Q So you don't want to have too long of a
15 lag between the filing and the press conference
16 because the story will get out before the press
17 conference, right?

18 A I'm less concerned in that type of an
19 instance because of -- of it -- of too much lag
20 between the filing and the SEC announcement
21 because the filing is the agency's word.

22 Q So it wouldn't have made any difference
23 to you if it was filed at 9:30 and they had the
24 press conference at 5:00 or if it was filed at
25 9:30 and you had the press conference at 10:30?

1 A If -- if it was sitting in there for a
2 long time and people are -- are finding out about
3 it, they're going to be asking us a lot of
4 questions. I need to be in a position so we can
5 provide those answers. And so, in this case,
6 that's why we set up the conference call with Rob.
7 Some people look at press conferences as elevating
8 the importance or status of event. I actually
9 look at it from a management process. If I'm
10 going to be getting phone calls all day long
11 wouldn't I rather have the consistent, same
12 message that everybody gets at the same time? And
13 the answer is yes.

14 Q So it's just kind of for convenience.
15 **There's no other benefit to having the press**
16 **conference be the first, that the reporters report**
17 **on the story based on the press conference? Is**
18 **that not a --**

19 A There's a benefit because even though we
20 are the -- even though -- there's a benefit to
21 being able to tell people what we said because
22 they're not all experienced in reading what charge
23 A, charge B, charge C, or whatever is. So we're
24 going to have to make ourselves available to make
25 sure that people accurately understand what we've

1 done. But it's not the same concern as
2 unauthorized information that may be inaccurate.
3 Like, the information we presented is accurate.
4 Now it's just making sure that they have -- so
5 obviously it's always --

6 Q I mean, there's a reason that you draft
7 a press release in a certain way.

8 A Right.

9 Q So you want to highlight whatever you
10 think is most important in the filing.

11 A Right.

12 Q So wouldn't you rather that the press
13 report from the press release on what is -- you
14 feel is most important from the filing than the
15 press just get to complaint and figure it out
16 themselves?

17 A Absolutely.

18 Q All right, let me show you the next
19 document. I'm going to mark it as Exhibit 8, an
20 e-mail from Myron Marlin to you, Thursday, April
21 15, 2010, 12:38 p.m.

22 (SEC Exhibit No. 8 was marked for
23 identification.)

24 BY MR. KOTZ:

25 Q By the way, is it unusual for Myron

1 Marlin to be sending e-mails at 2:38 in the
2 morning?

3 A Yes. Oh, did you ask me if it was usual
4 or unusual?

5 Q Unusual.

6 A It's usual.

7 Q It's usual. And was he at his office?
8 Because it's a very long e-mail. I don't think he
9 could have typed this out on a BlackBerry, could
10 he?

11 A I never actually asked what he's doing
12 up at that time or what machinery he's using, but
13 very frequently 1:00, 2:00, 3:00 in the morning
14 e-mails.

15 Q And does he expect you to get them at
16 that time?

17 A No. I've created no such expectations.

18 Q All right. So this is 12:38 p.m. He's
19 sending an e-mail on Thursday, [REDACTED]
20 this below is the draft timeline. List the items
21 we need to finalize."

22 Now, what's [REDACTED] role?

23 A He used to be in the Office of Public
24 Affairs and shortly after Rob Khuzami came on
25 board, Rob was asking me my thoughts on whether

1 the Enforcement Division should have a
2 [REDACTED] on staff and do I know
3 anybody who's available. [REDACTED] had come on to my
4 office after the previous chairman had left. He
5 had been working on a number of public
6 affairs-related projects, the annual report, and
7 whatnot. You know, I hadn't -- he hadn't gotten
8 to the point where I -- that he was growing -- I
9 don't want to say growing. I wanted to give him
10 fulfilling work to do and this was an opportunity.
11 And so Rob interviewed him and hired him. And so
12 he [REDACTED] Public Affairs
13 [REDACTED] with the Enforcement Division.

14 Q All right. So Myron's sending out a
15 timeline. He says timeline, timeline, timeline,
16 timeline, timeline. Again, do you recall whether
17 you had any involvement in this specific timeline
18 or is this just something that Myron came up with?

19 A Do you know whether it changes at all
20 from the previous one?

21 [REDACTED]: No, they moved up the
22 complaint filing to 9:00 from 9:30.

23 THE WITNESS: Okay. That would not have
24 been a decision I would have -- that wouldn't have
25 been the decision I would have had any opinion on

1 strongly.

2 BY MR. KOTZ:

3 Q So to the best of your recollection,
4 Myron provided the new timeline and you just went
5 with it?

6 A Because there's nothing in there that --
7 all right, unless it's created a new problem or
8 created a problem, then this is fine.

9 Q Right. But, I mean, you could certainly
10 have opinions on the timeline, right?

11 A Certainly.

12 Q It wouldn't have to be a problem for you
13 to have an opinion on it?

14 A No, it could be -- if -- I'm fine with
15 this, but I don't necessarily feel that I have to
16 say I'm fine with this to every e-mail either.

17 Q So do you recall whether you had any
18 particular comment about any of these timelines
19 that Myron sent out in this particular matter?

20 A I don't have a specific memory.

21 Q And so --

22 A And I assume there was probably a lot of
23 these because that's the way sometimes it goes.

24 Q They keep revising the timelines?

25 A They keep revising or -- or put

1 additional detail. It's just a way for someone's
2 not operating off of old information.

3 Q And so there were certain things in this
4 e-mail that -- although the e-mail's actually just
5 sent to you. The other folks are copied, but
6 there are only a few things in there that you're
7 responsible for.

8 A Yeah, (b)(6),(b)(7)(C) there, that's
9 obviously. Yeah, I mean, yeah, these are -- yes,
10 this is how, like, to make sure that nobody's
11 forgetting some aspect that has to be covered.
12 And that's a common thing for us to do.

13 Q And why would there be a need for such
14 detail and specific timing of all these different
15 matters? I mean, why would you have to spell out
16 by the minute every single matter that was
17 announced and when?

18 A There were more moving parts on this one
19 than is typical with an Enforcement announcement.
20 You have the Enforcement director who's going to
21 participate in a news conference in New Orleans
22 while we're all up here. We have a conference
23 call. If -- we can't just at 5 of 10:00 call
24 reporters and say there's going to be one at 10:00
25 or whatever the timeline is. We have to notify

1 reporters at a certain time. We have to make
2 arrangements with the vendor to set up the
3 conference call line. There's just a lot of
4 moving parts.

5 And whereas normally, if things slide
6 some, fine, you don't release until you're ready.
7 Here Rob had a hard out because his performance,
8 his conference participation, there's a panel that
9 he's on at a time certain. So if we are not
10 complete by then, we don't have an opportunity
11 just to keep sliding it further. So this is where
12 you start off from and then, you know, these
13 things happen in sequence. And if something's
14 interrupting the sequence, then where can we make
15 an adjustment? You just don't want to be going on
16 the fly.

17 Q All right. But why couldn't you say
18 just do them all in the morning? Why would you
19 space everything out like this?

20 A Because -- because of the -- the moving
21 parts and different people involved.

22 Q But couldn't you circulate documents to
23 the Hill at the same time and, you know,
24 distribute things at the same time?

25 A When we do -- when we have multiple

1 places that we're disseminating the information,
2 Legislative Affairs prefers that the information
3 be provided to Congress before being provided to
4 the press.

5 **Q Right.**

6 A And that's a courtesy because it's, you
7 know, not right for the press to call the
8 congressmen and have the congressmen not -- so we
9 -- we want to make sure that we're not forgetting
10 something, like -- like -- I'm sorry. We -- we
11 just want to make sure that we don't have a moment
12 later on that says wait a minute, we forgot all
13 about this.

14 **Q Right. So why couldn't you just -- you**
15 **know, you have Goldman and you have Stanford, why**
16 **couldn't you have just done both of them in the**
17 **morning first thing? Why would you need to space**
18 **it out?**

19 A Oh, I believe the decision had been long
20 made that your report -- the Stanford Report was
21 going to be at 1:30.

22 **Q Who made that decision?**

23 A It would have been something that would
24 have been informed to me. I know for like a week
25 or two leading up that it was getting close, and

1 that happens very frequently with reports. The GC
2 and, you know, various offices are doing things
3 with them. And I remember in particular that that
4 report I think I was told the week before that it
5 was going to be on Wednesday.

6 Q Right.

7 A And then it actually didn't go till
8 Friday.

9 Q But you also were informed that that
10 report was going to go out at 1:30 p.m.?

11 A Mm-hmm.

12 Q Yes?

13 A Yes. And we have to plan for that.

14 MR. KOTZ: All right. I'm going to skip
15 this and let's go to the next one.

16 All right, so the next document we're
17 going to mark as Exhibit 9. It's an e-mail from
18 Lorin Reisner to [REDACTED] Myron Marlin, Ken
19 Lench, with a copy to you, [REDACTED] Stephen
20 Cohen, and [REDACTED] And that's dated
21 4/15/10 at 7:42 p.m.

22 (SEC Exhibit No. 9 was marked for
23 identification.)

24 BY MR. KOTZ:

25 Q It looks like there was a conference

1 call at 6:00 that night to discuss Goldman and
2 Stanford and Tulane.

3 A Mm-hmm.

4 Q Yes?

5 A Yes, there was. There was actually, I
6 think, a couple conference calls that evening.

7 Q Do you remember that conference call?

8 A I remember [REDACTED]
9 participating, I believe, in the first one.

10 Q And who was on that call?

11 A It definitely would have been me, [REDACTED]

12 Lorin, Rob --

13 Q Who do you remember being on the call?

14 A I have a vague recollection of them all
15 being on there, but there was a couple of calls
16 that night, so.

17 Q Do you remember anything about what was
18 discussed in this call?

19 A This was more of making sure we're
20 ready. Have we forgotten anything, sequencing of
21 events.

22 Q Now, Lorin Reisner in this e-mail says,
23 "This does not work for a variety of reasons. I
24 can discuss."

25 A Mm-hmm.

1 Q Do you remember anything about what
2 didn't work and why?

3 A No. But it would be -- that is -- we
4 have to prepare talking points for Rob for the
5 questions he's going to be asked. They would
6 generally start off with the Enforcement Division
7 would write questions and answers. We don't --

8 Q So you don't remember any specifics
9 about what his issue was or what his concern was?

10 A No. And one of the reasons why I don't
11 is a lot of times they're very legal issues and
12 they're not related to me.

13 Q All right, let me show you the next
14 document and we'll mark that as Exhibit 10. It's
15 an e-mail from you to Reisner, [REDACTED] Lench,
16 Marlin, [REDACTED] and Cohen, copied to Khuzami and
17 [REDACTED] dated 4/16/10 at 9:56 a.m.

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

20 BY MR. KOTZ:

21 Q Do you remember that there was this
22 hiccup in the filing?

23 A Yeah.

24 Q That it was very, very meticulously
25 planned for the filing to occur at 9:30 and then

1 **it didn't happen?**

2 A Yes.

3 Q **So what do you remember about that? How**
4 **did you find that out?**

5 A Well, all of a sudden, we're at the
6 point of we're ready to file. Like, just for
7 background, I spent most of that morning working
8 with Rob and the other Enforcement people on Rob's
9 quote for the press release. (b)(6),(b)(7)(C) handled
10 setting up the conference call. Like -- like,
11 very smooth, so most of the morning. But I'm
12 aware of what time it is and I know we don't have
13 it yet, and then (b)(6),(b)(7)(C) informs me there was some
14 sort of a hiccup and we're not going to be able to
15 file until later.

16 Q **And so what was the impact of that?**

17 A It basically meant we had to -- I -- I
18 think we pushed back Rob's news conference a
19 little bit. But because we have a timeline we can
20 see -- like, one of the things we can do, we
21 normally would -- would -- it's our -- our
22 constant goal to give an hour's notice to the
23 commissioners before -- in their -- before it goes
24 out. There are some instances when for factors
25 beyond our control we can collapse that a little

1 bit. We try not to, but sometimes --

2 Q So did you collapse that in this case?

3 A I don't recall. I think actually -- I

4 -- I don't recall. But there are ways once you

5 have a schedule, then you can figure out where you

6 can make adaptations.

7 Q Right. So do you remember what time the

8 press conference was going to be initially,

9 assuming that the case was filed at 9:30?

10 A I don't recall the exact time that was

11 scheduled to have it.

12 Q All right. But in this timeline it

13 looks like it's at 10:30.

14 A Right.

15 Q So I assume you weren't able to do that

16 call at 10:30.

17 A We were not. No.

18 Q Because it was barely filed at 10:30.

19 A Right.

20 Q So do you remember what time you did do

21 the call?

22 A I think it was right around 11:00.

23 Q And so do you remember if you gave the

24 -- yeah, I guess you have to give the press an

25 hour to get ready?

1 A Right. Right.

2 Q And you can't shorten that or they won't
3 show up?

4 A Right. You're defeating the purpose.

5 Q But you can shorten the commissioners'
6 notice if necessary?

7 A If necessary. And also, you can
8 collapse the time you leave available for the
9 actual event. So we might have -- we might have
10 set aside 45 minutes for Rob to discuss and, all
11 of a sudden, how we're only going to be able to do
12 25 minutes.

13 Q Do you remember if there was less time
14 for Rob to discuss in this case?

15 A I think he had all the time that he
16 needed to discuss. I think he had less time to
17 prepare for this panel presentation.

18 Q Yeah, what was this Tulane panel
19 presentation?

20 A It was a conference of some sort of
21 Enforcement, but I don't recall the specifics of
22 it.

23 Q So that was on there because Rob would
24 be at this conference and wouldn't be able to
25 participate in the call at that time, right?

1 **That's why --**

2 A Say that again.

3 Q The reason that the Tulane thing is on
4 the timeline is that this is when Rob would not be
5 available.

6 A Right, yeah. Right.

7 Q So you don't remember whether in this
8 case you gave the Commission a shorter amount of
9 time to review the material?

10 A No, but it would be easily to figure out
11 we have sent all those things from either (b)(6),(b)(7)(C)
12 or (b)(6),(b)(7)(C) -- seldom my-- mailbox or the Public
13 Affairs mailbox.

14 Q Do you often get a lot of feedback from
15 the commissioners and revisions to what you send
16 them?

17 A I would say on the whole no.

18 Q Did you get any in this case?

19 A I don't recall any.

20 Q Because, I mean, obviously they know
21 about it.

22 A Right.

23 Q They just approved it.

24 A Right.

25 Q So it's just a matter of them being

1 comfortable with the language?

2 A Right. The -- the -- the comments
3 probably come up more from commissioners and
4 counsel in the context of rule-making.

5 Q But what happens if the Commissioner
6 comes back and says I'd like you to write it this
7 way and you had just kind of all agreed between
8 you to write it the other way? What do you do
9 then?

10 A We try to find a way to accommodate
11 everybody's concerns. And we've sometimes had to
12 hold up matters because we haven't reached a
13 consensus yet.

14 (SEC Exhibit No. 11 was marked for
15 identification.)

16 BY MR. KOTZ:

17 Q All right, let me show you the next
18 document marked as Exhibit 11, an e-mail from
19 Louise Story to you, 4/16/10, 10:37 a.m.

20 A Right.

21 Q And it looks like you sent her a copy of
22 the complaint -- or a copy of the press release
23 with the complaint.

24 A Right.

25 Q How come you did that?

1 A That is -- the -- the day before she was
2 -- I had to manually forward the actions that we
3 sent. We have an e-mail list of about 500 news
4 organizations and individuals on it. Most of the
5 people who need us -- but for sometimes there are
6 hiccups or sometimes maybe the list falls apart a
7 little bit. I don't know what happens. But the
8 previous day she had -- I had to -- I had to
9 manually forward to her the Quadrangle matters.
10 So the cut earlier today -- earlier this day,
11 she's actually asked me could I make sure I'm on
12 the list? Because the day before she wasn't
13 receiving them and I had forwarded them. And so I
14 -- I got an e-mail from her and I did -- as I
15 typically do for every reporter, I forwarded it to
16 (b)(6),(b)(7)(C) who maintains the list. But the thing is I
17 know, from past experience, that getting on that
18 list on (b)(6),(b)(7)(C) machine doesn't necessarily
19 translate to being on the server and going out.
20 So then rather than -- you know, like -- like, I
21 know there's going to be interest in this story,
22 you know, as -- I just send it -- forward it.

23 MR. KOTZ: All right, let me show you
24 another document. We're going to mark it as
25 Exhibit 12. This is an e-mail exchanged a little

1 earlier between Myron Marlin, Stephen Cohen, [REDACTED]
2 [REDACTED] and Didem Nisanci, 4/14/10, 6:08 p.m.

3 (SEC Exhibit No. 12 was marked for
4 identification.)

5 BY MR. KOTZ:

6 Q And you see at the bottom of the page
7 Scott Friestad is sending an e-mail to Khuzami,
8 Reisner, McKown, Lench, and [REDACTED] "I wanted to
9 let you know there's at least one reporter who
10 knows this recommendation is on the calendar
11 today. It's not clear to me how they found out,
12 but I wanted you to be aware of that fact in case
13 there's going to be any delay in filing the case
14 and afterwards authorizing it."

15 BY [REDACTED]:

16 Q Did you know about this? Oh, I guess you're
17 copied on it.

18 A No, I'm not. Am I?

19 Q Yes, from [REDACTED] --

20 A Oh.

21 Q -- to you and Myron Marlin on Wednesday.
22 Did you know that a reporter knew that the
23 recommendation was on the calendar?

24 A It would not have -- I don't recall the
25 specific memo. This happens on a constant and

1 regular basis that people have found out things.

2 Q How is that possible?

3 A You know, I'll preface that with I get
4 asked that question all the time, and I never
5 speculate because you can be wrong and then
6 unfairly impugn somebody. But it is -- is clear
7 there are lots of different people who have access
8 to information and motivations to --

9 Q Within the Commission?

10 A No, I'm talking about in the broad
11 spectrum. Defense counsel might know in one
12 instance.

13 Q All right. But how would somebody not
14 within the Commission know that a recommendation's
15 on the calendar?

16 A Sometimes -- well, I mean, I'm sure
17 you're going to ask (b)(6),(b)(7) I don't know what
(C)
18 specific information he's referring to. Reporters
19 sometimes do try to convey that they have
20 information that they -- that they really don't
21 have confirmed.

22 Q Right. But the information about when a
23 recommendation is going to be on the calendar has
24 to come at some point from inside the Commission.
25 Those are the only people who would know.

1 A No, I don't know -- I don't know that we
2 -- I do not know the practice one way or the other
3 of whether Enforcement ever tells opposing
4 counsel. I do not know the practice.

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

6 Q At least as to this instance do you have
7 an understanding as whether Goldman even had a
8 heads-up that the complaint was coming?

9 A Ask me that again.

10 Q Did you have an understanding as to
11 whether Goldman Sachs had any notice ahead of time
12 that --

13 A I did not know one way or the other at
14 that time.

15 Q Do you now know?

16 A Yes.

17 Q In light of that, does that shed any
18 light as to, you know, who the possible candidates
19 are as to -- does that narrow somewhat as to who
20 the possible candidates are who could --

21 BY MR. KOTZ:

22 Q It couldn't have been Goldman, right?

23 A Well, I became aware after we filed that
24 they were informed the morning of.

25 Q Right.

1 A That Goldman was informed the morning of
2 or Goldman's counsel was informed the morning of.

3 Q Right. And so they wouldn't have known
4 about it on Wednesday, April 14th, right?

5 A That's a reasonable presumption.

6 Q So it had to be from somebody in the
7 Commission?

8 A Well, again, I don't know for sure
9 whether this reporter actually knows or is -- I --
10 I -- I don't know whether the reporters actually
11 knows or the reporter is trying to find out. And
12 sometimes they'll say, like, I've already been
13 told such and such, I just need to know if it's
14 true. And if I get those calls, I don't know
15 whether or not they've actually really been told
16 that or not. And I'm not --

17 Q That's a pretty good guess, right? How
18 would they come up with that out of the blue?

19 A Yeah, I --

20 Q Just call up every week and say do you
21 have this case on the calendar?

22 A Right. No, I -- I -- I fully agree with
23 you. I'm just saying is I don't know, so I -- and
24 -- and I don't like to --

25 Q All right. All right, let me ask you

1 about this one. This is Exhibit 13, an e-mail
2 exchange between Stephen Cohen and Myron Marlin,
3 4/18/10, 3:38 p.m.

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

6 THE WITNESS: Which day is this again?

7 MR. KOTZ: 4/18, Sunday.

8 BY MR. KOTZ:

9 Q So there's an e-mail from Ken Lench to
10 you and a variety of other folks, subject Kara
11 Scannell. I guess it's a Wall Street Journal
12 reporter, is that right?

13 A Right. Yes, she is.

14 Q She said she heard it was "a 3-2 vote
15 and that one of the Republicans was unhappy
16 because Goldman was not given the chance to
17 settle. I had no comment."

18 And you said, "E-mailed me,
19 too. Declined comment because it's not public."

20 A Right.

21 Q And then Stephen Cohen says, "I do not
22 believe that is true."

23 Do you know what he's
24 referring to? I do not believe what is true, that
25 it was a 3-2 vote?

1 A No. This one, I found out later, about
2 Goldman not having the chance to settle.

3 Q Right. So he did have the chance to
4 settle?

5 A The Enforcement Division has told me
6 that they made it very clear to opposing counsel
7 that since they had not been able to -- like, they
8 had given the Wells response. We had not found
9 the Wells response satisfactory; that the next
10 step would be -- and we -- it would be that we
11 would recommend filing to the Commission.

12 Q But that was months before they actually
13 recommended filing.

14 A I now know that.

15 Q Is that right?

16 A But -- well, I -- I've been told that
17 this conversation where it was made clear that the
18 next step is a filing with the Commission took
19 place a couple of months -- February or March,
20 anyway -- before the April 16th.

21 Q And then someone in the Enforcement
22 Division called Goldman's lawyer that morning?

23 A I've been told that after the fact.

24 Q Do you know if that person reached
25 Goldman's lawyer that morning on the 16th.

1 A I have no reason to believe that they
2 didn't.

3 Q But, okay, but -- but this still could
4 be true that one of the Republicans was unhappy
5 because Goldman was not given the chance to
6 settle. I mean, that's -- to be true.

7 A Oh, yeah.

8 Q That's just saying somebody thought
9 something.

10 A Right. And, you know, on these stories
11 when they come out, when -- when the -- when the
12 reporters are piecing together and then, you know,
13 I just try to find out, like, what reporters have
14 and is there something -- And the point I'm trying
15 to make here is, like, I -- I -- I learned later
16 that there actually was -- or can I talk about
17 nonpublic stuff here?

18 Q Sure.

19 A Okay. I learned later that actually
20 this -- the unhappiness was not -- or I was told
21 that the unhappiness was not expressed at the
22 meeting; that was prior to the meeting. And
23 therefore, like it's kind of incorrect in that
24 aspect.

25 Q Do you know which commissioner expressed

1 unhappiness prior to the meeting?

2 A No.

3 Q It was one of the --

4 A It would be one of the two.

5 Q But you don't know which of the two?

6 A It's not particularly relevant. Now, if
7 someone were to come up to me and say I heard
8 Commissioner X was unhappy. As I try to do with
9 all of them, I -- I would call the Commissioner
10 and say just so you know, this reporter is
11 planning to write that you expressed unhappiness.

12 Q So you don't know which one of the
13 Republicans this is referring to?

14 A No.

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

16 Q So who informed you that one of the
17 Republicans expressed unhappiness prior to the
18 meeting about Goldman not being --

19 A No, I -- I got this e-mail that says
20 that --

21 Q No, but you said you heard that it was
22 prior to the meeting, not at the meeting.

23 A Oh, no, my learning of it was after the
24 meeting. That -- but that I -- so --

25 Q How did you learn that one of the

1 commissioners expressed unhappiness prior to the
2 Commission meeting? Who told you that?

3 A I don't recall in specific. It probably
4 was Steve.

5 Q Cohen?

6 A Right. And that -- what I'm saying is
7 sometime after the 16th -- and this obviously on
8 the weekend -- I'm hearing that the Commissioner
9 is -- expressing unhappiness at the meeting
10 because there's no plan to settle. And then I'm
11 finding out -- well, actually I found out like a
12 lot of this stuff, of the deliberations, took
13 place before the Commission met. Now, I don't
14 know anything about what was or what wasn't, who
15 did what and when.

16 BY [REDACTED]:

17 Q But you think you learned that from
18 Steve Cohen?

19 A After -- after the fact.

20 BY MR. KOTZ:

21 Q Now, this information that it was a 3-2
22 vote and one of the Republicans was unhappy
23 because Goldman was not given the chance to
24 settle, that had to come from inside the
25 Commission, didn't it?

1 A Yeah, I mean --

2 Q So was there concern expressed about the
3 fact that this information was in the Wall Street
4 Journal?

5 A We're always concerned when nonpublic
6 information is --

7 Q It seems to be, in this case certainly,
8 it happened pretty often. I mean, is it -- I
9 don't get the feeling that there's a great concern
10 among, you know, the folks about this. And, you
11 know, we find it a little bit odd ourselves
12 because, you know, when we seek information about
13 Commission meetings, there's a lot of discussion
14 about, well, it's very, very sensitive. We don't
15 even know if we want to give it to you. And
16 obviously we have a right to know because of our
17 role. And yet it seems to appear in the paper,
18 you know, pretty often and I don't see anybody
19 particularly concerned about that. Is that not
20 right?

21 A No, I -- I don't know if I would share
22 your -- it's -- concern is one thing and then,
23 two, being able to do something about it.

24 Q Has there been any --

25 A They -- they -- they do things, I

1 understand. They have Executive Sessions, which
2 limits the amount of people who can attend an
3 event.

4 Q Right.

5 A So that obviously --

6 Q What about trying to find out where the
7 leak came from? Do you know of any efforts within
8 the agency to try to do that?

9 A On this particular matter?

10 Q Yes.

11 A I do not know about one this particular
12 matter. I seem to recall some office did a review
13 trying to find out where a series of leaks related
14 to -- I think it was previous work that the
15 Commission had done on the Madoff things.

16 Q Which office was that?

17 A Which office was what?

18 Q You said some office was doing --

19 A Oh, it was either General Counsel's
20 Office or you. But, you know, I don't know.

21 Q Do you know what they determined?

22 A I believe they -- they were
23 inconclusive. I know in the past, because I've
24 been here for 13 years -- there have been a couple
25 of other instances where the IG has asked us to

1 certify as to whether we provided information to
2 somebody. So I -- I -- I know that there have
3 been instances and I'm not aware of any instance
4 where some has been successful. So what we tried
5 to do is, like, let -- let -- like, Public
6 Affairs, we don't tell anybody anything. And we
7 even -- even in a lot of instances (b)(6),(b)(7)(C) or (b)(6),(b)(7)(C)
8 won't even know until much closer to the event
9 just because, one, it's -- I'm -- in the time that
10 it would take me to explain all the nuances to
11 somebody of everything I've already learned in the
12 preparation for this, I could have done it,
13 whatever the next task is, myself. But to a
14 certain extent they will focus on the other work.

15 But, you know, we take every precaution
16 that we can take, but there's -- and I believe the
17 Commission takes other precautions; you'd have to
18 ask them.

19 MR. KOTZ: All right, let me show you
20 the next document. We'll mark it as Exhibit 14,
21 e-mail between Jesse Westbrook and you on
22 4/19/2010, 3:04 p.m.

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

25 BY MR. KOTZ:

1 Q And so I guess Jesse Westbrook is just
2 telling you that this is what he's going to
3 report?

4 A Right.

5 Q Why would he do that? You say he
6 doesn't seek comment.

7 A Right. So I'm assuming that he's given
8 me the opportunity to comment.

9 Q I see. So you can say that he gave you
10 the opportunity to comment? Is that the point
11 there?

12 A Right. And -- and -- and -- and so like
13 now, to save you from e-mailing me back, like,
14 we're not commenting.

15 Q So do you know whether this means that
16 there were multiple leaks or one got it from the
17 other?

18 A There are a lot of times where I suspect
19 that there may be one leak and then other people
20 are just saying they'd heard -- like, I heard
21 that, too, like, because it was in the paper. And
22 then some reporter might say then, well, I gave
23 them an opportunity to deny it. I mean, it's not
24 --

25 Q So it doesn't necessarily mean that

1 there was more than one leak?

2 A Right. Like --

3 Q Do you think that the one reporter would
4 tell another or --

5 A No, they -- they wouldn't do that.

6 Q -- would they be competing?

7 A But -- but here's what just gets
8 implausible to me. I -- I -- if I were trying to
9 leak information, which I don't --

10 Q Right.

11 A -- I wouldn't do it serially. Like, you
12 got it into the marketplace, you've accomplished
13 the objective.

14 Q Right.

15 A Now, the other reporters that are -- are
16 beating down the bushes are trying to match that.

17 Q Right.

18 A And I don't know -- you know, I know
19 from calls that I sometimes get they -- they go
20 would you say anything that would steer me away
21 from that?

22 Q Right.

23 A And then I would -- say I'm not going to
24 say one thing one way or the other.

25 Q Right.

1 A But I don't know how other people handle
2 that situation.

3 Q Do you know if there's some kind of
4 relationship between Kara Scannell and Jesse
5 Westbrook that they might share information?

6 A There would be no -- none that I would
7 know of.

8 Q So it could be that whoever leaked it,
9 leaked it to Kara Scannell and leaked it to Jesse
10 Westbrook to make sure that --

11 A Or -- or it could have been another
12 person. And again, I would never --

13 Q More than one leak, do you think?

14 A Absolutely. Because one could -- like,
15 we don't do this, but if -- if someone was saying
16 I'm getting a call, it's already out there, it's
17 public. Now, I -- I --

18 Q That's no longer nonpublic on some
19 level.

20 A Right. So I -- now -- I -- that -- it
21 still wouldn't be our policy in Public Affairs
22 because the Commission hasn't authorized the
23 release, but it is now public.

24 Q So this wouldn't necessarily indicate to
25 you that there were two leaks?

1 A No, actually, like I probably didn't
2 even analyze it because it's --

3 Q But I'm asking you now.

4 A As I -- as I look at it, it could be he
5 found the same person who had previously done it
6 or one of his colleagues in his organization had
7 found the same person who had previously done it
8 or they found a second person. But in this
9 instance I don't think it was an affirmative
10 someone sought to place it, but responded.

11 MR. KOTZ: All right. I'm going to skip
12 a few documents. I'm going to go to Exhibit 15,
13 which is an e-mail between Stephen Cohen, Rob
14 Khuzami, you, Lorin Reisner, with a copy to Myron
15 Marlin, dated 4/17/10, at 10:48 p.m.

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

18 MR. KOTZ: I think it was a Saturday at
19 10:48 p.m.

20 THE WITNESS: We never sleep.

21 BY MR. KOTZ:

22 Q Guess not. Is it always like this or
23 was this a unique weekend?

24 A No, this was probably the most intense
25 week I had had in my year of the commissions --

1 years with the Commission.

2 Q All right. So you're not working every
3 weekend at 10:50 at night.

4 A But I do -- for -- you know, frequently
5 I do, but --

6 Q But not in this -- not as intense as
7 this.

8 A This was nonstop for a full week of
9 responding to this story.

10 Q And that was because there were so many
11 things that were going on at the same time or just
12 because of the particular press coverage?

13 A It was -- I mean, press coverage-driven,
14 but also there are all kinds of people with points
15 of views and different angles which they could
16 pursue. You know, there was just a lot of story
17 angles of things that I don't have the information
18 on and I've got to spend a lot of time finding out
19 what the story and is there anything that we can
20 say in response and should we. There was a lot
21 just coming in.

22 Q All right. So in this e-mail exchange,
23 I guess Kara Scannell is asking questions about
24 timeline, although this I guess is a different
25 timeline. This is about when Goldman Sachs

1 received information.

2 A Right.

3 Q And you say, "And say that our actions
4 were totally in accordance with the Enforcement
5 manual." What was the specific provision of the
6 Enforcement manual that you were referring to?

7 A There was -- the reason I remember this
8 is because I got permission to say this line.

9 Q Okay.

10 A I was not in a position to say
11 affirmatively, yes, we notified Goldman in
12 advance. What I was able to tell reporters was
13 the Enforcement manual -- I don't know if it
14 requires or calls for, whatever -- the Enforcement
15 manual -- we'll figure out the verb because the
16 manual has it and I don't have it -- the
17 Enforcement manual requires you to come -- to
18 contact the other party or encourages you to
19 contact the other party, to notify them that you
20 intend to recommend an action. And then we follow
21 the Enforcement manual. So you can infer from
22 that that there was nothing different.

23 Q Did you look at the Enforcement manual?

24 A Mm-hmm.

25 Q Yes?

1 A Yeah. I do it with some frequency.

2 Q And do you remember what provision in
3 the Enforcement manual that was?

4 A No, but it's -- I -- I would have found
5 it by a search.

6 Q And is that different than the SEC
7 Administrative Regulations?

8 A Yes.

9 Q Are you familiar with the provision in
10 SEC Administrative Regulations about notifying
11 companies?

12 A Yes, I am. But actually that's really
13 -- that section, although it's the -- the press
14 policy, it is really actually the Enforcement --
15 that's an Enforcement section of it.

16 Q So is this the Enforcement manual you
17 were talking about?

18 A No.

19 Q It was a separate document?

20 A Right. And it has all kinds of things.
21 When you open -- when you do --

22 Q But this document, SEC Administrative
23 Regulations, there's a section on Notification of
24 Defendants. Are you familiar with this section?

25 A I'm familiar with the section. I don't

1 have it memorized chapter and verse.

2 MR. KOTZ: Right. Well, let me show it
3 to you. So we'll mark this as Exhibit 16.

4 (SEC Exhibit No. 16 was marked for
5 identification.)

6 BY MR. KOTZ:

7 Q And there's a provision on Notification
8 of Defendants on page 6 of 12. I mean, is this
9 something that came from your office?

10 A Before my tenure.

11 Q But still, I mean, this is --

12 A This is the --

13 Q -- promulgated by your office.

14 A Right. This is -- yeah.

15 Q On the front page it says, "Public
16 Affairs, Press Relations, Policies and
17 Procedures."

18 A Right, mm-hmm.

19 Q And so there's "every effort should be
20 made to avoid the possibility that defendants in
21 an SEC -- action first learn of the action when
22 they read about it in the newspapers or when they
23 are called by a reporter for comment about the
24 SEC's complaint. The Division Regional District
25 office primarily responsible for the filing of a

1 particular complaint shall take all necessary
2 steps to see that the defendants -- their counsel
3 are given timely advice concerning the action."

4 A Right.

5 Q Do you think this was followed in the
6 Goldman ABACUS case?

7 A I am aware that -- or I have been told
8 that they were notified the morning of, within a
9 half-hour, 15 -- I don't know exactly the precise
10 timeframe.

11 Q All right. So in reviewing this
12 provision, which comes from your office, do you
13 think that providing notice 20 minutes or a half
14 an hour before satisfies this provision?

15 A Which -- which line is that on there?

16 Q 15-C on page 6 of 12. So it starts on
17 page 6 and then goes to page 7.

18 A Yeah, I -- I don't know what their usual
19 practice is, so you would have to ask them.

20 Q All right. Let's assume the usual
21 practice is to provide a company notice a day or
22 two at least before the action is filed. And
23 essentially what happens is the Commission will
24 recommend going forward with the action. And then
25 the Enforcement Division will go to the company

1 and say, you know, this is serious. The
2 Commission's already approved this.

3 A Right.

4 Q So if you want to settle this --

5 A Right.

6 Q -- if you want to resolve it, you know,
7 you're going to have to do it now.

8 A Right.

9 Q In this case, that wasn't done. What
10 happened was a phone call was made to the lawyer
11 for Goldman Sachs; he wasn't there. He left a
12 message with his secretary and, you know, I mean,
13 I don't know if the Enforcement guy even got the
14 message because it was, you know --

15 A Right.

16 Q -- minutes before the case was filed.

17 A Right.

18 Q Now, what is the purpose of this
19 provision, Notification of Defendants?

20 A Well, as I said a while ago, about,
21 like, members of Congress being -- like, it is --
22 it is fair for the other side to know about our
23 actions from us, not an interpretation of it posed
24 in the form of a question.

25 Q Right. So in order to satisfy this

1 provision of the press relations policies,
2 wouldn't the Enforcement Division have to actually
3 reach somebody in Goldman Sachs rather than just
4 calling them a few minutes before and leaving a
5 message?

6 A Well, I'm not a lawyer and -- and so I
7 don't want to get lawyerly.

8 Q But it's your policy.

9 A Right. But it says "every effort,"
10 which --

11 Q So in your view -- I mean, this is your
12 policy. In your view, every effort was satisfied
13 by what happened here, which is making a phone
14 call minutes before the filing and leaving a
15 message?

16 A Yeah, I -- I just haven't formulated an
17 opinion. Like, I know it is shorter than -- that
18 people get, that's all I know. But I don't know
19 what other factors that they had -- that they had
20 at their disposal that they needed to consider in
21 making that determination.

22 Q Do you know if the folks in the
23 Enforcement Division are familiar with this
24 provision?

25 A About at least once a year we actually

1 do send them the press policy.

2 Q But do you know if they're familiar with
3 it even though you send it to them once a year?
4 Because we've asked a lot of people and they seem
5 to not be aware of it.

6 A I don't know, but we do make an
7 affirmative effort. There's usually some time
8 where something has gone contrary to the press
9 policy that we use as an occasion to remind people
10 of and call attention to a particular passage of
11 it.

12 Q And are you aware that after the
13 complaint was filed Goldman expressed the view
14 that they hadn't been given notice?

15 A Yes.

16 Q And is it fair to say that that might
17 have been avoided if this policy had been more
18 strictly adhered to?

19 A I think that's a fair interpretation. I
20 don't know what other factors that went into the
21 decision -- the Enforcement Division and its
22 timing of the --

23 Q So you weren't involved specifically in
24 the decision about when to make that call that
25 Friday morning?

1 A Correct, I was not.

2 MR. KOTZ: All right.

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

4 Q I just have a question on the prior
5 exhibit, Exhibit 15.

6 A Mm-hmm. Does this get a number or did
7 you put one on yours?

8 Q About halfway down that first page, you
9 write, "Kara's going to find out if she can find
10 out who allegedly did not return a call."

11 Do you know if you ever found
12 out who allegedly didn't return the call?

13 A No, I -- I don't. I remember this is
14 that they -- they were complaining to Kara or she
15 represented to me that they had placed a call to
16 us and it never got returned. And I was just
17 saying that it just doesn't make sense to me. I
18 don't have any specific knowledge one way or the
19 other and nor would I need to know because it's
20 irrelevant. But, like, if -- if I was a counsel
21 and I didn't get a call back, I'd do what a
22 reporter does: You call back.

23 Q Right. But I was just asking whether

24 ---

25 A I -- yeah, I -- I don't recall.

1 Q -- you heard further on that issue as to
2 who supposedly didn't return the call.

3 A Yeah, I -- I actually did at some point
4 find out from either Ken or (b)(6),(b)(7)(C) that they had no
5 recollection of that have had -- having happened a
6 month ago of not returning a call, and it was not
7 something they would normally do. They wouldn't
8 not return a counsel call.

9 Q But my question is did you hear back
10 from Kara Scannell as to who the alleged person
11 was who didn't return the call? You understand
12 what I'm saying?

13 A Oh, yeah, okay. So, yeah, I don't
14 recall that I would have.

15 BY MR. KOTZ:

16 Q So from your understanding is that it's
17 not true that nobody returned Goldman Sachs' call
18 or you don't know for sure?

19 A Well, that no one would have done it
20 intentionally. Now, could someone have left a
21 message and, like, and it got deleted because they
22 were -- I mean.

23 Q Right, right. I mean, people can always
24 make mistakes.

25 A Right.

1 Q So it is possible that Goldman Sachs
2 called and Enforcement didn't call them back?

3 A Well, that'd be speculative on my part,
4 but the information -- it's not our practice to
5 not return calls and be --

6 Q Right. But based on your knowledge of
7 the situation you don't know for sure whether that
8 happened or not?

9 A That's correct.

10 MR. KOTZ: All right, let me show you
11 the next document marked as Exhibit 17, an e-mail
12 exchange between you and Myron Marlin, 4/16/10,
13 3:55 p.m.

14 (SEC Exhibit No. 17 was marked for
15 identification.)

16 BY MR. KOTZ:

17 Q It was an e-mail initially from James
18 Duffy to [REDACTED]. [REDACTED] sends it
19 to Lorin Reisner. Lorin Reisner sends it to Rob
20 Khuzami and Stephen Cohen. Stephen Cohen sends it
21 to Friday folks and then it gets up to you.

22 A Right, right.

23 Q Do you remember anything about this
24 issue, this concern expressed by James Duffy?

25 A I -- I remember that -- that somewhere

1 along the line Lorin says to -- to Steve, this is
2 something that we should discuss with the
3 Exchange. I don't know if it's on this exchange,
4 but I know that that was the last time I ever saw
5 of it.

6 Q But was it discussed with the Exchange?

7 A I don't know.

8 Q Jim Duffy certainly thought it wasn't
9 discussed with the Exchange.

10 A Oh, no, I'm sorry. If -- make it clear.
11 It sounds like that the New York Stock Exchange
12 wants to discuss with the SEC its policy on -- or
13 on when --

14 Q Are you aware that the New York Stock
15 Exchange was upset that the SEC didn't give them a
16 heads-up?

17 A Yeah, when I got CC'ed here. And then
18 there are successive e-mails that indicated that
19 Enforcement people were going to take that up with
20 the appropriate people to see, like, if the policy
21 going forward.

22 Q But do you know why the SEC didn't give
23 the New York Stock Exchange a heads-up in this
24 Goldman matter?

25 A Don't know, but I don't know whether

1 that's ever been done before either.

2 Q Do you know if there was any discussion
3 about giving Goldman --

4 A None that I was in a participant in.

5 Q Do you know if there was any discussion
6 about the effect on the stock price of Goldman
7 that the announcement would have?

8 A There was none that I would have
9 participated in or -- or -- or be aware of either
10 is what I started to also say.

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

12 Q So to your understanding, did Lorin or
13 anyone else -- end up having a discussion with
14 anyone in the Stock Exchange?

15 A I do not know.

16 BY MR. KOTZ:

17 Q And have you learned anything further as
18 to whether or not there has been further
19 consideration of -- policy?

20 A I -- I -- I have not learned of
21 anything.

22 Q All right, let me skip a few to this one
23 dated 5/6/10. We'll mark as Exhibit 18, e-mail
24 exchange between you and (b)(6),(b)(7)(C) 5/16/10,
25 5:30 p.m.

1 (SEC Exhibit No. 18 was marked for
2 identification.)

3 THE WITNESS: Okay.

4 BY MR. KOTZ:

5 Q Do you know whether this is true that
6 Goldman sought to have Rob Khuzami knocked off the
7 case, but the Ethics Office cleared him?

8 A I confirmed with the Ethics Office that
9 no conversation took place with the Ethics Office.
10 I talked to (b)(6),(b)(7)(C) and he said there would be
11 no way the Ethics Office would have been involved
12 in that without (b)(6),(b)(7)(C) knowing about it.

13 Q But do you know if Goldman made any
14 effort to have Khuzami recused from the case?

15 A I have no idea where else they would
16 have done it, but it said here that the Ethics
17 Office, that would be where I'd go for the
18 information.

19 Q Well, but, I mean, the first part could
20 be true, that Goldman sought to have Rob knocked
21 off the case and then, for whatever reason, they
22 decided it wasn't necessary to go to the Ethics
23 Office. I mean, that could be true.

24 A Oh, yeah, but I only looked at the four
25 corners of this. It says that our Ethics Office

1 cleared Rob to work, which to me sounded like
2 answering -- if they had sought it and our guy
3 said no conversation had taken place.

4 Q So you don't know if Goldman at any
5 point indicated to the SEC that they thought Rob
6 should be recused in the case?

7 A I don't know and nor have reason to
8 believe that such a thing would have happened or
9 occurred.

10 Q I mean, they could have said -- you
11 know, made any kind of representation.

12 A Right. I -- yeah, but I just don't have
13 any.

14 Q You wouldn't necessarily know if they
15 did that, would you?

16 A No.

17 MR. KOTZ: All right, let me show you
18 the next document. It is marked as Exhibit 19.
19 It's an e-mail between Lorin Reisner and Stephen
20 Cohen, 6/17/10, 6:44 p.m.

21 (SEC Exhibit No. 19 was marked for
22 identification.)

23 THE WITNESS: Can we take a bathroom
24 break at any point?

25 MR. KOTZ: Oh, sure, right now if you

1 want.

2 THE WITNESS: Let's do that.

3 MR. KOTZ: Okay. Off the record.

4 (A brief recess was taken.)

5 BY MR. KOTZ:

6 Q Do you remember if there was any
7 discussion about whether to file the complaint
8 against a publicly traded company during the
9 trading day? We've had testimony from several
10 people who believe that the SEC shouldn't be
11 filing actions against publicly traded companies
12 during the trading hours. Do you remember if that
13 was discussed?

14 A Not with me.

15 Q Do you remember any discussion about the
16 fact that that Friday was the third Friday of the
17 month and that had a significance for the
18 expiration of options?

19 A I have no -- I wouldn't participate and
20 that's not even something I would even understand
21 the significance of.

22 Q So you don't remember any discussion on
23 that?

24 A I -- I know that I had no participation
25 in any conversation like that.

1 Q Were you surprised at the effect on the
2 market, on Goldman's stock, and the market overall
3 because of the announcement?

4 A You know, as I said at the beginning
5 here, I was surprised -- I knew it was going to be
6 a big story. I didn't know the extent that it was
7 going to be such a dominant story. You know, I
8 certainly hadn't given any thought to what it
9 might do to a stock, so, therefore, I had no
10 metric to figure that out.

11 Q All right, let me show you the next
12 document we're going to mark as Exhibit 20.

13 Oh, yeah, I didn't ask you about this, Exhibit
14 19. I'm sorry. So after the Goldman case was filed, at
15 what point in time did you become aware that there were
16 settlement discussions?

17 A You know, I don't -- I think at least a
18 week went by before they -- the settlement
19 discussions began, but I don't know that for a
20 fact because I would --

21 Q A week went by from the filing of the
22 action?

23 A April 26th -- from April 16th, I'm
24 sorry.

25 Q So shortly after the case was filed you

1 became aware that there were settlement
2 discussions with Goldman?

3 A Yes. I mean, you sort of -- things
4 start showing up in the paper that, you know,
5 they're about to --

6 Q So you found out about this from the
7 paper or you found out about this from internally?

8 A I don't recall specifically the -- like,
9 it would not be a normal course of business for
10 Enforcement to tell -- to notify me that they've
11 opened settlement talks. That would not be at
12 all. Sometimes they might because maybe they've
13 gotten to an informal agreement and the company's
14 going to be making an announcement and so,
15 therefore, I need to know because we'll be getting
16 calls.

17 Q But you found out that the Enforcement
18 Division was engaged in settlement discussions
19 with Goldman well before the July timeframe when
20 the settlement was announced?

21 A Correct.

22 Q And at what point did you learn that the
23 settlement was imminent?

24 A Only because this is more recent. It
25 was the Friday or so before -- what day did we do

1 this? Thursday, the actual announcement?

2 Q Right.

3 A Yeah, it was the Friday before. And the
4 only reason that I really remember that with
5 specificity is because I was going to be (b)(6),(b)(7)(C)
6 (b)(6),(b)(7)(C) the week after the Goldman settlement
7 announcement. And so that was the first time that
8 I learned -- because there was -- there was a
9 court deadline while I was going to be (b)(6),(b)(7)(C)
10 (b)(6),(b)(7)(C) and it was the first time that I learned
11 that there's a possibility that the court filing
12 deadline was going to become moot. And so,
13 therefore, I wasn't going to have to spend (b)(6),(b)(7)(C)
14 (b)(6),(b)(7)(C) to deal with the court
15 case.

16 Q I see. So this --

17 A So it was about the Friday before in one
18 of my conversations with Myron.

19 Q And so this court deadline was this July
20 19th deadline that's referenced in Exhibit 19?

21 A Mm-hmm.

22 Q Yes?

23 A Yes.

24 Q So what was the impact of the court
25 deadline?

1 A Well, the -- Goldman had to file a
2 response by July 19th, when -- when -- in the
3 normal course of my work, once they file it, even
4 though we won't say anything substantively, I'm
5 going to get besieged with phone calls with how do
6 we counter the assertion they made.

7 Q I see. And did you understand that the
8 settlement was going to be entered into prior to
9 the Goldman -- that they had to file?

10 A Right. On Friday, the week before, the
11 week we announced the settlement, I learned that
12 the -- that talks had progressed to the point that
13 it was very likely that an offer of settlement was
14 going to be presented to the Commission at its
15 closed Commission meeting the week of -- the week
16 we did it.

17 Q And so what do you remember at that
18 point? Do you remember -- the filing was on
19 Thursday, the deadline was the following week.
20 What do you remember about when was the Commission
21 meeting that approved the settlement?

22 A Can you ask me that one more time?

23 Q So I'm trying to see what you remember
24 about the circumstances of that week. On Friday,
25 you learned from Myron that there's a settlement

1 that's imminent, right?

2 A Mm-hmm.

3 Q The next week, on Thursday, the
4 settlement is announced.

5 A Yeah.

6 Q Do you remember when the Commission met?

7 A It met the day that we announced the
8 action.

9 Q On Thursday?

10 A Right.

11 Q Do you remember -- what do you remember
12 about your understanding of the timing going
13 forward?

14 A Sure. Well, if -- if this'll be easy
15 for you, Friday at some point I become aware that
16 the Commission is going to consider an offer of
17 settlement during the next week in its closed
18 meeting.

19 Q Right.

20 A And I don't know the terms of the
21 settlement, you know, anything about it. So Myron
22 suggests that he and I get together with Steve
23 Cohen, who often knows these things, and he filled
24 us in up in Steve's office. I don't recall which
25 day, but it may have been that Friday, but it

1 might have been the successive Monday. And that
2 was the first time -- it might even have been
3 Tuesday, but -- but it's somewhere in that
4 timeframe. And I got a good feel that it was
5 going to be a dollar amount, that it was going to
6 be -- you know, some of the highlights of -- of
7 the action, and then the Commission was going to
8 be considering it on date certain.

9 Q And what was that date certain? Was it
10 understood --

11 A That the Commission -- no.

12 Q -- when it was going to happen?

13 A That the Commission was going to
14 consider it?

15 Q Yes.

16 A Yes, at its closed Commission meeting
17 that week.

18 Q So you found out on Friday or Monday
19 some of the specifics of the settlement and what
20 day the Commission was going to review it, look to
21 approve it?

22 A Right.

23 Q And so you knew that shortly after the
24 Commission approved it you would have to go
25 forward with the announcement, right?

1 A Correct.

2 Q And you realized that that was going to
3 take place (b)(6),(b)(7)(C) so that was good?

4 A Yes, that was good.

5 Q And so you had time to work on drafts, I
6 guess.

7 A Mm-hmm.

8 Q Because you knew this was coming in
9 advance.

10 A Correct.

11 MR. KOTZ: And so mark as Exhibit 20 an
12 e-mail from you to (b)(6),(b)(7)(C) and Ken Lench.

13 REPORTER: 21?

14 MR. KOTZ: No, this is 20.

15 REPORTER: Okay.

16 MR. KOTZ: Dated 7/14/10, 12:02 p.m.

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

19 MR. KOTZ: So what was the date that it
20 was actually issued? The Thursday was what date?

21 (b)(6),(b)(7)(C): The 15th.

22 MR. KOTZ: The 15th, okay.

23 BY MR. KOTZ:

24 Q So this would have been Wednesday, the
25 day before the case was filed.

1 A Mm-hmm.

2 Q Yes?

3 A Yes.

4 Q So you guys started drafting this?

5 A Actually I took the initiative to start
6 drafting something, but I subsequently found out
7 that Enforcement was already drafting something.
8 The reason why I took the initiative myself
9 because if they were working on drafting the
10 complaint, they were not going to be drafting a
11 press release and it was going to delay our
12 potential ability to get press materials done in
13 time. As it turned out, the versions that we were
14 simultaneously working on did get merged.

15 MR. KOTZ: All right, let me show you
16 the next document we're going to mark as Exhibit
17 21. This is an e-mail from you to a whole variety
18 of folks, including the chairman, 7/14/10, 12:04
19 p.m.

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

22 BY MR. KOTZ:

23 Q So Rob Khuzami sends an e-mail to the
24 chairman and several other folks, including you,
25 "Kara Scannell from Wall Street Journal called,

1 said they're hearing that Goldman Sachs is trying
2 to settle ABACUS and other CDO investigations it
3 had. So they're writing maybe not today, and
4 wanted guidance."

5 What does that mean, "they're
6 writing maybe not today?"

7 A Whenever a reporter calls you for a
8 question the -- the days of it, the deadline being
9 tomorrow's paper are long gone. They write their
10 stories and they appear online that night. So now
11 the lingo has become I'm writing for today, even
12 though it's tomorrow's paper, but it's going to
13 appear.

14 Q I see, okay. So in this instance she
15 was saying that she might not be writing it today?

16 A Correct.

17 Q And so you guys found out the day before
18 the plan to have the Commission approve and then
19 announce the settlement that the story was getting
20 out?

21 A No, because the settlement -- the story
22 here is that settlement negotiations are taking
23 place and Goldman is trying to settle. It -- it
24 -- there's no indication in anything that she has
25 that I'm aware of that there's actually a

1 settlement imminent to go before the Commission.

2 Q But there were articles that came out in
3 the day or two before the actual settlement was
4 announced about settlement discussions, right?

5 A Correct.

6 Q And was that a concern that these
7 articles were out there?

8 A Yes, and there was one in particular
9 that, you know, seemed to talk about negotiating
10 positions. And there's only two parties that know
11 that, the negotiating positions: The negotiators
12 and --

13 Q That would be Goldman and the SEC,
14 right?

15 A Yeah, or its counsel and the SEC.

16 Q Right.

17 A And, you know, that -- that gets to --
18 it -- it's shaping the perception and
19 understanding of our action before we've even
20 taken one, and that's why it's always concerning.

21 Q And was there a concern that Goldman was
22 leaking the information about the settlement?

23 A In my mind, because I don't try to
24 speculate on who -- it's -- it's indicative to me
25 that information is finding its way into the

1 marketplace about these talks.

2 Q And your assumption at this point was it
3 found its way from Goldman, not the SEC?

4 A No, I -- I -- I -- I really don't do
5 that. I -- I could ascribe motives to -- like,
6 that -- that article they eventually ran wasn't
7 one-sided. It had stuff that only the negotiators
8 could know, but it -- like, you couldn't read that
9 article and say this could only come. Yeah, I
10 could make -- I could make an argument that it
11 might have come from the respondent through
12 counsel, but I -- I just wouldn't --

13 Q Now, would there be concern that Goldman
14 or their counsel would provide information to a
15 reporter and spin the settlement to their benefit?

16 A Absolutely.

17 Q And why would that be a concern?

18 A Because our -- our job is to communicate
19 it accurately and faithfully. And if the -- if
20 the perception of it is being distorted before we
21 even make an announcement, as I said before,
22 without trying to make a hand signal, we're
23 already starting off behind the curve just to get
24 the -- the -- back to neutral for people's, you
25 know, fair understanding of our action.

1 Q And certainly Goldman in this case would
2 have an incentive to spin the story the way they
3 wanted it to, right? I mean, it could affect
4 their stock price. I mean, there could be
5 numerous reasons.

6 A Every party has potential incentives to
7 have the story told in the most favorable light to
8 that party.

9 Q Right, but particularly in this case
10 given the import of this story, how much press it
11 got the first time, the effect on the stock price
12 of Goldman initially.

13 A Right.

14 Q I mean, don't you think in this case
15 Goldman would have a much greater incentive to try
16 to tell the story themselves first?

17 A It's -- it's a reasonable perception,
18 but I -- it's not one that I would spend a lot of
19 time on, and I don't. But yes, that -- that is --
20 I can -- for any party in a negotiation, I can --
21 can construct very valid scenarios why someone
22 would want to get that information in their own
23 telling.

24 Q Right. And was that a particular
25 concern in this case?

1 A No more or less in the sense of what is
2 happening. In other words, that's a frequent
3 occurrence. I think --

4 Q How about --

5 A In this -- in this case it is -- it
6 would be of higher concern.

7 Q But was it? I'm asking was it in this
8 case a concern on the part of the SEC, folks in
9 the SEC, that Goldman might get this information
10 out earlier and tell the story the way they want
11 to tell it?

12 A That would be my concern.

13 Q Was it your concern?

14 A Yes.

15 Q And was it the concern of others? I
16 mean, did people talk about this as a concern?

17 A I don't recall. You know, concurrent
18 with this when these stories are coming and I
19 remember conversations about information that's
20 finding its way into the marketplace. And you
21 don't have to spend your time figuring out where
22 it's coming from. You just know that it's -- it's
23 going into the marketplace.

24 MR. KOTZ: All right, let me show you
25 the next document. We're going to skip a couple.

1 Mark it as Exhibit 22, this is an e-mail exchange
2 between [REDACTED] Lorin Reisner, Robert
3 Khuzami, John Nester, Myron Marlin, Stephen Cohen,
4 7/14/10, 9:26 p.m. We'll mark it as Exhibit 22.

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

7 BY MR. KOTZ:

8 Q So in this case, Louise Story is sending
9 an e-mail to [REDACTED] saying, "The Wall Street
10 Journal is acting like there's something new here
11 so I'm just checking. Is a settlement imminent?"

12 A Right.

13 Q So at this point in time it looked like
14 at least there were some indications from the
15 press that they knew that there was a settlement
16 that was imminent, right?

17 A No, I -- I actually took a different
18 interpretation when I got this e-mail.

19 Q Okay.

20 A My interpretation was the Wall Street
21 Journal -- and I don't recall the placement the
22 Journal gave to its story, whether it was the
23 front page or front page of the Business section
24 or whatever. But the -- the data points that were
25 in the story had been in the marketplace for some

1 time, not necessarily in all one place, but, you
2 know, there had been speculation in the press that
3 there might be a billion-dollar penalty associated
4 with this case. There have been speculation in
5 the press, lots of it, about whether there'd be a
6 fraud charge associated with this. So there was a
7 lot of things in that article that had been talked
8 about previous and then, all of a sudden, now it's
9 -- it's contained in one article that -- that has
10 a feeling like there's a story to be told here.
11 But as the reporters' looking at it, I don't see
12 it.

13 And then she says, you know, they're
14 acting like there's something new here, like
15 that's what she heard. And then she says -- so
16 she's inferring from that that something must be
17 going on.

18 Q So did you have a feeling that
19 information was getting to the marketplace that
20 the settlement was imminent?

21 A You know, when the story ran I don't
22 think that you -- if I -- I knew what the answer
23 was. I don't think that the average person could
24 tell from that story that the settlement was
25 imminent. And if -- if the reporter had an

1 indication that a settlement was imminent there
2 would have been a line to that effect in that
3 story. So I don't think the Wall Street Journal
4 reporter had a sense that there was something
5 imminent. It just said settlement talks are
6 underway or -- or whatever.

7 MR. KOTZ: All right. And so in this
8 case the settlement, according to this timeline --
9 or let me put this into evidence then. This is an
10 e-mail between you and a whole variety of folks
11 dated 7/15/10, 9:55 a.m. We'll mark it as
12 Exhibit 23.

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

15 BY MR. KOTZ:

16 Q And this is -- you sent an e-mail
17 referencing a timeline prepared by (b)(6),(b)(7)(C)

18 A Mm-hmm.

19 Q Did you have any -- did you participate
20 in any or have any role in (b)(6),(b)(7)(C) timeline?

21 A Yes.

22 Q What was your role?

23 A There was a meeting that afternoon, late
24 morning, somewhere in which similar to other
25 instances we go through the timeline of when can

1 we announce this case. And there's a big
2 discussion of when does notification of opposing
3 counsel take place? When does notification of the
4 Commission take place? You can't notify the
5 Commission -- there's lots of discussions. There
6 was another case that was scheduled on the
7 calendar in Executive Session that eventually went
8 away and got scheduled another time.

9 So at this meeting, there was a
10 suggestion that we could the following day --

11 Q Right.

12 A -- in other words, after the Commission
13 action.

14 Q Right.

15 A And I -- I told Rob and I remember my
16 exact words. I said I'm a 55-45 on this, 55
17 percent in favor. Like, in other words, you've
18 got to do what you've got to do.

19 Q Fifty-five percent in favor of which
20 side?

21 A I'll explain, to doing -- to doing the
22 announcement the day the Commission acts. I said
23 I'm a 55 -- in favor of that. The reason I vacillate is
24 because also you have to do what you have to do and I
25 wouldn't want to compromise it. But just sort of left in a

1 vacuum it'd be better if we announce it on the afternoon the
2 Commission takes the action.

3 Q Why is that? Just from your
4 perspective.

5 A We had done the same thing in the
6 Anthony Mozillo case a year previously in the
7 Countrywide investigation. You know, the
8 information's now available. The circle of people
9 who know it is going to do nothing but expand
10 after the Commission has taken an action. The
11 most opportune time to effectively communicate
12 your message is when you are the one delivering
13 the message. So just for clear --

14 Q And so -- but there was 45 percent of
15 you that wanted to wait till the next day. What
16 were the considerations on that side?

17 A Yeah. Well, it wasn't -- the 55-45
18 wasn't all media considerations. It's just also
19 like if I have -- if -- if you have to do
20 something less in order to do this to compromise
21 the action --

22 Q Was there any benefit at all to wait
23 another day?

24 A No, I -- I -- I wouldn't say there is
25 benefit from the press side to waiting another

1 day. It's just that it'd be harder for me to
2 argue that it would be a lot more peril for
3 waiting to the next day.

4 Q So what would be the reasoning of anyone
5 to wait another day?

6 A Give them more time to type up whatever
7 they needed to type up and --

8 Q Was there any concern about this is
9 close to the end of the day, you'd rather have a
10 story come out in the beginning of the day?

11 A Well, it depends on the story.

12 Q Well, this specific story.

13 A This is a big enough story that -- that
14 the media can react late in the day to.

15 Q So it wasn't an issue with this story?

16 A No. I mean, like, if -- if it's a story
17 that's going to take a lot of explaining, the
18 morning is better because that's when editors --
19 or I shouldn't say a lot of explaining. A story
20 whose news value is not readily apparent, it's
21 better to have it earlier in the day so then they
22 can think it into their plans. If it's sort of a
23 modest story and it comes out late in the
24 afternoon and I've already laid out my -- my paper
25 for the next day, it's kind of the king of the

1 hill, it's not going to get in. But this story
2 will clearly -- there'll be space for this story.

3 Q And it will be issued in time enough,
4 even though late in the day, for them to still put
5 it in tomorrow's newspaper?

6 A And that evening's news.

7 Q Right, yes. Yes?

8 A Yes.

9 Q Okay. Now, what about financial
10 regulatory reform legislation? Were you aware
11 that there were allegations made by a congressman
12 in connection with the original action brought by
13 the SEC that that was done improperly to affect
14 financial regulatory reform legislation?

15 A Yes, I became aware of the congressman's
16 concerns within a day of -- or not that day of our
17 taking the April 16th action, and I'm aware of his
18 concerns as he expressed them within a day, if not
19 the day, of our settlement.

20 Q All right. So in July of 2010, you're
21 aware that a congressman had previously stated
22 that -- or alleged that the SEC may have done
23 something improper by timing the Goldman action
24 announcement to help regulatory reform in that the
25 Office of the Inspector General was going to

1 investigate that. And then here you are on
2 Thursday, July 15th, discussing when to announce
3 the settlement. And at that time, did you know
4 that that date was the same day that the Senate
5 had passed the final stages of the Financial
6 Regulatory Reform Bill?

7 A Right. I --

8 Q Just did you know that?

9 A No.

10 Q Oh, you didn't know that.

11 A I didn't know what the status of the
12 Senate -- I knew that -- because it's been in the
13 news that the Senate is deliberating and there's a
14 question of whether the Republicans that voted
15 will change and Democrats' vote will hold. So I
16 know that there was uncertainty that week as to
17 whether or not the bill would come up for a vote
18 and be voted on and approved.

19 Q Did you know at some point in time that
20 the Financial Regulatory Reform Bill was going to
21 be voted on on that Thursday, July 15th?

22 A No.

23 Q You never knew that?

24 A In fact, when we -- the Commission had
25 acted on its memo -- or the recommendation for the

1 settlement, I learned for the first time that
2 they'd just done the cloture vote to cut off
3 debate. And I didn't even know there was going to
4 be a cloture vote. So then -- then they did final
5 approval before we announced our action. So like,
6 I'm aware of those things happening, but I wasn't
7 --

8 Q All right. So you were aware before the
9 SEC announced its action that the Senate had done
10 final approval of the financial regulatory reform
11 legislation?

12 A Correct. About an hour before, I think
13 is what it was.

14 Q Was there any concern expressed by
15 anyone that the SEC after being criticized for
16 allegedly coordinating previously regarding
17 financial regulatory reform, regarding the Goldman
18 announcement of the action, now was going to be
19 issuing the settlement on the same day of this
20 momentous moment in financial regulatory reform?
21 Did it come up?

22 A No. There was one time the day before
23 where we said, like, we're going to get criticized
24 again because we always do. It happens before,
25 but we have to do what we have to do. We can't

1 let --

2 Q So what was that discussion about?

3 A Oh, just because we don't know -- I
4 don't know when it's going to happen, but I know
5 that the Senate -- there's nothing but stories
6 about vote counts all week long. I know we're in
7 that milieu.

8 Q Who did you have that discussion with?

9 A Myron and Steve.

10 Q And what was said in that discussion?

11 A Just sort of like, you know, like, I
12 understand the same thing. Like, we're going to
13 -- like, we can't not do what we have to do
14 because of something -- and particularly when we
15 can't control the events on the other side.

16 Q All right. But you said that it was 55
17 to 45 whether to announce it on Thursday or
18 Friday.

19 A Mm-hmm.

20 Q So you could have announced it on
21 Friday.

22 A Right.

23 Q It wouldn't have been a terrible thing.

24 A Right.

25 Q Was there any discussion about the fact

1 that since Thursday was the day that the Senate
2 voted finally after all these months to approve
3 financial regulatory reform --

4 A Right.

5 Q -- that maybe to hold off and to
6 announce the Goldman settlement on Friday?

7 A I can't -- I don't think I expressed
8 this with anybody. In my own mind, I had the
9 exact same view I would have had before. If I
10 chance the date of when we do a legal -- or if I
11 suggest changing the date when we do an
12 Enforcement action for a non-Enforcement-related
13 action --

14 Q But we're not talking about changing the
15 date of an Enforcement action. I mean, the matter
16 was approved by the Commission on the day it was
17 approved.

18 A But it hasn't filed in court yet. And
19 that's when -- that's when our sequencing begins.
20 And so to say don't file -- like, don't file a
21 complaint you are prepared to file in court, like
22 --

23 Q So did that discussion take place?

24 A No, I didn't have a conversation. I
25 just --

1 Q Okay, so -- yes, well, I'm just
2 interested --

3 A I evaluate in my mind and then decide,
4 like, do I need to raise this? And I didn't.

5 Q And you didn't raise it.

6 A Correct.

7 Q And no one else raised at that point in
8 those discussion that you're aware of?

9 A That I'm aware of, right.

10 Q And so the plan was for the Commission
11 to approve it and then shortly after to file it in
12 court?

13 A Correct.

14 Q And how long -- that's not on the
15 timeline. How long would the folks need to file
16 it?

17 A I don't know.

18 Q After the settlement was approved. I
19 mean, was there any concern that this is toward
20 the end of the day, that they may not be able to
21 file it in time?

22 A Right, but as it turned out the
23 Commission meeting was shorter than originally
24 envisioned. So we gained time and so the timing
25 of the actual complaint was more like when they're

1 ready to go, we'll be ready to go and we still
2 have all the rest of the time for the -- for the
3 --

4 Q What time was the Commission meeting?
5 Was it in the morning?

6 A It was, I think, 2:00. There -- I know
7 at some point there was some discussion of maybe
8 moving it up earlier, but I don't think they ever
9 did. And our timelines had it, but we had -- when
10 we thought the Commission would address the matter
11 at hand, the Goldman matter, how much more of the
12 meeting would take place because -- and then time
13 for the notification of the commissioners and all
14 of the sequencing. As it -- as I recall, I got a
15 call or an e-mail from Steve Cohen around quarter
16 of 3:00 that they'd approved the Goldman action
17 and I believe I was already aware that another
18 action that was expected to be time-consuming was
19 no longer going to be considered anyway. So then
20 we sort of knew that we were going to be -- we
21 were going to be able to execute that afternoon.
22 If the meeting had gone long, we would have done
23 it the next morning.

24 Q Right. But the thinking was if at all
25 possible, based on the timing of the Commission

1 meeting, there was a strong interest in trying to
2 file it and announce it that day?

3 A Yes.

4 Q And was one of the factors in that that,
5 again, time was going on and there would be more
6 time for leaks?

7 A That's one of the considerations in the
8 timing of any high-profile action.

9 Q Right. And maybe more so in this case
10 because there had been some leaks already
11 regarding Goldman, right? I mean, it --

12 A That's a --

13 Q Not every case is going to leak like
14 this one because not every case is as important or
15 as interesting to the press.

16 A Right. Yeah, there are unique aspects
17 to this case because of the confluence of the type
18 of charge, violation, and the party, but --

19 Q And those unique aspects make it more of
20 a concern about leaks, right? Because they're
21 more likely to be a leak and the press is more
22 interested in gathering information.

23 A Yeah.

24 Q Right?

25 A The more that gets out there means the

1 more diluted the Commission's message is going to
2 be.

3 Q And this is -- so what I'm trying to
4 establish is that --

5 A But actually --

6 Q -- this was a particular concern in the
7 Goldman case because there was more interest in
8 the Goldman case.

9 A That's a reasonable viewpoint, but
10 there's also, when you think about it, there was
11 actually a little bit less or -- or somewhat less
12 in both the announcement of the original action
13 and the announcement of the settlement in some
14 cases. So even though there's greater interest
15 here, there's less maybe getting out as a
16 percentage of that interest. Like, in other
17 words, there's much interest here on this case,
18 you might even expect more pressure to get things
19 out. And like it -- it -- other than the story
20 that appeared on a Wednesday, I think it was,
21 there really wasn't much in the run-up to the
22 Commission's action. And, you know, I sometimes
23 see more than that on lesser cases.

24 Q And were you aware then that the vote on
25 the settlement then got out into the press as

1 well?

2 A After the fact, right.

3 Q Yes. And was there any discussion about
4 trying to figure out how that happened?

5 A No, because it's -- it's the same
6 metrics, like -- you know, it's information that
7 is not supposed to be made public by anybody.

8 Q Right. Now, is there a concern that
9 that affects the message of the SEC when
10 information comes out afterward about the vote?

11 A The way I look at it is -- and it's just
12 sort of my press philosophy, too -- is we are an
13 agency that the public has a right to trust. And
14 people who come forward to us with information
15 have a right to expect that we're going to treat
16 that information responsibly. And when I see
17 information that came out of this organization,
18 like, it makes me upset because it diminishes our
19 public perception. So, like, of -- of all the
20 things that leak out, the private deliberations of
21 the Commission and their staffs is like the worst.

22 Q Right. Does that in some way undermine
23 almost the import of the case that it comes out as
24 a 3-2 vote, which means two people were against
25 it?

1 A You know, there's always that. The
2 thing is the reason why the Commission is
3 established the way the Commission is established
4 is that you're supposed to have a variety of
5 viewpoints. And that a majority has the full
6 force of law. So like I understand why people --
7 like, it doesn't make it any less a right and just
8 and official action. So, yes, there are those
9 things, but I get more upset just about the fact
10 that -- that information that could only, you
11 know, appear to come from the Commission, it's
12 just not good for anybody.

13 Q Right. Were you aware that there were
14 two big stories that came out after the
15 settlement? Very long stories that had a lot of
16 information. One was, I think, in the Wall Street
17 Journal, one was in the New York Times. And they
18 kind of had different perspectives. One
19 perspective was sort of this is a 3-2 vote, people
20 weren't in favor of it, it was almost a negative
21 perspective toward the SEC. And the other one was
22 much more positive. I think it was describing the
23 heroic efforts of different attorneys in the case.
24 Do you remember that?

25 A No, I don't, but I -- I -- I remember

1 reading a lot of the articles about the 3-2. I
2 don't remember those specific two.

3 Q But do you remember that there was one
4 article at least that came out that was sort of --
5 tried to spin the Goldman settlement in a negative
6 way, almost like the SEC --

7 A Oh, like I don't know which one you're
8 talking about, but that would be the predominance
9 of the 3-2 vote stories is that this case must be
10 somehow illegitimate because two people voted
11 against it.

12 Q Right.

13 A And there would be -- there would be all
14 kinds of parties who would have an interest in
15 seeing that kind of a story told.

16 Q Right. So that would be Goldman would
17 be one of those parties?

18 A Respondents, respondents' counsel,
19 people who criticized the SEC for other reasons,
20 might one have been -- like there are lots of
21 reasons why people might want to criticize an SEC
22 action that have nothing to do with that
23 particular action.

24 Q And so was there concern that those
25 types of stories which try to put a negative spin

1 on the SEC settlement would come out before the
2 SEC had actually announced the settlement? I
3 mean, weren't those the kinds of stories that they
4 were concerned about?

5 A No, I wouldn't say about like -- like a
6 3-2 type of a vote.

7 Q Not about a 3-2, but, you know, the
8 point is that you can take the same set of facts
9 --

10 A Right.

11 Q -- and you can -- you know, I read two
12 articles, I think they might have been on the same
13 day, about basically the same thing.

14 A Right.

15 Q And they had totally different spins.

16 A Right.

17 Q One was the SEC is doing a great job out
18 there getting bad guys and the other is the SEC's
19 kind of weak and not doing anything.

20 A Right, right. But I think --

21 Q And it's all about who frames the story,
22 right?

23 A Right.

24 Q Isn't that an issue?

25 A Right. But I think yours, also -- your

1 example makes the point that I've been trying to
2 make is that we don't know who the "who" was in
3 each one of those instances, but it sounds like it
4 was different who's. And one -- you know, so we
5 don't know if someone is putting information in
6 the marketplace, what their motivation is ahead of
7 time, so I can't say for a certainty that a leak
8 would be a positive or a bad for the agency.

9 Q Right, but there is --

10 A In terms of -- in terms of the way the
11 story then is ultimately presented.

12 Q Right.

13 A It's going to be positive for whoever
14 presented it to the writer.

15 Q Right. But you could know that if
16 Goldman or its counsel leaked information about
17 the SEC settlement with them before the SEC had an
18 opportunity to announce it, that that story would
19 be likely more favorable to Goldman?

20 A Right, but Goldman wouldn't be allowed
21 to -- is not permitted to know the Commission
22 vote.

23 Q Right. No, I understand. I'm just
24 saying in general. My point was not about the
25 Commission vote. My point was you could take the

1 story of the Goldman settlement and spin it as --

2 A Absolutely.

3 Q -- an amazing achievement for the SEC or
4 not so much of an achievement for the SEC.

5 A Right, yes. Yeah.

6 Q And so if Goldman or someone else had
7 framed the story before the SEC, they could have
8 framed it in such a way that would not have
9 necessarily made the SEC as good as you believe
10 was appropriate?

11 A Right. I mean, absolutely. When
12 stories started appearing, as they started
13 appearing fairly soon after the original charges
14 were filed, this billion-dollar number was in the
15 press. So I don't know where that billion-dollar
16 number came from. Anything less than that is
17 somebody didn't have to pay the billion that some
18 expected. And I saw after the settlement story
19 saying some had expected it might be higher, as
20 much as a billion. So, like, there's an
21 expectation in the marketplace that was set by
22 whomever.

23 Q Right.

24 A But at the same time, if -- like, say
25 that billion is in there and actually it's going

1 to be a \$2 billion settlement. Then there's a
2 different -- different set of motivations that
3 could come into play of, like, minimizing
4 expectations.

5 Q Right. In any of the discussions that
6 you had with anyone about the initial filing of
7 the Goldman case was there any discussion at all
8 of financial regulatory reform?

9 A None.

10 Q In connection with the filing of the
11 settlement and the announcement of the settlement
12 was there any discussion about financial
13 regulatory reform other than the fact that it
14 might happen on the same day?

15 A Right, that was the -- the extent of my
16 conversations in that.

17 MR. KOTZ: All right. You want to take
18 a minute?

19 (b)(6),(b)(7)(C): Sure.

20 MR. KOTZ: Okay, so we'll take a minute
21 and see if we have anything more.

22 THE WITNESS: Okay.

23 MR. KOTZ: We're off the record.

24 (A brief recess was taken.)

25 MR. KOTZ: Back on the record.

1 BY MR. KOTZ:

2 Q You are aware that there were
3 allegations that the SEC coordinated its action
4 against Goldman Sachs with the White House, with
5 Congress, with the Democratic National Committee,
6 or similar entities, yes?

7 A Yes, I'm aware of the allegations as
8 they were made.

9 Q Right. Are you aware of any information
10 at all, whether while it was going on or what you
11 learned afterward, that would lead you to believe
12 that there was any such either sharing of
13 information or coordinating by the SEC as related
14 to Goldman Sachs with the White House, Congress,
15 or any Democratic committee?

16 A Not aware of any and no reason to
17 believe that such took place.

18 MR. KOTZ: All right. With that, we're
19 off the record. There's just one other thing. I
20 would ask --

21 (Whereupon, at 12:08 p.m., the examination was
22 concluded.)

23 * * * * *

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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 155 pages is a complete, true and accurate transcript of the testimony indicated, held on July 30, 2010, at 9:34 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:

8/6/10

Official Reporter:

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

Diversified Reporting Services, Inc.

PROOFREADER'S CERTIFICATE

In the Matter of: OIG-534
Witness: Number 25
File Number: OIG-534
Date: Friday, July 30, 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)8/6 /10

(Proofreader's Name)

(Date)

Chapter Break

ORIGINAL

Page 1

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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

WITNESS: Number 26

PAGES: 1 through 35

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

DATE: Friday, July 30, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 1:31 p.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, Inspector General

5 (b)(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

4

EXHIBITS:

DESCRIPTION

IDENTIFIED

1

November 4, 2009, E-mail,

[REDACTED] to Cohen

13

2

November 6, 2009, E-mail,

[REDACTED] to Cohen

15

3

April 20, 2010, E-mail,

[REDACTED] to [REDACTED]

21

4

Document from Office of Public Affairs

23

5

April 16, 2010, E-mail,

[REDACTED] to Reisner

25

6

July 15, 2010, E-mail,

[REDACTED] to [REDACTED]

29

P R O C E E D I N G S

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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

14

Q Okay, could you state and spell your
full name for the record, please?

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Q

Could you spell

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Sir, my name is David Kotz. I'm the
Inspector General of the United States Securities
and Exchange Commission. I have with me my
colleague from the Office of the Inspector
General, (b)(6),(b)(7)(C). This is an investigation
by the Office of Inspector General, Case No.
OIG-534. I'm going to ask you certain questions
and you will be providing answers under oath. A

1 court reporter will record 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 non-verbal response won't
5 be picked up by the court reporter.

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

15 Do you understand those instruction?

16 A Yes.

17 Q I'm going to give you the standard
18 perjury warning language. As you can see, your
19 response to the statements given today are
20 provided after you've sworn an oath and will be
21 taken down verbatim by the court reporter. This
22 is an official U.S. Government Law Enforcement
23 investigation. The claims asserted in this case
24 are serious ones. It is very important you tell
25 me everything you know about the matter at hand

1 and are completely forthcoming and truthful with
2 me.

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

9 Do you understand those instructions?

10 A Yes.

11 Q Great. All right, why don't we start
12 with a little bit of background and then I'll get
13 into some other, more specific, matters.

14 Can you describe for me, please, your
15 education, beginning with college?

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

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

18

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

21 A

22 Q

23 A

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

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Securities and Exchange Commission.

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Q

What year did you come to the SEC?

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Q

What was your first position at the SEC?

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Freedom of Information Act and Privacy Act.

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Q

How long did you do that for?

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A

23

basically.

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Q

What did you do for that office?

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A

I was

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Q What kind of duties were there,

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generally?

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A Reviewing documents, making decisions about whether information was exempt under the Act, drafting responses, assisting in processing appeals, and I served in the FOIA office [REDACTED] until about [REDACTED] and then was given additional duties within the Office of Consumer Affairs and Information Services, I think it was called at the time.

Basically, the Commission's complaint department -- I acquired supervisory responsibilities over that function, as well. And for a short time, also, [REDACTED] public reference room. So I had like three hats.

Q And that was until [REDACTED]?

A [REDACTED].

Q What did you do after that?

A I got a position in the Office of Public Affairs.

Q What was your first position in the Public Affairs office?

A [REDACTED] I

1 think.

2 Q What were your duties in connection with
3 that position?

4 A Pretty much to assist the director at
5 the time in responding to press questions. Some
6 management of the publication of the SEC news
7 digest and the clip service.

8 Q And is that your current position still?

9 A Oh, in [redacted] they changed my title to
10 [redacted]

11 Q [redacted] Office of Public
12 Affairs?

13 A Yes.

14 Q But your duties have remained the same?

15 A Pretty much, I've acquired some more
16 administrative duties and, otherwise, they've been
17 pretty much the same.

18 Q What kind of administrative duties have
19 you acquired?

20 A I took over the responsibilities for
21 evaluating performance of employees of the office.

22 Q I see. How many people are there in the
23 Office of Public Affairs at the moment?

24 A Right now there's seven of us.

25 Q And then there's some vacancies?

1 A We have two postings, I believe, at this
2 point. We're about to [REDACTED] August,
3 so --

4 Q [REDACTED]

5 A Yes.

6 Q And who do you currently report to?

7 A John Nester.

8 Q Now, what is the relationship between
9 you and Mr. Nester and Myron Marlin? He does
10 communications, right?

11 A Myron?

12 Q Yes.

13 A Myron works out of the Chairman's
14 Office.

15 Q Yes.

16 A And coordinates closely with John and me
17 and [REDACTED]

18 Q And does some of Myron's duty overlap
19 with the duties of the Office of Public Affairs?

20 A Occasionally, I think Myron will get
21 involved in responding -- in talking with
22 reporters. We consult with him about how to
23 respond to press calls, from time to time, but
24 usually he advises us -- or coordinates with us --
25 and we actually do the talking, or e-mailing, or

1 correspondence with reporters.

2 Q So, what are his general duties or
3 functions?

4 A Well, to keep us aware of what's going
5 on, as far as the chairman's perspective is
6 concerned.

7 Q I see. Did there come a time where you
8 became aware of the existence of an investigation
9 by the SEC into the sale of collateralized debt
10 obligations by Goldman Sachs, known as the ABACUS
11 Investigation?

12 A Yes.

13 Q When was that? When did you first hear
14 about this Goldman Sachs ABACUS matter?

15 A I would say shortly before the action
16 was filed.

17 Q When you say, shortly before, do you
18 mean a day or two, or a couple weeks?

19 A I would say, probably a couple weeks, at
20 the outside. And maybe a good deal shorter than
21 that. As far as a specific Goldman action, with
22 regard to ABACUS.

23 Q How did you learn about it? Who told
24 you?

25 A As far as I know, the first detailed

1 information I had came by way of a draft of a
2 press release.

3 Q So did you have an understanding that
4 the Goldman ABACUS case was a significant
5 investigation for the SEC?

6 A Well, after being at the Commission for
7 [REDACTED] Goldman is significant.

8 Q How come?

9 A It's a major investment bank. A major
10 player in the markets.

11 Q Was it one of the more significant cases
12 you've seen in your time at the SEC?

13 A [REDACTED]

14 Q Right.

15 A I would say it's certainly in the upper
16 quarter, upper third, probably.

17 Q Would you say that the Goldman ABACUS
18 case got as much or more press attention when it
19 was initially filed than any other case you've
20 seen in your time here?

21 A Well, as you're going up against some
22 competition -- I mean, Enron --

23 Q Right.

24 A -- was absolutely radioactive.

25 Q So let's say this, would you say that

1 the Goldman ABACUS case was one of a handful -- or
2 maybe 10 cases -- that you've seen during your
3 time at the SEC, in terms of the amount of press
4 attention?

5 A Press attention? Yeah, I would say it's
6 right up there. Top 10. Top 20.

7 MR. KOTZ: We won't ask you to rank
8 them. All right, let me start showing you some
9 e-mails.

10 The first e-mail is from actually way
11 back in November of 2009, we're going to mark it
12 as Exhibit No. 1. It's an e-mail exchange between
13 you and Steve Cohen.

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

16 BY MR. KOTZ:

17 Q And it starts off with an e-mail from a
18 guy named Greg Gordon, to you -- Wednesday,
19 November 4, 2009 -- talking about a Goldman
20 series, wondering if Sharon Schapiro -- Chairwoman
21 Schapiro -- would talk with him about the series.
22 About whether the SEC is going to investigate
23 whether Goldman Sachs knowingly dumped risky or
24 toxic investments. And I guess you sent this to
25 John Nestor. He suggests you send it to Myron. I

1 assume you do -- oh, you do, and then it gets to
2 Steve Cohen. Do you remember anything about this
3 exchange?

4 A Just barely.

5 Q Do you think you were aware at the time
6 that this reporter was talking about whether the
7 SEC is going to investigate Goldman? That, in
8 fact, they had an investigation of Goldman?

9 A Our policy in the office is to neither
10 confirm or deny investigations.

11 Q Right, but I asking about what you knew.

12 A Right. I tend to not dig any deeper
13 than necessary when that kind of question comes
14 up. If only to make my, no comments, more
15 convincing because I don't know the answer to
16 begin with.

17 Q I see. Do you know why this was sent to
18 Stephen Cohen?

19 A I think, at the time, Steve was probably
20 the person on the chairman's staff who handled
21 enforcement.

22 Q And he says to you, can we discuss
23 tomorrow? And you say, any time. And then let me
24 show you another e-mail -- it may help to even
25 further refresh your recollection. This we're

1 going to mark as Exhibit No. 2. It's an e-mail
2 exchange between you and Steve Cohen, 11-6-2009,
3 3:43 p.m.

4 A Okay.

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

7 BY MR. KOTZ:

8 Q And you say, Steve, Greg Gordon, and
9 McClatchey's Goldman stories -- would be happy to
10 hear from us on Monday or Tuesday, have a good
11 weekend. Stephen Cohen says, thanks, [REDACTED] You,
12 too.

13 But do you remember whether there was a
14 discussion with Greg Gordon?

15 A I think we successfully let this,
16 somehow, just peter out, as I recall. I mean, I
17 don't think that we ever picked up the ball with
18 Mr. Gordon, and he may have mentioned it -- let's
19 see, when was this?

20 This was -- yeah, he may have mentioned
21 it to me in a phone call sometime after the
22 beginning of the year -- the beginning of 2010.
23 And we just sort of left it lay. I mean, he never
24 followed up.

25 Q Do you remember Stephen Cohen ever

1 saying to you that he was concerned that
2 information was getting out, regarding the SEC's
3 investigation of Goldman?

4 A I don't recall him expressing any
5 concern about that.

6 Q All right. So you became aware that the
7 Goldman case was going to be brought, a short time
8 before it was brought. Did you have an
9 understanding about when it was going to be filed?

10 A No. Not a specific date, I don't think.
11 I really don't have any recollection of when I
12 found out that it was going to be filed on a
13 particular day.

14 Q Did you have to undertake certain
15 actions on the day that it was filed, to prepare
16 for press, in accordance with the filing?

17 A My recollection is that my involvement
18 was fairly marginal, at most. Generally, when
19 there's a major thing going on, the job of
20 responding to phone calls on everything else that
21 happening falls on me.

22 Q I see.

23 A I kind of mind the store while other
24 people take care of those.

25 Q So you weren't specifically involved in

1 the discussions about when it would be filed, or
2 preparing press release. There was an issue of
3 Rob being -- Rob Khuzami -- being in New Orleans.
4 You weren't involved in those discussions?

5 A No, not in any serious way. I think I
6 do remember being advised that he was down in New
7 Orleans and --

8 Q Do you remember anybody expressing any
9 concern that information was getting out to the
10 press about the Goldman case before the SEC had a
11 chance to announce it?

12 A I don't recall anything specific. I
13 mean, that sort of concern is always in the back
14 of people's minds, but --

15 Q Is it generally the case that the Office
16 of Public Affairs prefers that the first word
17 about a new filing of an enforcement action by the
18 SEC, come from the SEC itself, to the press?

19 A Oh, yeah. That's our model. That's
20 what we strive for.

21 Q And what's the reason for that?

22 A Primarily so that we kind of shape the
23 way that the action is covered.

24 Q And when the SEC has a significant
25 enforcement case, like the Goldman case, it's

1 helpful for the SEC to get positive press coverage
2 out of it, right?

3 A Well, and also we consider ourselves to
4 be the best source of information about the action
5 we're filing.

6 Q Right.

7 A There's usually -- there's sometimes
8 rumors out in the market place and sometimes
9 they're wildly off the target.

10 Q But isn't it also the case that the Sec
11 wants to get credit in the press -- favorable
12 press -- for an action that they bring, right? I
13 mean, doesn't that serve as the deterrent
14 affector? There are other reasons why it's good
15 for the SEC to have favorable coverage?

16 A Favorable and, at a minimum, accurate.
17 I mean, that's the principle.

18 Q Now, throughout this process we have
19 learned that there was some kind of internal
20 discussions in the office -- or in the SEC, I
21 guess -- about whether to file enforcement actions
22 on Friday, with two schools of thought, I guess.

23 Some saying, you never file a case that
24 you want to get a lot of press attention on Friday
25 because, you know, the Saturday newspaper isn't

1 read by as many people. And other folks saying,
2 you know, these days, with the Internet, it's a
3 24/7 news cycle. Are you aware of that kind of
4 debate?

5 A Oh, yeah. It's always been around and I
6 think it made some sense 10 years ago, 15 years
7 ago, when people primarily went out to the front
8 porch, picked up the dead tree, and got their news
9 from the newspaper. Things have changed. And I
10 even -- judging from my own practice -- the
11 Saturday paper is the one that I read most
12 thoroughly because I'm not on my way to the
13 office.

14 Q Right.

15 A Busy all day.

16 Q So, in your view, that kind of thinking
17 is no longer -- not relevant?

18 A It's hard for me to believe that it's as
19 critical as it used to be, anyhow.

20 Q What about the part that if there's
21 negative news about an entity, it's better that it
22 be issued on Friday. Does that still resonate, or
23 --

24 A I think that's like, likewise. Sort of
25 petering away and, in fact, if you do it too often

1 or too flagrantly, why, the practice becomes a
2 story in itself.

3 Q But, I mean, historically within the SEC
4 there have been those kinds of conversations about
5 whether you want to, perhaps, issue negative news
6 on a Friday and issue positive news the rest of
7 the week?

8 A People have talked about it, sure.

9 Q So you don't know, specifically, why the
10 SEC announced the Goldman case on Friday, even
11 though -- at least traditionally -- that had not
12 been the day that the SEC announced enforcement
13 cases.

14 A I just don't have any information for
15 you on that.

16 Q And you were aware that there was
17 considerable press coverage of the SEC's
18 announcement of the Goldman case of Friday?

19 A Yeah, I think the other factor that you
20 take into account when you're having a discussion
21 like that is whether it's Goldman or not. I mean,
22 we could have announced Goldman on any day and
23 there would have been press coverage.

24 MR. KOTZ: Right. All right, let me
25 show you another document. This is dated

1 4/20/10, at 9:13 a.m. And it's an e-mail from
2 you to somebody named Astrid Dorner. We're going
3 to mark it as Exhibit No. 3.

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

6 BY MR. KOTZ:

7 Q Now you don't say much to Mr. Dorner
8 other than, we decline comment, but he said
9 there's several stories about the SEC being
10 divided over filing the Goldman case, can you
11 confirm that? And is there anything else you
12 would like to add? Could that result in serious
13 problems for the SEC?

14 And my question to you is, do you recall
15 that information about the vote in the Goldman
16 case was leaked to the press?

17 A Could you repeat the question? I'm
18 trying.

19 Q Do you recall that shortly after the SEC
20 filed its action against Goldman, there was
21 information leaked to the press about the actual
22 vote that the Commission had?

23 A I think I remember that there were
24 stories about the vote, but I don't know.

25 Q And was there any concern expressed,

1 that you were aware of, in the office about how
2 this information got out?

3 A I suspect there was some concern, but
4 it's happened so many time in the past, with other
5 cases, that I don't think there was particularly
6 intense -- compared to other similar situation.

7 Q But this was a big case. And for
8 information like that to leak out, wasn't that
9 particularly upsetting to people?

10 A Well, it was not the way we would have
11 preferred for it to have happened.

12 Q Right.

13 A It has happened in the past and will
14 continue to happen, I suppose.

15 Q Do know if there were any efforts made
16 to try and figure who leaks this information?

17 A Not that I'm aware of. I would assume
18 that there are, but I don't know of any
19 specifically.

20 Q But was the assumption made that it was
21 a leak from the SEC -- somewhere within the SEC?

22 A That would be my assumption.

23 Q Because who else would know this
24 particular piece of information, right?

25 A Right.

1 Q All right, now are you aware of whether
2 Goldman Sachs was notified in advance of the
3 filing of the action against it? That the SEC had
4 approved a recommendation to go forward with an
5 action?

6 A I don't know that for a fact.

7 MR. KOTZ: All right, let me show you a
8 document. This a SEC administrative regulation
9 from the Office of Public Affairs. We're going to
10 mark it as Exhibit No. 4.

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

13 BY MR. KOTZ:

14 Q Are you familiar, first of all, with
15 Exhibit No. 4?

16 A Yes.

17 Q If you look on page 6 -- at the bottom
18 of page 6 -- under 15-C, Notification of
19 Defendants, and then it goes to page 7. It
20 states, every effort should be made to avoid the
21 possibility that defendants in an SEC enforcement
22 action first learn of the action when they read
23 about it in the newspapers, or when they are
24 called by a reporter for comment about the SEC's
25 complaint. The division of regional or district

1 office primarily responsible for the filing of a
2 particular complaint shall take all necessary
3 steps to see that the defendants and/or their
4 counsel are given timely advice concerning the
5 action.

6 Are you aware of this provision?

7 A Hmmm, no.

8 Q Were you aware, generally, that there
9 was a provision that stated that defendants were
10 supposed to be notified in advance of SEC
11 enforcement actions?

12 A I knew that that was the practice, but I
13 didn't know that there was a specific paragraph in
14 here.

15 Q Do you know why it is the practice, or
16 it has been the practice? What's the reasoning
17 behind this provision and/or the practice?

18 A I do not know.

19 Q Do you think it's possible that -- or
20 did you understand that perhaps the SEC will
21 provide a heads-up, say, to an entity and let them
22 know that, in fact, the Commission has approved
23 the recommendation to go forward with a case? To
24 give them a final opportunity to resolve it by
25 other means, by essentially saying to the entity,

1 you know, the Commission's approved this now.

2 We're going to really go forward, you know. What
3 do you have to say? Have you heard that that --

4 A I'm not acquainted with the practice at
5 that level. You're not talking about Wells?
6 Wells is --

7 Q I'm talking about after the Commission
8 approves the recommendation to go forward.

9 A Okay. Yeah, I'm not aware of the
10 practice.

11 Q Do you think this SEC administrative
12 regulation on Public Affairs is widely known
13 through the Commission?

14 A I'm fairly certain it is not widely
15 known.

16 Q Is there any reason for that?

17 A It's available, but I don't know that
18 people are briefed on it.

19 MR. KOTZ: All right, let me show you
20 another document. We're going to mark this as
21 Exhibit No. 5. And this is an e-mail exchange
22 between you and Lorin Reisner, with a copy to John
23 Nestor, 4/16/10, 4:57 p.m.

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

1 BY MR. KOTZ:

2 Q And this relates to a telephone call
3 that you had with Jim Duffy, the head of the New
4 York Stock Exchange Regulation, in April.

5 A Correct.

6 Q Do you remember that conversation?

7 A I'll have to review the e-mail.

8 Q Please. I can also tell you that we did
9 speak with Mr. Duffy, so I can tell you what he
10 recalls, as well.

11 A Ah, yes. Okay, I remember the issue
12 now.

13 Q Okay, great. What do you remember?

14 A Well, I took a call from Mr. Duffy, who
15 had been trying to get in touch with Mr. Reisner.
16 He was expressing concern that the first thing
17 that the New York Stock Exchange knew about the
18 Goldman action was what they got over the TV. And
19 the action against Goldman was market moving and
20 he was wondering if he could set up a conversation
21 with Mr. Reisner about how to proceed in the
22 future in situations like that, involving
23 companies that are listed on the Exchange that
24 might -- whose securities might be affected by SEC
25 action.

1 Q Were you aware of why the SEC didn't
2 give the New York Stock Exchange a head's up about
3 this matter?

4 A I never got an explanation on that
5 point.

6 Q Did you try to get an explanation for
7 that?

8 A Well, I made sure that Mr. Reisner knew
9 about this phone call.

10 Q Okay.

11 A And he took it over from there.

12 Q Do you know if Mr. Reisner ever called
13 Mr. Duffy back?

14 A I do not know.

15 Q Would you be surprised to hear that we
16 don't believe he did?

17 A Mildly, yes.

18 Q Did you in some way agree with Mr. Duffy
19 or appreciate his concerns that he expressed to
20 you on the phone?

21 A I try to be as non-committal as
22 possible.

23 Q Right.

24 A I mean, I certainly indicated to him
25 that I would make sure that Reisner got the

1 message.

2 Q But regardless of what you actually said
3 to him, did you yourself appreciate his concerns?

4 A I saw his problem, but it occurred to me
5 that there might be other problems from our side
6 of the fence, as well, that would give him cold
7 comfort.

8 Q Were you aware of other cases,
9 historically, with the SEC has notified the New
10 York Stock Exchange?

11 A No.

12 Q You don't know that that's happened
13 either way? Or you know that they haven't done
14 that?

15 A I don't know whether they have or have
16 not.

17 Q Do you know if, in connection with the
18 SEC settlement of Goldman, whether they notified
19 New York Stock Exchange in advance about that?

20 A I have no idea.

21 Q And you say in here, he would like to
22 discuss ways the SEC can work with NYSE to insure
23 that market moving news involving SEC enforcement
24 actions might be handled more along the lines that
25 the NYSE handles this sort of thing in other

1 context. Do you know what the other context he
2 was referring to?

3 A I don't recall -- I'm not sure that he
4 even explained that to me.

5 Q Were you surprised at the amount of
6 press coverage that the SEC's announcement of its
7 case against Goldman got?

8 A No.

9 MR. KOTZ: All right, let me show you
10 the next document. This is dated 7/15/10. It's
11 an e-mail between you and Lisa Chow. We're going
12 to mark it as Exhibit No. 6.

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

15 BY MR. KOTZ:

16 Q Lisa Chow is sending you an e-mail on
17 Thursday, July 15, 2010, at 4:16 p.m. saying, is
18 it true that the SEC has settled with Goldman?
19 And you say, no comment.

20 A Okay.

21 Q That was the day the SEC had settled
22 with Goldman. Were you aware, generally, that in
23 the time period -- or the few days right before
24 the SEC officially announced its settlement with
25 Goldman, that there were news reports that were

1 getting out about this fact?

2 A Oh, sure.

3 Q And do you remember if there was any
4 discussion about any concern that the information
5 about the SEC settlement with Goldman would get
6 out before the SEC had a chance to announce it
7 itself?

8 A I think that concern's always around.

9 Q Were you involved specifically in
10 discussions about when to finalize the settlement
11 with Goldman, and announce it?

12 A No.

13 Q When did you hear that the SEC had
14 settled with Goldman?

15 A That it had actually settled? I don't
16 recall.

17 Q How long before the actual settlement
18 was announced did you become aware that there were
19 settlement discussions with Goldman?

20 A Once again, I think, it was probably
21 shortly before the announcement was made.

22 Q Did you have involvement in that process
23 or the press, in accordance with the SEC
24 announcement of the settlement with Goldman?

25 A Once again, I kind of fell into the

1 position of minding the store and my involvement
2 was pretty minimal, I think.

3 Q Were you aware that the Financial
4 Regulatory Reform bill was being passed by the
5 Senate the same day that the SEC announced its
6 settlement?

7 A Yeah. It was a busy day.

8 Q When the SEC first brought its action
9 against Goldman in April 2010, are you aware that
10 a Congressman complained or alleged that the SEC
11 had coordinated its action with the White House,
12 or the Congress, in order to affect financial
13 regulatory reform?

14 A I saw the stories in the paper, yep.

15 Q And given that, were you surprised that
16 when the SEC announced its settlement of Goldman,
17 it chose the day that the Financial Regulatory
18 Reform had cleared its final hurdle in Congress?

19 A Surprised? Not particularly.

20 Q How come?

21 A Things -- coincidences occur.

22 Q Do you have any reason to believe that
23 was not a coincidence?

24 A I don't have any basis one way or the
25 other.

1 Q So, with respect to this allegation that
2 the SEC coordinated its action against Goldman
3 Sachs with either the White House, Congress, or
4 some Democratic committee, do you have any reason
5 to believe or any information that would suggest
6 that that's the truth?

7 A No.

8 Q Are you aware of whether the SEC shared
9 any information about its goal in investigation
10 with any member of Congress, the White House, or
11 any Democratic committee?

12 A I'm not aware of any information that
13 would support that.

14 Q And are you aware of anyone within the
15 SEC providing non-public information about either
16 the Goldman investigation or the Goldman
17 settlement to any members of the press prior to
18 the action being public?

19 A No.

20 Q All right. I don't have any more
21 questions. I will say, first, before we go off
22 the record. First, thank you for your time.
23 Second of all, I would ask that you do one thing
24 for us and this is an important matter. In order
25 to preserve the integrity of our investigation, I

1 ask that you not discuss the content of your
2 testimony with anyone. Okay?

3 A Right.

4 MR. KOTZ: All right, we're off the
5 record.

6 (Whereupon, at 2:41 p.m., the examination was
7 concluded.)

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REPORTER'S CERTIFICATE

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I, [REDACTED], reporter, hereby certify that the foregoing transcript of 33 pages is a complete, true and accurate transcript of the testimony indicated, held on July 30, 2010, at 1:31 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:

8/6/10

Official Reporter:

[REDACTED]

Diversified Reporting Services, Inc.

PROOFREADER'S CERTIFICATE

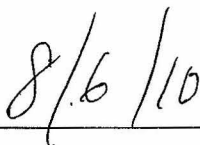
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In the Matter of: OIG-534
Witness: Number 26
File Number: OIG-534
Date: Friday, July 30, 2010
Location: Washington, D.C.

This is to certify that I,  (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.



(Proofreader's Name)



(Date)

Chapter Break

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)

) File No. OIG-534

OIG-534)

C COPY

WITNESS: Number 27

PAGES: 1 through 56

PLACE: Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C.

DATE: Friday, July 23, 2010

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

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, Inspector General

5

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

6

Office of Inspector General

7

Securities and Exchange Commission

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100 F Street, N.E.

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Washington, D.C. 20549

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11 On behalf of the Witness:

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1 C O N T E N T S

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3 WITNESS

EXAMINATION

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6 EXHIBITS:

DESCRIPTION IDENTIFIED

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E-mail chain dated 2/25/2010

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E-mail chain dated 2/26/2010

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E-mail chain dated 3/4/2010

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E-mail chain dated 4/7/2010

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SEC Administrative regulation

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P R O C E E D I N G S

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MR. KOTZ: All right. We are on the record at 12:36

p.m. on July 23, 2010 at the United States Securities and

Exchange Commission. I'm going to swear you in.

Would you please raise your right hand?

Whereupon,

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

was called as a witness and, having been first duly sworn, was

examined and testified as follows:

EXAMINATION

BY MR. KOTZ:

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

A

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

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

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

1 investigation by the Office of Inspector General, case number
2 OIG-534. I'm going to be asking certain questions, and you'll
3 be providing answers under oath.

4 A court reporter will record and later transcribe
5 everything is said. Please therefore provide verbal answers to
6 the questions, as a nod of the head or another non-verbal
7 response won't be picked up the court reporter. Also, so the
8 record will be clear please let me finish my question before you
9 provide your response. I'll try to let you finish your response
10 before I ask the next question.

11 In addition, it's important you understand the
12 questions and give accurate answers. If there's anything you
13 don't understand or anything you do not know or are not sure
14 about, please let me know, otherwise I will assume that you
15 heard and understood the question. Do you understand those
16 instructions?

17 A Yes. I do.

18 Q Okay. Great. I'll give you the perjury warning.
19 As you can see, your responses and statements given today are
20 provided after you've sworn an oath and will be taken down
21 verbatim by the court reporter. This is an official U.S.
22 government law enforcement investigation. The claims asserted
23 in this case are serious ones. It is very important you tell me
24 everything you know about the matter at hand and are completely
25 forthcoming and truthful with me.

1 I'm formally advising you that your testimony today
2 is subject to the laws of perjury. Providing false or
3 misleading testimony under oath is a serious offense. If the
4 evidence shows the testimony you have given is false we may
5 refer it as appropriate. Do you understand those instructions?

6 A I do.

7 Q Great. Okay. I'm going to start with a little bit
8 of background. Could you describe with me your education,
9 beginning with college?

10 A [REDACTED]

11 [REDACTED]

12 Q [REDACTED]

13 A [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 Q [REDACTED]

17 A [REDACTED]

18 Q [REDACTED]

19 A [REDACTED]

20 [REDACTED]

21 Q [REDACTED]

22 A [REDACTED]

23 Q [REDACTED]

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Yes. I believe it was in [REDACTED] I

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joined the Securities and Exchange Commission as [REDACTED]

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[REDACTED] under the office head, [REDACTED] in [REDACTED]

19

[REDACTED] And I stayed there about [REDACTED]

20

Q

Okay. What did you do in that [REDACTED] stint in

21

22

A

Marc Fagel and I basically -- there were no

23

[REDACTED] in the office, so we were -- we were

24

[REDACTED] the enforcement unit in the [REDACTED]

25

Q

Okay. What kind of activities did you conduct as

1 [redacted] enforcement unit?

2 A Basically we supervised enforcement investigations
3 and brought enforcement actions to the Commission for approval.

4 Q Okay. Who did you report to at that time?

5 A [redacted] was, at that time, [redacted]

6 [redacted] It would now be the [redacted] position.

7 Q And so that was [redacted] And so then what
8 did you do after that?

9 A I came to the home office [redacted]
10 and deputy director. At that time [redacted]
11 [redacted] and the deputy director was Linda Thompson.

12 Q And that was in [redacted] sometime?

13 A No. That was -- well, it would have been just the
14 end of [redacted]. I believe it was technically about [redacted]
15 of [redacted] but you could say I really got going in [redacted]

16 Q And how long did you serve in that position [redacted]

17 [redacted]

18 A I still hold that position.

19 Q Okay. And what were your duties in connection with
20 that position?

21 A The duties [redacted] are very
22 mixed. We wrote Congressional testimony. We wrote speeches. A
23 lot of it was what you would call utility fielding. Whatever
24 came up that [redacted] or deputy director should not have to
25 deal with [redacted] would deal with. And I shared my position

1 throughout my tenure with [REDACTED] And she and I split up
2 our duties and basically dealt with whatever comes up.

3 Q Okay. And who were your different supervisors over
4 the years?

5 A Well, first, as I say it was [REDACTED] and Linda
6 Thompson. Then when Linda became director of enforcement I
7 worked for Linda primarily. The deputy directors then were
8 Walter Ricciardi and [REDACTED] When [REDACTED] first and then
9 Walter left the Commission, there were two other deputies,
10 George Curtis and Scott Friestad.

11 Q Okay.

12 A And upon Linda's departure [REDACTED] to Rob
13 Khuzami and his present deputy, Lauren Reisner.

14 Q Okay. And who do you officially report to? The
15 deputy or the director?

16 A You know, I think the position is intended to report
17 to both of them. As a practical matter I've always reported
18 more directly to the director.

19 Q Okay. All right. And then did there come a time
20 when you decided to do a detail?

21 A Yes. I was given the opportunity to take a detail
22 probably around the very end of November of 2010. And I --

23 Q November of 2009?

24 A No. No. I'm sorry. I'm sorry. I misspoke. What
25 I meant was it was at the end of February in 2010, and I took --

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

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

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

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

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

18 Q Okay. How long is your detail duration?

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

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

23 A I am. Yes.

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

1 A Yes. That's correct.

2 Q Okay. All right. Now that I'm going to get into
3 some specifics, I want to just state for the record up front
4 that, you know, we are not looking to have revealed any
5 information regarding any investigations that the Senate
6 committee has conducted. And so what I would ask is if my
7 questions maybe unwittingly would be answered by providing that
8 information that you let me know. So I mean nothing about
9 anything the Senate has down in terms of their investigating or
10 other duties that they have is the subject of this testimony.
11 Okay?

12 A And I should tell you, before I left -- before I
13 left the SEC for my detail in the Senate, I did talk with our
14 office of legislative affairs about what I could disclose to the
15 Senate and what I could disclose back to the SEC while I was at
16 the Senate. And essentially we tried to erect an information
17 barrier, where I would not tell the Senate investigators
18 anything that I learned at the SEC, and likewise I would be
19 unable to tell anyone at the SEC things that I learned
20 exclusively in my employment at the Senate.

21 Q Okay. And those are some of the things we want to
22 talk about today, to kind of get clarity. I mean you understand
23 that our investigation relates to any alleged cooperation or
24 efforts between the SEC and the Senate. So your detail and some
25 of the e-mails back and forth that you were just describing is

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

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

8 Q Okay.

9 A Shortly after the investigation was started, because
10 at that time, as part of my duties (b)(6),(b)(7)(C)
11 one of the things that I prepared and circulated regularly was
12 something called the sub-prime spreadsheet. And that was a
13 listing, generally, of all of the sub-prime matters that were
14 open involving the financial crisis and the meltdown of the
15 housing market and so forth. We just generally referred to that
16 as sub-prime matters. And a number of those cases were open,
17 and I tracked them over time.

18 Q Okay.

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

1 matter, whether they were in testimony or still reviewing
2 documents, or whatever the status of the matter was. They would
3 give us kind of an update. And they did that I believe
4 quarterly and then monthly.

5 Q And that information would go to who?

6 A To me.

7 Q Okay. And then you would share it with [REDACTED]

8 [REDACTED] deputy director?

9 A Oh. The spreadsheet, after I had collated it, would
10 go to all of the senior managers of the enforcement division,
11 including the regional office heads. And for some period of
12 time it went directly on a monthly-basis to the sub-prime
13 enforcement task force that was division wide under Chairman
14 Cox.

15 Q And the Abacus, Goldman Sachs case was one of them
16 on this sub-prime list spreadsheet?

17 A Yes.

18 Q And so -- go ahead.

19 A I should clarify. There were at one time probably
20 100 or so matters on that list, which was the reason we created
21 it. There began to be too many to keep track of in our usual
22 way. So we created the sub-prime spreadsheet. And over time,
23 as matters were not panning out, some were deleted from the
24 list. And so the list was shrinking over time. But I do recall
25 the name Abacus.

1 Q And do you understand why the task force was
2 initiated by Chairman Cox, relating to sub-prime?

3 A Yes.

4 Q Why?

5 A Well, at that time we were in the thick of the
6 sub-prime meltdown, and it was important that the enforcement
7 division pursue cases involving misconduct that may have given
8 rise to the sub-prime mortgage crisis.

9 Q So is it fair to say that the Abacus, Goldman
10 investigation being on the sub-prime spreadsheet list had a
11 particularly high priority within the enforcement division?

12 A I would say that all of the sub-prime cases that
13 were on the spreadsheet, for the duration of time that they were
14 on the spreadsheet, had significant priority to the Commission
15 as a whole.

16 Q And this was something that was a priority for the
17 Commission under both Chairman Cox and Chairman Schapiro?

18 A I can't speak for Chairman Schapiro. The reason
19 that I felt that it was a priority for Chairman Cox was that I
20 was requested to circulate the sub-prime spreadsheet of our 100
21 plus sub-prime matters to all of the commissioners. And I knew
22 also that Chairman Cox had formed a sub-prime task force and
23 that, you know, obviously he would not have done so if it were
24 not a serious concern to the Commission as a whole. It was a
25 Commission-wide task force that took in trading in markets, I

1 think investment management, OC enforcement. It was
2 Commission-wide.

3 Q What did the task force do?

4 A The task force was meant to look at the reasons for
5 and any possible securities laws violations that may have led to
6 the sub-prime mortgage crisis in the United States financial
7 markets. And I believe that the other parts of the Commission,
8 other than enforcement, were looking for possible legislative
9 and rule-making solutions to any problems that they may find.

10 Q So would it be fair to say that there was a great
11 interest on the part of the Commission, at that point in time
12 under Chairman Cox, of the potential of enforcement bringing
13 cases, enforcement cases relating to sub-prime matters.

14 A If appropriate, and if we had the evidence to bring
15 such a case, yes.

16 Q Do you remember anything specific about some of the
17 information you received on the Goldman Abacus case? You said
18 you got it from time-to-time, or on a quarterly basis would find
19 an update. Do you remember anything about, oh, we think we're
20 about to bring it, or oh, it's taking a lot longer than we
21 thought or anything?

22 A Absolutely nothing specific about Abacus. I should
23 tell you that at the time we had a matter listed on the
24 sub-prime spreadsheet under what -- the cases were broken down
25 by various categories. There were cases against -- what would

1 you call it? -- mortgage lenders, people making loans directly
2 to borrowers.

3 Then there were cases against financial
4 institutions. And in that category there would be
5 investigations involving the major investment banks, [REDACTED]
6 [REDACTED] Goldman.

7 Almost every major investment bank was involved in selling
8 certain products that had sub-prime implications, and Goldman
9 was listed as one of the matters there.

10 And the way it would work is once a month or once a
11 quarter -- I can't quite recall when it was quarterly and when
12 it was monthly -- but I would send a note to everybody working
13 on these cases and say, can you update your sub-prime entries on
14 the spreadsheet. And then they would send me back, literally a
15 line to cut and paste into the chart that updated their matters.

16 And so my job was more to collate all the information coming
17 in.

18 But I didn't specifically give a lot of attention to
19 any of the line matters. And as I say, at one time we had more
20 than 100 investigations open. We subsequently reduced the list
21 to about 50, which would be 25 that we thought might result in
22 cases, and about 25 or so that were less likely to come to
23 fruition.

24 Q And was Goldman Abacus on the list of 25 that was
25 more likely?

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

11 So, you know, it didn't really strike me as Goldman
12 being among the major investment banks. It would have struck me
13 if they weren't on that list. And the name Abacus just stuck
14 out because it was an unusual name, and I really didn't know
15 what it meant. There were -- there may have been some other,
16 what I know now to be Goldman-related cases. But at that time I
17 didn't really associate them with Goldman. And that would be
18 (b)(6),(b)(7)(C) and possibly -- although I don't think it was on the
19 list -- (b)(6),(b)(7)(C).

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

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

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

1 There was a little bit of emphasis on Goldman. Maybe they
2 talked about (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) as possible targets as
3 well. And I knew nothing about the structured products that the
4 banks had been selling. So I looked through the -- in fact, I
5 printed out the action memos that were in the action memo
6 database about those matters.

7 But, you know, that's -- my reading the Goldman
8 action memo on Abacus I finally figured out that there was this
9 connection between Abacus and Goldman. Because actually the
10 other Goldman matter was not going to be pursued. The main one
11 that I had been looking at, as in the major financial
12 institutions group, was not pursued. They were going to close
13 that down. And so I was surprised in a way that we still had a
14 Goldman matter and that it was Abacus. So that's how I came to
15 know that the name Abacus, the name (b)(6),(b)(7)(C) and possibly
16 (b)(6),(b)(7)(C) were all related to Goldman Sachs. Because up to that
17 point I didn't.

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

1 [REDACTED]: Okay.

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

4 BY [REDACTED]:

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

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

16 BY MR. KOTZ:

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

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

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

1 I created a separate list to track those matters, because it was
2 one of the waves -- we get periodic waves the engulf the
3 enforcement division, mutual funds, market-timing was one
4 example of that. And the whole sub-prime wave we could see to
5 be another example that was going to stretch several years.

6 Q How many cases, approximately, were on the priority
7 case list?

8 A That's hard to say. It was about a 30-page list,
9 but it went through every major case category that we bring,
10 cases involving investment advisors, cases involving trading and
11 markets. Accounting fraud was typically our longest category of
12 cases. And as I say, this could be swayed over time, depending
13 on what large block of matters we were working often, because
14 very often you'll get a wave.

15 And so I believe that we tracked the market -- the
16 market-timing cases separately. And then when sub-prime came on
17 there were just too many cases to put on a list that was already
18 30 pages. Nobody would be able to keep track of that. So we
19 broke that out separately. And within that the option rate
20 securities cases got to be too large to keep in that
21 spreadsheet, so I broke them off eventually, and I had three
22 spreadsheets I was keeping.

23 Q Do you know if the Goldman Abacus case was on the
24 priority case list?

25 A I don't think it was, because we had decided fairly

1 early on to split off the sub-prime cases. In fact, we in the
2 enforcement division had started a sub-prime working group in, I
3 believe it was February of 2007.

4 Q Now, is this also a list that was utilized by Rob
5 Khuzami? Do you know?

6 A You know, I don't know whether Rob ever used the
7 list. I did circulate it once, possibly two or three times,
8 during his tenure, just to show him that we had it. He never
9 remarked on it to me, so I don't know to what extent he relied
10 on it. I do not that Linda Thompson and Chairman Cox and so
11 forth -- they all received it regularly, so I presume they read
12 it.

13 MR. KOTZ: Okay. All right. Let me show you an
14 e-mail exchange. And this relates to the timeline of your
15 discussions with ethics about what would happen when you get on
16 the committee. So we're going to mark the first document as
17 Exhibit 1.

18 (Exhibit No. 1 was marked for
19 identification.)

20 BY MR. KOTZ:

21 Q It's an e-mail exchange between you and (b)(6),(b)(7)
(C)
22 (b)(6),(b)(7)(C) dated 2/25/2010, 5:25 p.m. Why don't you take a
23 minute to read the exchange so you have all the context?

24 A Okay.

25 Q All right. And just initially, in the e-mail you

1 sent to [REDACTED] Thursday, February 25, 2010, you state,
2 for example, Goldman appears to be under investigation by the
3 committee. I assume you're referring to the permanent
4 subcommittee there?

5 A I was. Yes. Goldman was among several large
6 investment banks that they mentioned as possible targets of the
7 investigation.

8 Q And do you remember any reaction on the part of [REDACTED]
9 [REDACTED] or [REDACTED] or anyone else at the SEC about the fact
10 that Goldman was being investigated by the committee?

11 A No. No. I don't. I think -- I don't believe that
12 I ever had a discussion with [REDACTED] I do think that
13 [REDACTED] and I had a subsequent discussion in which we -- he
14 more or less -- you know, I don't know whether -- he may have
15 consulted with [REDACTED] I really don't know.

16 But I do know that [REDACTED] and I had a discussion of the
17 parameters, where we decided that we would erect this
18 information barrier, and that I wouldn't discuss anything I
19 learned at the SEC with the committee, and that likewise I
20 wouldn't pass back committee information to anyone at the SEC.

21 Q Okay. And I'll show you an e-mail on that, so that
22 you can have that in front of you. You say also in this e-mail,
23 I know that the SEC has already looked at Goldman on some of
24 these issues, but I think decided not to pursue it. Goldman has
25 settled with some state authorities, but not the SEC, although I

1 don't think we're going to follow-up. What was that based on?

2 A Well, that was, as I was trying to tell you, on the
3 sub-prime spreadsheet there was an entry that was labeled
4 Goldman Sachs. And that was under the large institutional
5 cases. And I believe the status on that said exactly what it
6 says here, that they'd settled with state authorities, didn't
7 look like it was going to become a case. So I assume -- that
8 was the one that I assumed was going to be closed.

9 Q But that was not the Abacus case?

10 A No. And in fact, based on looking on this now, I
11 think I had not yet associated Abacus and the other matters with
12 Goldman Sachs.

13 MR. KOTZ: Okay. All right. Let me show the next
14 document. We're going to mark it as Exhibit 2.

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

17 BY MR. KOTZ:

18 Q This continues the exchange between you, [REDACTED]
19 [REDACTED] and [REDACTED] And it was -- the top is an
20 e-mail from you to [REDACTED] and [REDACTED] dated 2/26/2010, 10:43
21 p.m.

22 A He did respond to me. Good to know.

23 Q And so at the bottom of the e-mail exchange you're
24 explaining, I guess, to [REDACTED] and [REDACTED]
25 [REDACTED] of the committee, it could obtain documents. And then

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

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

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

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

23 A Right.

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

1 with the PSI committee or not?

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

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

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

18 A Yes.

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

23 A Yes. I would say that there was some communication.
24 I mean obviously the whole reason that I went over there was
25 that the permanent subcommittee was doing an investigation of

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

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

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

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

23 A No. I didn't.

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

1 back to the SEC?

2 A No.

3 Q No you didn't?

4 A No. I did not.

5 Q Okay.

6 A And I believe that any communications that we had
7 were mediated through (b)(6),(b)(7)(C)

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

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

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

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

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

1 that would be --

2 A I believe it was [REDACTED] You know, [REDACTED]
3 [REDACTED] on the -- at the PSI, on the permanent subcommittee,
4 was -- well, he was the [REDACTED] and he also
5 discussed this with me. So in my mind -- I may not be
6 remembering exactly who told me what, but I did have an idea of
7 what the job was going to be from, I believe, [REDACTED] at
8 the SEC.

9 BY MR. KOTZ:

10 Q And do you know if the SEC was aware that the
11 permanent subcommittee was planning to do a hearing and then
12 hearings were delayed and then, you know, whatever the date of
13 the actual hearing was -- do you know if the SEC was aware of
14 that?

15 A At -- no. Actually that isn't exactly how things
16 happened. As I say, [REDACTED] we had the general -- I
17 had the general impression that the hearing that I would be
18 working on was one of a series of four, that mine would be the
19 last of four hearings that were -- I don't know whether they had
20 then been scheduled. But the only one they talked to me about
21 really was the one I'd be working on, which was role of the
22 investment banks, and that that was anticipated to be in June or
23 July.

24 MR. KOTZ: Okay. Because we have some -- it may
25 have been incorrect information, but we have internal e-mails

1 that -- within the SEC that talk about the fact that the SEC
2 folks thought there was a PSI hearing earlier -- in what period?

3 What was the first time they thought there was going to be a
4 hearing? February?

5 (b)(6),(b)(7)(C): At one point. Yes.

6 MR. KOTZ: Yeah. January or February. And then --

7 THE WITNESS: Nobody ever mentioned that to me.

8 BY MR. KOTZ:

9 Q Okay. And then the information that they got was
10 the hearing was not going to take place for some time. So you
11 don't know how the SEC may have gotten that information?

12 A I have no idea.

13 Q But it certainly wasn't from you?

14 A No.

15 Q Okay.

16 A No. Because I never knew that until you just said
17 it to me.

18 Q Okay. Do you think just generally, from being at
19 the SEC, that there would be any concern on the SEC's part of
20 having a hearing by the permanent subcommittee about a matter
21 that was similar to an ongoing investigation of theirs?

22 A I think certainly it would be a matter of interest.

23 Q To the SEC?

24 A Yes.

25 Q For what reason?

1 A They would want to know to what extent there was
2 overlap. When you're in litigation you have concerns about what
3 might be disclosed about your case before you're in a position
4 to disclose it. So, yes, there would be some -- you would be
5 interested in knowing what other authorities were going to do.
6 And I think that this situation was very complicated, because
7 there were numerous agencies looking at similar parties, and
8 everybody was more or less looking at the financial crisis.

9 So you had the FCIC. There was the banking
10 committee in Congress. There was PSI in Congress. And other
11 agencies also had investigations going. So I think it was a
12 fairly complex mix, and I think that all of them would have
13 been, to some extent, interested in what the other ones for
14 doing, if for no other reason than to avoid recreating the
15 wheel.

16 Q Okay. But what about from a press perspective?
17 When the SEC brings an action, particularly a high-profile
18 action, whether it's on a priority list, related to the
19 sub-prime mortgage crisis -- you know, we have some internal
20 documents that show there was an interest in trying to engender
21 press attention for that. There was a deterrent effect or other
22 -- many other, you know, very legitimate reasons to get
23 attention for a case.

24 But we have some information that leads us to
25 believe that there might have been concern that kind of the

1 essence of the action that the SEC was brining against Goldman
2 would have gotten out there through the PSI or another one of
3 these hearings prior to the SEC bringing their action. And that
4 might have been a concern in terms of kind of stealing their
5 thunder. In your experience, how would you comment on that?

6 A Well, I would say that with respect to this matter
7 in particular I have no knowledge of that.

8 Q Okay.

9 A If there were e-mails to that effect I was not a
10 party to them.

11 Q Okay.

12 A Nobody ever spoke to me about the Goldman case from
13 this side, other than I've already disclosed to you. From the
14 PSI side, knowing what I knew in my head, which was -- well, you
15 haven't asked me the question, but I'll tell you what little I
16 knew about the timing. I asked PSI -- I said do you -- as a
17 matter of policy, do you care whether other agencies are
18 investigating this matter. I said, for example, we know the
19 FCIC is looking at it, and all the other agencies who were
20 concerned with the investment banks are looking a similar
21 things; do you care who goes when. And from PSI's side the
22 answer was no, we don't care. They said we do our own
23 independent investigations. If some other agency is
24 investigating it, that's fine, but we're going to do our
25 investigation our way, and it's not a concern to us.

1 Q Okay.

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

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

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

15 BY MR. KOTZ:

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

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

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

1 particularly about Abacus?

2 A No. I knew nothing about the subjects, which are
3 really quite complicated, so I needed to find out, you know, if
4 you wanted to train somebody at the SEC to do work in this are
5 what would you have them read. And as I said, I wasn't looking
6 for -- nothing about non-public, pending cases, just how did
7 these products work.

8 Q Did you get anything from these folks? Do you
9 remember?

10 A Yes. Ken gave me materials that he was studying
11 that basically were off the web, I believe. Most of them were
12 off the web from major investment banks, where it seemed to be
13 the banks' training materials about these subject matter --
14 these types of structured products. And there were -- there was
15 also a memo from the risk division here, but it turned out to be
16 not particularly pertinent to what I was doing.

17 Q Okay. And there was nothing non-public in the
18 information that was provided to you at this time in March?

19 A Not that I'm aware of.

20 MR. KOTZ: All right. Let me show you the next
21 document we're going to mark as Exhibit 4.

22 (Exhibit No. 4 was marked for
23 identification.)

24 BY MR. KOTZ:

25 Q It's an e-mail exchange between (b)(6),(b)(7)(C) and

1 (b)(6),(b)(7)(C) 4/7/2010, 4:45 p.m. And it starts with an e-mail
2 that you sent. So that's the one I guess to focus on, the first
3 e-mail on the last page. This is actually you get to see what
4 they're saying in response.

5 A Yeah. That's amazing, because it was much briefer
6 when we spoke.

7 Q So don't tell them you got this information from us.

8 A Yeah. I see what they're saying here. And that's
9 -- so after this exchange I had not disclosed the investigation
10 to the committee. And as I say, at that time I didn't believe
11 they were aware of it. But, in fact, they had all the
12 documents, and they were aware of it, because Goldman Sachs had
13 produced all the documents to them in the ordinary course. So
14 they knew of the investigation earlier, but I did not disclose
15 it to them myself. Somebody said something to me that made me
16 aware, well into it, that they knew. And I was kind of shocked
17 that they did know.

18 But when I figured out how they knew it all made
19 perfect sense, because Goldman had given them the documents
20 requested that Goldman had. And it disclosed the investigation,
21 and when it started, and so forth. So even -- even if I had
22 disclosed, which I did not, I wouldn't have been telling them
23 anything they didn't already know.

24 But what happened after this series of e-mails --
25 the main concern that I had was that I knew in my head that

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

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

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

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

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

8 A No. I didn't. I didn't. I just asked (b)(6),(b)(7)(C)
9 (b)(6),(b)(7)(C) are there any other transcripts from anywhere, and he
10 said, we have been told there are not. And I said, based on
11 what (b)(6),
(b)(7)(C) had said to me, ask them again.

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

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

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

21 A No.

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

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

1 that PSI was already aware of the SEC investigation. Is that
2 right?

3 A That is correct.

4 Q Okay.

5 A I learned that later when, you know, we were trying
6 to sort all this out about the testimony.

7 BY MR. KOTZ:

8 Q And do you know why the SEC filed the action against
9 Goldman Sachs in the Abacus case on Friday, April 16th?

10 A No.

11 Q Do you have any information about the timing of it,
12 or why it was filed on a particular day?

13 A I think [REDACTED] I was generally aware that
14 they were getting close to filing an action or to going before
15 the Commission to get approval for an enforcement action. And
16 the reason I knew that was I had access to Rob Khuzami's
17 calendar, and there was an entry about it a man named [REDACTED]

18 [REDACTED] And it's actually [REDACTED]
19 [REDACTED]

20 And at around the same time -- and this was probably a week

21 [REDACTED] -- it said [REDACTED] Wells meeting. And then I was

22 reading the Abacus action memo, trying to figure out what

23 structured products were all about and what might be going on,

24 and [REDACTED] name came up there. So I was able to put two and

25 two together, oh, this is a Wells meeting in connection with

1 this Abacus case.

2 And so I knew they were close. But in my
3 experience, quite honestly, close when you're at a Wells stage
4 could mean they're going to bring the action next week or
5 they're going to bring it in 18 months. You really can't tell
6 from knowing that there is a Wells meeting when the action will
7 be filed, because there is so much administrative work that
8 needs to be done to go before the Commission, to get on the
9 calendar, to actually have a meeting, and sometimes matters are
10 sent back for a different approach or different work. So you
11 really can't tell from the fact that there is a Wells meeting
12 scheduled when an action might be filed. But you know they're
13 at the end of their investigation.

14 Q Okay. But you didn't know anything about the
15 specific timing?

16 A Not at all.

17 Q Okay. So you were surprised, or at least -- you
18 know, not surprised about an action in general, but surprised,
19 you know, in the timing when you found out, I guess probably
20 through the press, that the SEC had filed its action?

21 A It was very interesting. We were in the middle of
22 an interview with Goldman and its lawyers, and it came across on
23 my Blackberry on the internal service, you know, the press
24 release service. It said Goldman -- you know, SEC files action
25 against Goldman. I was stunned. But I was watching the

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

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

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

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

15 A No. Not to me.

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

20 A I don't know.

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

25 A No.

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

6 A No.

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

10 A No.

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

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

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

25 A No.

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

7 A No.

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

14 A No. I was not aware of that.

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

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

19 BY MR. KOTZ:

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

25 A So 6 up top?

1 Q Yes. 6. At the bottom of the page, under 15C, it
2 says notification of defendants. So it says, "every effort
3 should be made to avoid the possibility the defendants in an SEC
4 enforcement action first learn of the action when they read
5 about it in the newspapers or when they are called by a reporter
6 for a comment about the SEC's complaint. Division, regional, or
7 district office primarily responsible for the filing of a
8 particular complaint shall take all necessary steps to see that
9 the defendants and/or their counsel are given timely advice
10 concerning the action." Were you aware of this provision, if not
11 these specific words, just generally this provision?

12 A Now that I review it again, yes, you would not want
13 them to learn that the complaint had been filed from the
14 newspapers. But I would say that typically you would be in
15 close negotiations. Settlement negotiations often go up to just
16 before a matter is recommended to the Commission. And you only
17 go to the Commission if you can't settle the matter. You'll only
18 seek authority to file a litigated matter if you can't settle
19 it. So sometimes you're working on settlement negotiations
20 right up to the point where they break down, and then you seek
21 authority to file the litigated action.

22 So I'd say that in most cases the opposing party or
23 the respondents are well aware of where you are in your
24 investigation, and that if settlement negotiations break down
25 there's likely to be the filing of -- or you would go to the

1 Commission to seek authority to file a litigated action. So I
2 would say that, yes, you don't want them to read about it in the
3 newspaper, but it'd be very, very unusual if that was the case.
4 I mean --

5 Q What about a situation where there weren't
6 settlement negotiations right up to the end, where perhaps, as
7 in this case, the company would have no way of knowing that the
8 SEC was about to bring an action? I mean there might have been
9 a Wells meeting some months before, but if there were no
10 settlement discussions do you understand this policy to require
11 that the SEC give some kind of heads-up, kind of as a courtesy I
12 guess, that they're going to bring an action?

13 A You know, I think based on this it does not appear
14 to be a requirement. But it says every effort should be made to
15 avoid the possibility that somebody's going to read about it in
16 the newspapers. So I think that we would want to give some
17 notice if we were going to file a litigated action and they were
18 otherwise unaware of it. But I do know in this case there were
19 Wells meetings being held at least within the prior month or six
20 weeks. When did I leave? Yeah. So it would not have been that
21 long before.

22 And I do know, based on Goldman's disclosures, that
23 their lawyers for individuals are all working closely with
24 counsel for the company as well. They're all -- the individuals'
25 defense is being provided by the company, so it would be

1 surprising to me if counsel for individuals did not apprise the
2 company of where they were in their Wells negotiations.

3 Q What about market impact? Do you know while you
4 were at the SEC whether the SEC had a policy of informing the
5 New York Stock Exchange prior to filing a complaint against an
6 entity that might have an impact on the market?

7 A That I'm not aware of. I just have no information
8 one way or the other on that.

9 Q What about the idea of the third Friday of each
10 month having significance for the expiration of options? Were
11 you familiar with that?

12 A No.

13 Q In most of the -- I assume through your work at the
14 SEC in a very senior position you saw a lot of enforcement
15 cases.

16 A Yes. I did.

17 Q Okay. Would it be unusual to have a situation where
18 an enforcement case went forward to a recommendation for an
19 action, and an action was brought without any settlement
20 discussions at all?

21 A There are cases, particularly where have concern
22 that assets may leave the country, that we do not want the
23 defendant to have any advance notice of the action being filed.
24 Those are typically TRO type actions. But that does happen
25 quite often.

1 Q But other than those types of situations, where
2 there's a particular concern about the defendant's being aware
3 of certain information because of assets, are you aware of other
4 cases where the SEC went forward and just there were no
5 settlement discussions at all until the case was filed?

6 A The cases I'm familiar with have had settlement
7 discussions, so if that has happened I'm not aware of it, except
8 in the emergency dissipation of asset circumstances.

9 Q And how many cases would you say that you were aware
10 of during your time at the SEC?

11 A Well, what types of cases.

12 Q Well, you just said in the cases I saw they were
13 settled. So I'm trying to get a sense on how many we're talking
14 about.

15 A Well, when I was actually working on cases, per say,
16 in [REDACTED], we had about 40 year.

17 Q Okay.

18 A And I do know that on the whole we had both
19 litigated and settled. We typically filed somewhere in the
20 region of 650 enforcement actions per year in the last few
21 years.

22 Q And when [REDACTED] deputy
23 director did you have occasion to see a lot of these enforcement
24 cases?

25 A Yes. I did.

1 Q Okay.

2 A I did not -- I should make clear that I never worked
3 on the substance of the cases. But I would generally know which
4 cases -- part of my job was inventory and inventory flow. And
5 so I would know which cases were going to the Commission, which
6 ones might be approved. So I had some general information about
7 the types of cases we were bringing.

8 But I can't say that I was intimately familiar with
9 what had gone on in the case. Sometimes I would know from
10 general discussion that there had been settlement discussions.
11 That's what I would consider the ordinary case. If there were
12 cases where there were never any settlement discussions I'm not
13 aware of it, except in the dissipation of assets circumstance.
14 I can't say that it never happened, because I just don't have
15 sufficient knowledge of what was going on inside specific cases.

16 Q Okay. But you have a general knowledge of a lot of
17 cases, [REDACTED]

18 A Yes.

19 Q Okay. All right.

20 A I mean typically if the SEC calls you and says,
21 we're investigating you, its an opening salvo more or less. But
22 first we want the information. And I think the enforcement
23 staff is always open to settlement discussions, whether you call
24 them that or not. So I think the very fact that you're talking
25 to the other side about the information you want and what the

1 possible ramifications are, and certainly by the time you get to
2 the Wells notice -- the Wells notice is basically an invitation
3 to say, why shouldn't we sue you.

4 Q Right.

5 A So to some extent, that type of a settlement
6 discussion is unavoidable. You shouldn't sue me because --
7 anybody who responds to a Wells is more or less making a
8 settlement communication. So to me the whole -- the whole
9 process entails the possibility of settlement discussions,
10 implicit if not explicit.

11 Q But in many cases there are extensive settlement
12 discussions, well beyond the Wells notice. Right?

13 A Yes. That's true. And often they start from the
14 Wells notice. These are the charges we intend to file, and the
15 respondent will say, yes, but I don't think you have grounds for
16 the following charges, or you should not charge my individual
17 because.

18 Q Right.

19 A So all of it's the nature of a settlement
20 discussion, or something to change the charges or resolve the
21 matter. So, you know, to me, given the process that we have, I
22 don't know that it'd be fair to say there are no settlement
23 discussions. There may not be discussions that are said, I
24 would like to settle this case, I mean where it's explicit. But
25 there are always discussions about the charges we intend to

1 bring and any defenses, because we have a strong interest in
2 wanting to know what the defenses are before we bring a case.

3 Q But would you say it's common in the cases that
4 you've seen, over your time at the SEC, that in addition to the
5 Wells process there were other settlement discussions?

6 A Yes. That is common. I think if -- you know, I
7 don't know that the statistic is accurate, but almost all of our
8 actions are settled. It would be in excess of 90 percent of the
9 matters that we investigate, if we intend to bring a case, they
10 are settled before we go before the Commission.

11 Q And would you say of the 10 percent that are not
12 settled, in a large percentage of those cases there are
13 settlement discussions in addition to the Wells process, but
14 they didn't come to a resolution?

15 A Yes.

16 Q Okay. Now, recently the SEC announced that it had
17 settled its case with Goldman Sachs. You're aware of that, I
18 assume?

19 A Yes.

20 Q Okay. But again, when you learned that information
21 were you surprised by that?

22 A Oh, yes.

23 Q Okay.

24 A So you didn't have any knowledge that that was going
25 to happen before it happened?

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

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

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

1 because that's, you know, information that I had about what the
2 job would be like, and it turned out to be radically different.
3 But in short experience in Congress, its very unpredictable.

4 Q Now, were you aware that there were news reports
5 that came out after the SEC settlement that stated the
6 particular vote in the case on the settlement?

7 A Yes. I did read the Wall Street Journal article.

8 Q Were you surprised that that information was out
9 there? Wouldn't that be non-public information?

10 A It would be non-public information. It should not
11 be out there. But there have been incidents in the past where
12 the Wall Street Journal has had remarkably accurate non-public
13 information.

14 Q And were there general concerns within the
15 enforcement division to your -- in your experience about leaks?

16 A Yes.

17 Q But are you aware of any information indicating in
18 this case that anyone at the SEC had provided any non-public
19 information about the settlement to the --

20 A Other than the article that was published, not at
21 all.

22 Q Do you know, just kind of generally, if the SEC was
23 concerned that there was a leak and potentially concerned that
24 information about a settlement would get out there? Would the
25 SEC want to make sure that they filed their action before the

1 information was released?

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

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

17 A Certainly.

18 Q Okay. And why would that be?

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

25 But the understanding is that the SEC will be the

1 first party to announce -- or announce jointly with criminal
2 authorities -- and that the respondent will then make some --
3 but they are free to make some kind of response to the filing,
4 but that typically the practice is that the SEC and the
5 prosecuting authorities, if any, will announce first.

6 Q Okay. And in terms of what you described earlier,
7 the deterrent effect in terms of press attention from the SEC,
8 would there also be a consideration on the SEC's part that they
9 wanted to get the story out first from them, rather than have
10 the story already out there and by the time they announced it,
11 it was kind of old news?

12 A It's not so much the concern about it being old
13 news, although I think any kind of press office would tell you
14 that that is a concern. But it's more to have the information
15 from our perspective and accurate first. And from what little
16 I've read in the newspapers about this settlement, it would be a
17 concern that the settlement be portrayed accurately.

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

20 (A brief recess was taken.)

21 MR. KOTZ: All right. Back on the record. All
22 right. We don't have any further questions. The only thing I
23 would ask is in order to preserve the integrity of our
24 investigation that you not discuss the content of your testimony
25 with anyone.

1 THE WITNESS: Sure.

2 MR. KOTZ: Okay.

3 THE WITNESS: I do need to confirm to the Senate
4 that we didn't discuss the substance of the Senate's
5 investigation.

6 MR. KOTZ: Right. I mean that's fine. Because
7 you're really just saying what you didn't discuss rather than
8 what you did discuss. But otherwise, if you would not, that
9 would be great.

10 THE WITNESS: Yes. That's fine.

11 MR. KOTZ: Okay. Then we are off the record.

12 (Whereupon, at 1:49 p.m., the interview was
13 concluded.)

14 * * * * *

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23 REPORTER'S CERTIFICATE

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25

1 I, (b)(6),(b)(7)(C) reporter, hereby certify that the foregoing
2 transcript of 54 pages is a complete, true and accurate
3 transcript of the testimony indicated, held on July 23, 2010, at
4 12:36 p.m. in the matter of: OIG-534.

5

6

7 I further certify that this proceeding was recorded by me, and
8 that the foregoing transcript has been prepared under my
9 direction.

10

11

12

13

Date: 7/30/10

14

Official Reporter:

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

15

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PROOFREADER'S CERTIFICATE

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1 In the Matter of: OIG-534
 2 Witness: Number 27
 3 File Number: OIG-534
 4 Date: Friday, July 23, 2010
 5 Location: Washington, D.C.

6

7

8 This is to certify that I, (b)(6),(b)(7)(C) (the
 9 undersigned), do hereby swear and affirm that the attached
 10 proceedings before the U.S. Securities and Exchange Commission
 11 were held according to the record and that this is the original,
 12 complete, true and accurate transcript that has been compared to
 13 the reporting or recording accomplished at the hearing.

14

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

7/30/10

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(Proofreader's Name)

(Date)

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Chapter Break

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:

)

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

) File No. OIG-534

OIG-534

)

WITNESS: Number 29

PAGES: 1 through 79

PLACE: Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C.

DATE: Tuesday, August 3, 2010

The above-entitled matter came on for hearing, pursuant to notice, at 1:33 p.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, Inspector General

5 

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

14 Robbins Russell Englert Orseck Untereiner & Sauber, LLP

15 1801 K Street, N.W., Suite 411L

16 Washington, D.C. 20006

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C O N T E N T S

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WITNESS

EXAMINATION

5

EXHIBITS:

DESCRIPTION

IDENTIFIED

Agreements

12

January 4, 2010, E-mail,

[REDACTED] and Khuzami

12

January 15, 2010, E-mail,

[REDACTED] Cohen and Nisanci

16

February 25, 2010, E-mail,

[REDACTED] and [REDACTED]

17

April 11, 2010, E-mail,

[REDACTED] and [REDACTED]

28

April 14, 2010, E-mail,

[REDACTED] and [REDACTED]

31

April 14, 2010, E-mail,

[REDACTED] and Lench

33

April 14, 2010, E-mail,

Marlin to [REDACTED], Cohen and Nisanci

43

April 15, 2010, E-mail, [REDACTED]

47

April 16, 2010, E-mail,

Marlin to [REDACTED]

48

1	EXHIBITS:	DESCRIPTION	IDENTIFIED
2	11	April 16, 2010, E-mail,	
3		[REDACTED] and [REDACTED]	51
4	12	E-mail, [REDACTED] and [REDACTED]	52
5	13	April 19, 2010, E-mail,	
6		[REDACTED] to Nisanci, Cohen and Delfin	65
7	14	Regulation	68
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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 1:33 p.m. on
3 August 3, 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 BY MR. KOTZ:

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

14 A It's

15

16 Q [REDACTED], my name is David Kotz. I'm
17 the Inspector General of the United States
18 Securities and Exchange and I have with me my
19 colleague from the Office of the Inspector
20 General, [REDACTED]

21 MR. KOTZ: Would your counsel like to
22 introduce yourselves for the record?

23 [REDACTED]: My name is [REDACTED]

24 I'm counsel to Eric. This is my colleague [REDACTED]

25 [REDACTED]

1 BY MR. KOTZ:

2 Q This is an investigation by the Office
3 of the Inspector General, Case Number OIG-534.
4 I'm going to ask you certain questions and you'll
5 be providing answers under oath. The court
6 reporter will record and later transcribe
7 everything that is said. Please, therefore,
8 provide verbal answers to the questions as a nod
9 of the head or another nonverbal response won't be
10 picked up the court reporter. Also so the record
11 will be clear, please let me finish my question
12 before you provide your response.

13 In addition, it is important that you
14 understand the questions and give accurate
15 answers. If there's anything you don't understand
16 or anything you do not know or are not sure about,
17 please let me know. Otherwise I will assume that
18 you've heard and understood the question.

19 Do you understand those instructions?

20 A I do.

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

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

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

12 Do you understand those instructions?

13 A I do.

14 Q Why don't we start with a little
15 background? Could you describe for me your
16 education beginning with college?

17 A 

18 

19

20

21 Q 

22 A

23 Q

24 A

25 Q

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

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

3 Q

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 A

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

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

11 A

12 Q

13 A

14 Q

15 A

16 Q

17 A

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

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

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

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

22 Q

23 A

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

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when I came to the SEC.

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When exactly did you start with the SEC?

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-- officially of -- of

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Q

What's your current position?

23

A

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Office of Legislative and

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Intergovernmental Affairs.

1 **Q What are your duties in that position?**

2 A Very similar to the [REDACTED] I serve as
3 liaison to congressional actions for the
4 Commission.

5 **Q How many staff do you have working for**
6 **you in the Office of Legislative and**
7 **Intergovernmental Affairs?**

8 A I have three professional staff, and
9 then one support staff officially with the office
10 and I think there's two or three who are -- have
11 at various times worked for the Office of
12 Legislative Affairs and sort of float back and
13 forth between that office and the Chairman's.
14 They're support staff.

15 **Q Who do you report to?**

16 A I report to the Chief of Staff.

17 **Q Did there come a time when you became**
18 **aware of the existence of an investigation by the**
19 **SEC into the sale of collateralized debt**
20 **obligation by Goldman Sachs known as the Abacus**
21 **Investigation?**

22 A I became aware of an investigation of
23 Goldman Sachs. I didn't know initially that it
24 involved anything on Abacus or anything else.

25 **Q When did you first become aware of just**

1 the fact that the SEC was investigating Goldman
2 Sachs? I assume it was subsequent to August 2009.

3 A Yes. I really don't know originally. I
4 knew by early of 2010, but I don't know if I had
5 heard earlier than that.

6 Q When you first learned of the
7 investigation, what did you learn? What did you
8 hear about the investigation?

9 A Just that the SEC was conducting an
10 enforcement investigation into Goldman Sachs.

11 Q Did you understand that investigation to
12 be considered a national priority investigation
13 for the SEC?

14 A I don't know what that is.

15 Q Did you understand that the
16 investigation into Goldman Sachs had any
17 particular significance within the SEC or within
18 the Division of Enforcement?

19 A No.

20 Q Were you aware that the investigation
21 was put on the Commission calendar and then taken
22 off the calendar on two different occasions?

23 A I knew of one occasion where it was on
24 and off.

25 Q Do you know when that was? Was that in

1 **December or January?**

2 A I think that was -- I think that was
3 January.

4 MR. KOTZ: Let me show you some
5 documents and you have them in front of you so
6 you'll be able to recollect things. Why don't we
7 put the confidentiality and nondisclosure
8 agreements into evidence? We will mark them both
9 together as Exhibit 1 and if counsel can just
10 verify for the record that this is their
11 signatures on each one of these documents.

12 (b)(6),(b)(7)(C) : It is.

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

14 MR. KOTZ: Why don't we mark as Exhibit
15 2 as an e-mail exchange between you and Rob
16 Khuzami dated 1-4-2010 at 7:52 p.m.?

17 (Exhibit Nos. 1 and 2 were marked for
18 identification.)

19 BY MR. KOTZ:

20 Q Do you recall in January 2010 there was
21 discussion about the SEC being ready to bring the
22 Goldman case?

23 A From -- I recall this e-mail.

24 Q What do you recall about this e-mail?

25 A Very little, just that the Enforcement

1 Division indicated that they were curious about
2 the timing of whether we knew anything about when
3 PSI was -- the Permanent Subcommittee on
4 Investigations, was going to move forward with
5 their hearing or investigation.

6 Q Do you know why the Enforcement Division
7 was interested in that?

8 A Just from the e-mail in terms of -- of
9 whether there was -- their investigation was going
10 to -- be preempted by PSI.

11 Q What do you mean preempted by PSI?

12 A That PSI would hold a hearing before the
13 -- before Enforcement brought their case.

14 Q Was that a concern to the Enforcement
15 Division?

16 A I don't know whether it was of concern
17 to them.

18 Q Robert Khuzami sends an e-mail to you on
19 Monday, January 4, 2010, at 1:45 p.m., where he
20 references the Senate Permanent Subcommittee on
21 Investigations and he says, As we would certainly
22 want to file our Goldman case before the hearing
23 which will put us on the offensive on this issue.
24 Do you know what he meant by put on the offensive?

25 A No, I don't.

1 Q (b)(6),(b)(7)(C) is someone who works for
2 you?

3 A Yes, she is.

4 Q She said, This is somewhat delicate
5 because they likely don't want us to beat them to
6 the punch either. What does that mean, beating
7 them to the punch?

8 A I think it means that the concern was
9 that both were pursuing actions against Goldman
10 Sachs, neither knew what the other was doing, and
11 I think (b)(6),(b)(7)(C) was being careful not to let PSI
12 know that we were doing anything.

13 Q Was there an interest in the agency in
14 bringing its action against Goldman Sachs prior to
15 the PSI having their hearing?

16 A I don't know. There wasn't in our
17 office. Our only interest was responding to the
18 question. I mean, we didn't care when they
19 brought the case.

20 Q What did you find out about the case,
21 your office I mean?

22 A As far as I know nothing. I mean, (b)(6),(b)(7)(C)
23 -- Rob said he didn't want to check and we didn't.
24 I mean, we -- we continued -- we were getting
25 requests from PSI for information and so forth so

1 we knew they were still proceeding but we weren't
2 -- in terms of timing we weren't -- I wasn't aware
3 we knew anything about their timing.

4 Q We had testimony from both [REDACTED]
5 and [REDACTED] that there were conversations
6 with folks on the PSI staff at that time to find
7 out about the hearing. Were you not aware of
8 those conversations?

9 A No.

10 Q Would that be unusual that the staff
11 under you would have conversations and you
12 wouldn't be aware of them or do you think maybe
13 you just don't remember them?

14 A I don't remember them and I don't think
15 it would be unusual that they would be talking to
16 the staff.

17 Q Without letting you know? That was my
18 question. Not about them talking with the staff,
19 but that you wouldn't know about it.

20 A They would probably let me know, but a
21 question of timing wouldn't be a very significant
22 -- I mean, if they were going to be holding a
23 hearing and they were asking when a hearing was
24 going to be held, that wouldn't necessarily be
25 something that they would let me know.

1 Q You were aware at that time that the SEC
2 was ready to bring the case against Goldman?

3 [REDACTED]: When you say "at that
4 time," do you mean on January 4?

5 BY MR. KOTZ:

6 Q Yes, in that time period, the January
7 2010 timeframe. Do you know why the SEC did not
8 go forward with its case at that time?

9 A No, I don't.

10 MR. KOTZ: Let me show you the next
11 document which will be marked as Exhibit 3. It's
12 an e-mail exchange between [REDACTED]
13 [REDACTED] Steve Cohen, Didem Nisanci and you dated
14 1-15-2010 at 12:52 p.m.

15 (Exhibit No. 3 was marked for
16 identification.)

17 BY MR. KOTZ:

18 Q Maybe this will refresh your
19 recollection. There's a e-mail from [REDACTED]
20 Friday, January 15, 2010, at 11:48 a.m., saying:
21 For what it's worth, the soft touch intel we're
22 getting from PSI is that they are doing a hearing
23 on this anytime soon.

24 A Let's look through it.

25 Q Do you remember anything about [REDACTED]

1 [REDACTED] finding out that PSI was not doing a
2 hearing?

3 A No, I don't remember.

4 Q Did you have an understanding of what
5 exactly what PSI was looking at in their hearing?

6 A No. I just knew they were looking
7 generally at Goldman Sachs.

8 Q Do you know if they were looking at any
9 of the specific issues that the SEC was looking at
10 in its investigation?

11 A No, I don't know. I wasn't privy to
12 those conversations on either end. I didn't know
13 either what the -- what the SEC was looking at or
14 what the PSI was looking at.

15 Q It looks like your staff was more
16 involved with those issues. Yes?

17 A Yes.

18 MR. KOTZ: Let me show you the next
19 document. We're going to mark it as Exhibit 4,
20 dated 2-25-2010 at 7:33 p.m., an e-mail exchange
21 between you and [REDACTED]

22 (Exhibit No. 4 was marked for
23 identification.)

24 BY MR. KOTZ:

25 Q Do you remember this issue with [REDACTED]

1 [redacted] who was an [redacted] who was detailed
2 to the PSI?

3 A Yes.

4 Q What do you remember about this?

5 A I remember that she had contacted [redacted]
6 asking essentially whether she could reveal to the
7 committee anything that she might know
8 confidentially from her time at the SEC, and that
9 we responded that she should not do that, that as
10 a detailee she should be communicating through us
11 on anything and she shouldn't reveal any
12 confidential information.

13 Q Did you understand at the time that the
14 folks on the PSI were aware that the SEC was
15 investigating Goldman?

16 A No, I was not aware of that, and part of
17 what this was about was to try and make sure they
18 didn't know. I mean, we were trying to make sure
19 that no one inadvertently revealed anything about
20 the existence or nonexistence of an investigation.

21 Q We had testimony from folks under you
22 that during this time period the folks on the PSI
23 were well aware of the Goldman investigation.
24 Does that surprise you?

25 A No. I mean, it was -- people were

1 speculating in the press all over the place as to
2 whether or not we were doing it. In fact, at one
3 point, I don't know if it was before or after
4 this, Ben Bernanke had testified that he was sure
5 that the SEC was investigating Goldman Sachs at a
6 congressional hearing. So there had been a lot of
7 speculation I thought in the press at that point
8 in time.

9 Q Do you know if [REDACTED] ever did
10 discuss the either existence of or the specifics
11 of the Goldman investigation with the PSI?

12 A No, I don't know.

13 Q Do you know if the PSI ever requested or
14 sought documents from Goldman that were the same
15 documents that the SEC was looking at in its
16 investigation?

17 A I don't know about their document
18 requests.

19 Q Was there any concern that you're aware
20 of that the PSI might by their actions interfere
21 with the SEC's investigation of Goldman?

22 A Yeah. I mean, I think there was -- that
23 was a concern throughout. It was one of the
24 reasons we didn't want to reveal that there was an
25 investigation going on was because PSI might

1 request or ask for things that might impinge on
2 the investigation.

3 Q But you don't know whether that in fact
4 happened?

5 A No.

6 Q Was it was a concern but you don't know
7 whether it occurred?

8 (b)(6),(b)(7)(C): I'm sorry. I don't
9 understand that.

10 BY MR. KOTZ:

11 Q You said it was a concern, but was there
12 anything done to alleviate the concern? It seems
13 like you were aware that there was a concern for a
14 period of time about this, but then you don't know
15 if there was any problem.

16 A We just -- in my office at least we just
17 tried -- as far as I knew, we tried to make sure
18 that none of us revealed the existence or
19 nonexistence of the investigation, that even if
20 the committee told us that they knew of something,
21 my standard response would have been -- although I
22 wasn't talking to the committee would have been
23 I'm not going to talk to you about it. I can't --

24 Q Did you have any conversations with
25 anyone on the committee?

1 A Not that I recall.

2 Q It says in the response that (b)(6),(b)(7)
(C)
3 (b)(6),(b)(7)(C) came to (b)(6),(b)(7)(C) that you replied
4 as a good answer. I would think that you could
5 talk to SEC staff on PSI or SEC specific stuff in
6 the same way that PSI could talk to them now,
7 i.e., by contacting us in leg affairs and letting
8 us set up a phone call or meeting with PSI now
9 including you and the SEC staff. Do you know if
10 any meetings or phone calls were set up with PSI?

11 A I think -- I think there were ongoing
12 conversations and meetings with PSI. I was not a
13 party to any of the PSI conversations.

14 Q Do you know who on the SEC was a party
15 to those conversations?

16 A At least in my office it would have been
17 primarily (b)(6), (b)(7)(C) and (b)(6),(b)(7)
(C)

18 Q Do you know what the substance of those
19 conversations was?

20 A No, I don't.

21 Q They wouldn't report back to you what
22 they talked about?

23 A They would tell me generally that they'd
24 talked to PSI and that they're -- on the Goldman
25 stuff. The most I recall is that there might be

1 conversations about certain types of documents,
2 but -- that our people were -- we were just
3 serving a liaison function, our people had
4 answered the questions and they would come back to
5 me and say that they thought that the meeting
6 either went well or -- and that they seemed
7 satisfied with the responses.

8 Q This was PSI seeking information?

9 A Yes.

10 Q What kind of information were they
11 seeking?

12 A I wasn't part of those conversations.

13 Q You don't remember even generally what
14 kind of information they were seeking?

15 A My understanding was they were just
16 generally seeking information about Goldman and
17 some of their transactions, but -- but I don't
18 know the details.

19 Q The SEC was able to talk to PSI about
20 Goldman and their transactions as long as it
21 wasn't nonpublic information?

22 A As long as we were responding to their
23 questions and not indicating anything about our
24 investigation.

25 Q But the SEC had certain knowledge about

1 Goldman that they could share with PSI that was
2 public. Is that right?

3 A I mean, I assumed that whatever the
4 enforcement people were -- or whoever was on that
5 call would be only sharing public information.

6 Q But there are times are there not where
7 the SEC and the Commission approves the SEC and
8 leg affairs to provide nonpublic information to
9 Congress.

10 A That's correct.

11 Q Do you know if this was one of those
12 cases where the Commission allowed the SEC to
13 provide nonpublic information to PSI or was it
14 limited to public information?

15 A I don't know if this was one of those
16 cases or not.

17 Q Is it your understanding that in order
18 for your folks in leg affairs to provide nonpublic
19 information to folks in Congress that you would
20 have to have specific approval from the Commission
21 or is there some kind of delegated authority?

22 A No, you'd need specific approval from
23 the Commission.

24 Q For the category of information?

25 A Yeah, for -- specially for

1 enforcement-related information.

2 Q And you don't remember whether that
3 occurred with the Goldman matter to PSI?

4 A No, I don't recall.

5 BY [REDACTED]:

6 Q Correct me if I'm wrong, but you came to
7 learn that the Abacus investigation got pulled
8 from the Commission calendar in January. Is that
9 right?

10 A Yes.

11 Q How did you come to learn that?

12 A I think it was just hallway
13 conversations that the case had been pulled.

14 Q With whom?

15 A I would guess it would be -- I actually
16 don't recall. I mean, my guess would be that it
17 would either by [REDACTED] or Steve Cohen.

18 Q Did you come to learn why it had been
19 pulled from the calendar?

20 A Not that I recall.

21 BY MR. KOTZ:

22 Q Was the fact of the SEC bringing an
23 action against Goldman after its investigation
24 have an effect on you in Legislative Affairs?

25 A I'm sorry. Could you repeat the

1 question?

2 Q Was it relevant for you in Legislative
3 Affairs that the SEC was about to or was bringing
4 an action against Goldman?

5 A It was only relevant from the standpoint
6 of once they brought the action we would have to
7 communicate that action to the Hill and let them
8 know that that action had been taken.

9 Q Why would you have to communicate that
10 to the Hill?

11 A Because lots of significant actions by
12 the Commission, we provide press releases or other
13 public announcements to key Hill staffers so that
14 they know what we're doing at the Commission.

15 Q How do you decide which one is a
16 significant action?

17 A Tends to be sort of an ad hoc decision.
18 It can be things that they've indicated an
19 interest in, it can be things that will generate
20 significant public interest or comment, things
21 that they might get questions about from the press
22 or public.

23 Q How was it determined that the Goldman
24 case was one that you would want to communicate
25 with Capitol Hill about?

1 A It was a -- well, we knew that PSI was
2 conducting an investigation and we know that the
3 case would generate some comment, and so that was
4 -- that indicated that it was probably one that we
5 would want to make sure that staff knew about.

6 Q Is it fair to say since it was a case
7 brought against a prominent investment bank it
8 might be something that Capitol Hill would be
9 interested in?

10 A I mean, I think any prominent case by
11 the SEC, I mean, it -- similarly as when we
12 settled Bank of America or that sort of thing,
13 significant cases, we sent up the e-mails for a
14 number of enforcement cases that come through
15 after they're disclosed.

16 Q You said that there was speculation out
17 there about the Goldman case. Other than PSI were
18 there any inquiries from anybody in Congress about
19 Goldman such that you would particularly have to
20 provide them a heads-up once the action was filed?

21 (b)(6),(b)(7)(C) : During what time period?

22 BY MR. KOTZ:

23 Q Really any time period.

24 A The -- in terms of have to, I mean, we

25 --

1 Q Or want to.

2 A We would -- we got -- we got a number of
3 requests or questions after the Bernanke inquiry,
4 and so I mean they were going to have an obvious
5 interest.

6 Q Do you remember when the Bernanke
7 inquiry was?

8 A I believe it was in February.

9 Q Do you remember which congressional
10 offices asked questions or followed-up?

11 A No. No, because I didn't even -- we
12 just told them at that time we couldn't talk about
13 it.

14 Q Was there a list of offices within
15 Congress that the information about the Goldman
16 action was to or was it more broad brush?

17 A No, usually what we do is we have the
18 primary authorizing committees and primary
19 authorizing subcommittees, majority and minority,
20 and that's the -- the first cut usually of who
21 gets those e-mails.

22 Q But if another office had inquired about
23 it, they would be added to the list?

24 A We would shoot them an e-mail as well,
25 yeah.

1 Q Who would be the one in your office to
2 determine who is on the list?

3 A I mean, there was no set kept list of,
4 you know, this is the Goldman list or anything
5 like that. It would be if people had received a
6 contact and felt that they wanted to send it to
7 someone, they could send it.

8 MR. KOTZ: Let me show you the next
9 document. We're going to mark it as Exhibit 5, an
10 e-mail exchange between you and (b)(6),(b)(7)(C) dated
11 4-11-2010, at 6:47 p.m.

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

14 BY MR. KOTZ:

15 Q Do you remember this issue with the PSI
16 looking to have somebody testify at their April 27
17 hearing?

18 A Yes, I do.

19 Q What do you remember about it?

20 A I remember that they were looking for a
21 witness, potentially initially (b)(6),(b)(7)(C) or
22 somebody else, who could provide testimony with
23 regard to the types of documents that the
24 subcommittee was interested in.

25 Q It looks like in this e-mail that you

1 **were concerned about** (b)(6),(b)(7)(C) **being the**
2 **individual.**

3 A I thought that it would be a bad idea
4 for an SEC witness to be testifying at a hearing
5 and -- essentially because I had no idea whether
6 (b)(6),(b)(7)(C) had been involved in the case or not,
7 so you would have an SEC witness with -- who may
8 or may not be saying things consistent with what
9 the SEC's case and enforcement --

10 **Q Did you make any inquiry to determine if**
11 (b)(6),(b)(7)(C) **had worked on the SEC**
12 **investigation of Goldman?**

13 A I think (b)(6),(b)(7)(C) did, and I believe that he
14 told me that -- that (b)(6),(b)(7)(C) had not up to that
15 point been involved in the investigation.

16 **Q Did that ally your concerns?**

17 A No. I still thought it would be a bad
18 thing for the Commission to have a witness up
19 testifying in a congressional hearing if we had a
20 case.

21 **Q How come?**

22 A Well, because the -- there are different
23 rules of evidence, thee are -- a witness could
24 easily say something that could harm the
25 Enforcement Division's case especially if they

1 weren't part of the Enforcement Division and
2 hadn't been privy to the investigation. So that
3 struck me as a bad idea.

4 Q Did you have an understanding at this
5 time I guess around April 11 that the SEC was
6 about to bring its case?

7 A I believed so. I believed that there
8 had been some talk that the case was nearing
9 completion and being ready to be brought.

10 Q Did you have an understanding that the
11 SEC's case would actually come before this April
12 27 hearing?

13 A That I can't recall. I don't know that
14 I knew when it was calendared.

15 Q Would that make a difference in your
16 concerns about whether (b)(6),(b)(7)(C) should
17 testify whether the PSI hearing was either before
18 or after the SEC brought its case?

19 A No. I think I'd have concerns either
20 way, but they might be slightly different
21 concerns. I mean, I think it was before I'd
22 obviously be concerned about a witness who would
23 be revealing the existence of an SEC investigation
24 that hadn't been made public. If it was after --

25 Q To clarify, if it was before you mean if

1 the PSI hearing was before the SEC brought its
2 case?

3 A Right. Right. If the PSI hearing was
4 after the SEC brought its case, I would still have
5 concerns about trying the case in a congressional
6 hearing.

7 MR. KOTZ: Let me show you the next
8 document and we'll mark it as Exhibit 6. This is
9 an e-mail between you and [REDACTED] 4-14-2010
10 at 9:23 p.m.

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

13 BY MR. KOTZ:

14 Q It looks like from the previous that you
15 said, I think we should push [REDACTED] hard to come up
16 with some names so that it doesn't end up being
17 him, but then [REDACTED] references a lengthy
18 conversation he had with them where they strongly
19 prefer [REDACTED] and they were trying to preface it.
20 Do you remember whether the PSI came back with
21 some kind of compromise or what happened here
22 exactly?

23 A What I recall of it was that we had had
24 trouble initially reaching [REDACTED] that we had --
25 that he was in New York or something, that we more

1 significantly getting trouble some alternative
2 names from [REDACTED] that we wanted to provide to the
3 committee as a possible other witness. The -- the
4 -- I -- other than what's in this e-mail, I don't
5 recall what sort of arrangement they were willing
6 to -- to set up for -- for [REDACTED] as a witness, but
7 it's -- still it would not have changed my feeling
8 that that was just a bad idea because there was no
9 way that Levin would be able to control the
10 questioning or to provide the kind of assurances
11 that -- that -- whatever they might be. I mean,
12 once the other senators start asking questions,
13 there wasn't going to be a whole lot he could do
14 in that situation.

15 Q You said that you were having trouble
16 getting other names from [REDACTED]
17 Wouldn't there be other people within the
18 Commission who could come up with names? Why
19 would you have to go back to him?

20 A Well, he was the one that they had asked
21 for so that was our first place to go. I think
22 [REDACTED] may have also asked some other folks as well,
23 maybe [REDACTED] and some other folks for some
24 academics who might be able to fill the same role
25 for the committee.

1 Q Do you know if other names were given to
2 the SEC to the PSI?

3 A I don't know for sure.

4 Q Do you know whether [REDACTED]
5 testified in the end?

6 A He did not.

7 Q Do you know if there was somebody else
8 in his place for those same issues?

9 A I don't know.

10 Q Are you aware that the PSI took place
11 after the SEC files its action?

12 A Yes. Yes.

13 Q Given that the PSI hearing took place
14 after the SEC filed its action and there were no
15 SEC folks who testified, the concerns were
16 allayed. Is that right?

17 A Yeah.

18 MR. KOTZ: Why don't we mark the next
19 document Exhibit 7? This is an e-mail exchange
20 between [REDACTED] and Kenneth Lench, 4-14-2010 at
21 10:11 p.m.

22 (Exhibit No. 7 was marked for
23 identification.)

24 BY MR. KOTZ:

25 Q I don't think your name is on it but I

1 wanted to ask you a question about it anyway.

2 Were you aware generally during that week, the
3 week of April 12 through 16, that the SEC was
4 about to file an action against Goldman?

5 A Yes.

6 Q You needed to know that because of your
7 Legislative Affairs duties?

8 A Yes.

9 Q Were you involved in reviewing the
10 complaint?

11 A No.

12 Q Were you involved in reviewing press
13 releases?

14 A Yes.

15 Q What was your role in what happened that
16 week with regard to the announcement of the
17 Goldman case?

18 A My role was to make sure that we had the
19 final press releases in time to send them to the
20 Hill and that we didn't jump the gun was my big
21 worry.

22 Q What do you mean by that?

23 A Well, I -- we -- the worst thing we
24 could do would be to send out a press release to
25 the Hill in advance of filing, so we wanted to be

1 sure that we knew when things were official so
2 that we would not inadvertently send anything out
3 before it was public.

4 Q Would you want to send some kind of
5 heads-up to the Capitol Hill folks before the SEC
6 announced it generally to the press and the
7 public?

8 A Not the --

9 (b)(6),(b)(7)(C): Are you asking it was filed
10 but before it was it was filed?

11 BY MR. KOTZ:

12 Q Right.

13 A As long as it was after it was filed.
14 In close proximation preferably a minute or two
15 before just because it helps to -- I mean, when
16 the Hill folks read about it coming across the
17 crawl on CNBC within minutes after it's filed,
18 they'll call us immediately and so I prefer to
19 have it in their hands before the press puts it
20 out.

21 Q So it's sort of a courtesy?

22 A Yeah.

23 Q From what we understand from the e-mails
24 back and forth and the testimony, originally the
25 complaint was going to be filed and then it

1 switched to Friday. Do you have any idea why it
2 switched to Friday?

3 A No. I know there was a lot of -- a lot
4 of actions going on that week and there was a lot
5 of movement of -- of different items as to when
6 they were going to be released, and so, I mean,
7 people kept moving -- the dates kept moving for
8 stuff.

9 Q There was a Quadrangle case. Do you
10 remember that one?

11 A Yeah.

12 Q In the end the Quadrangle case was filed
13 on Thursday and the Goldman was filed on Friday.
14 Do you remember that?

15 A Right. Yeah.

16 Q Do you remember why that was the case,
17 why it wasn't switched to Goldman on Thursday and
18 Quadrangle on Friday?

19 A No.

20 Q Do you remember conversations about it
21 would be a good idea not to have both Quadrangle
22 and Goldman on the same day?

23 A There might have been conversations like
24 that. I just -- I can't recall right offhand. I
25 mean --

1 Q Go ahead.

2 A No, I was just going to say that's -- I
3 don't -- yeah, I mean, it sounds familiar but I
4 just can't put any --

5 Q Would there be a particular reason why
6 the SEC wouldn't want to announce two cases on the
7 same day?

8 A I think at least from the press's --
9 Press Office's perspective not having multiple
10 things on the same day gets more coverage for each
11 item.

12 Q Do you remember anything in particular
13 about why you wanted maybe Quadrangle on Thursday
14 and Goldman on Friday rather than vice versa?

15 A No. We had a lot going on that week
16 because in addition to those two cases we also --
17 I think the Chairman had a press conference on
18 Thursday with Senator Schumer and five former
19 chairmen and --

20 Q About self-funding?

21 A About self-funding, and on Friday we had
22 the -- the Stanford case I believe.

23 Q The Office of Inspector General report?

24 A Yes, the Office of Inspector General.

25 Q This issue with self-funding that the

1 Chairman was doing, would there be a reason not to
2 have that on the same day as the SEC brought a
3 case?

4 A No, it's just a big press week. It's
5 just a lot of stuff in front of the press. I
6 mean, at the end of the day any stuff we brought
7 was going to all sort of merge together.

8 Q Do you remember generally that there
9 were efforts to try to coordinate all these many
10 different items?

11 A Right, because I remember like the -- I
12 remember there were issues with the Commission
13 with the Inspector General's report about the
14 redactions and there was -- that affected the
15 transmittal letter which affected the timing there
16 and I was told that there were -- there was
17 redrafting or drafting going on with regard to the
18 complaint as well until -- into Friday.

19 Q Who do your understanding was making the
20 final decisions on when things would be issued and
21 filed?

22 A I was hearing when the final dates were
23 coming from -- from the Press Office.

24 Q Who particularly in the Press Office?

25 A Myron Marlin.

1 Q So you weren't involved in those
2 decisions or you weren't make those decisions
3 obviously?

4 A I wasn't making those decisions. We
5 were -- there was sort of continuing discussion
6 going on around which -- what's going to happen
7 when and who's going to do what and that sort of
8 thing.

9 Q Do you remember any discussion about
10 when would be the best time or not the best time
11 to file and announce the Goldman case?

12 A I think there was some discussion of --
13 of not having it be the same day as -- as the
14 other case.

15 Q Quadrangle?

16 A Quadrangle. The -- I mean, from my
17 perspective and -- on the congressional side, it
18 wasn't going to make one difference one way or
19 another. I just needed to know when.

20 Q What about from the congressional side
21 with respect to the Stanford report? Would that
22 make a difference whether Goldman was on the same
23 day as that report or on a different day?

24 A No. We just wanted to get them out
25 because we were under -- we had heard from folks

1 on the Hill that the Office of Inspector General
2 had told folks that the report was done and they
3 were asking where it was so we wanted to get it
4 out as soon as it was ready.

5 Q Had you been aware of the general
6 content of the Office of the Inspector General
7 Stanford report, generally what it found?

8 A Yeah, I think so.

9 Q Were you concerned that that report was
10 critical in certain ways of the SEC?

11 A I wasn't concerned by it. I recognized
12 that it was.

13 Q Did you think that it might be a good
14 idea from a Legislative Affairs perspective to
15 have the Goldman case on the same day as the
16 Stanford report so that you would have some
17 positive news?

18 A No. I wanted -- I wanted the Stanford
19 report out as fast as it was done.

20 Q For what reason?

21 A Because we were getting requests for it.

22 Q Do you know if anybody discussed the
23 idea that it might make sense to have both Goldman
24 and Stanford on the same day?

25 (b)(6),(b)(7)(C): Did anyone discuss it in

1 his presence?

2 BY MR. KOTZ:

3 Q Yes, if he's aware of any discussions.

4 Or not in the same day?

5 A I remember -- I just remember general
6 discussion that week of sort of the boxes kept
7 moving around, but I don't remember -- I don't
8 remember a concern about -- the -- the Stanford
9 case or the Stanford report as I understood it was
10 -- wasn't being keyed off of -- to anything else
11 because we didn't know when it was going to be
12 ready. I mean, my understanding was that the
13 final redactions were being done, that there was a
14 dispute over the redactions that went back up to
15 the Commission, that the Commission changed some
16 of the redactions. So we were -- we were prepared
17 to issue the Stanford report as soon as we were
18 told it was finished and everybody was okay with
19 it.

20 Q It was finished on Friday?

21 A That was my understanding. We were
22 still getting redaction changes that we had to put
23 in the transmittal as I recall on Friday morning
24 because we were concerned that we were going to --
25 there had been at least two rounds of changes and

1 we were concerned that our transmittal was going
2 to misdescribe the redactions in the report
3 because it kept changing.

4 Q There was some discussion that we
5 understand based on testimony and documents about
6 whether to issue generally and then specifically
7 in the Goldman case an enforcement case on Friday,
8 with some folks taking the position that you never
9 want to issue a high-profile case on Friday
10 because the media has less on the Saturday papers,
11 and then the other side being we're now in a 24/7
12 news cycle and none of that matters. Do you
13 remember that discussion?

14 A I don't remember a discussion. I -- it
15 sounds -- that sounds like the kind of debate I've
16 heard before, whether it was related to this
17 particular case or not, but, I mean --

18 Q Did you have an opinion on that issue,
19 on that debate?

20 A I think my opinion, if -- well, in a --

21 (b)(6),(b)(7)(C): Which is precisely?

22 BY MR. KOTZ:

23 Q Whether you should file a high-profile
24 case on Friday because you're going to miss out on
25 press coverage or whether it's a 24/7 news cycle

1 **it doesn't matter?**

2 A I don't -- I don't -- I don't think it
3 matters anymore.

4 MR. KOTZ: Let me show you the next
5 document. We're going to mark it as Exhibit 8.
6 Myron Marlin is sending an e-mail to you, Stephen
7 Cohen and Didem Nisanci on 4-14-2010 at 6:08 p.m.

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

10 BY MR. KOTZ:

11 Q **Do you remember this, that a report**
12 **seemed to be aware of certain issues?**

13 A I remember getting this e-mail.

14 Q **What do you remember about it?**

15 A Just that a reporter had -- supposedly
16 have the story on the day of the Commission's
17 meeting.

18 Q **Was that a concern?**

19 A It wasn't for me. That's not -- I mean,
20 it didn't affect anything I was going to do. I
21 was still not going to release anything until the
22 case was filed.

23 Q **But would it be a concern vis-à-vis leg**
24 **affairs that the information would get out before**
25 **you have an opportunity to give a heads-up to**

1 **somebody on the Hill?**

2 A Yeah, but there's no way to -- to deal
3 with that. I mean, we're not going to -- on one
4 reporter's report before the thing is filed we're
5 not going to -- we're still not to confirm or deny
6 to anybody on the Hill that just because -- any
7 more than we did when Bernanke did his thing.

8 Q **Do you know how the reporter got the**
9 **information?**

10 A No, I don't.

11 Q **Do you know if anyone looked into how**
12 **this reporter got that information?**

13 A I don't know.

14 Q **Were you aware that after the SEC filed**
15 **its action against Goldman there was an article in**
16 **the paper that provided the vote in the case?**

17 A Yes.

18 Q **Then after the SEC settled with Goldman**
19 **there was an article in the paper that gave the**
20 **vote in that case.**

21 A Yes.

22 Q **Do you know who leaked that information?**

23 A No, I do not.

24 Q **Do you know if anything was done to try**
25 **to investigate how that information was leaked?**

1 A Not to my knowledge.

2 Q Was that a concern to you that this
3 information was getting out there?

4 A Just generally. It meant that the
5 deliberations of the Commission were being made
6 public, and the -- the fact that votes with regard
7 to enforcement cases were being made public from
8 an agency standpoint is not a good thing.

9 Q But it didn't have any specific effect
10 vis-à-vis leg affairs?

11 A No. Well, the one place that it would
12 have an effect was we were testifying the
13 following Tuesday on the Lehman case and so we had
14 a possibility that the Chairman would be asked
15 whether she would confirm the 3-2 vote.

16 Q What did she do there?

17 A We were never asked the question.

18 Q What was the advice given?

19 A The advice given was that --

20 (b)(6),(b)(7)(C): By you or by someone else?

21 THE WITNESS: There was discussion
22 between me, I think the General Counsel, and there
23 may have been a couple others on how we would
24 craft a response on that. The advice was to
25 initially attempt to not confirm the vote, that --

1 that the Chairman would take the position that --
2 that once the Commission voted, that was the
3 position of the Commission and that it was not a
4 good or useful thing to have the votes leaked for
5 -- for the actions. I don't believe -- I can't
6 remember in that instance whether there was
7 Commission approval sought to disclose the -- the
8 vote if asked. That would be in the seriatim
9 system and would show that. I just can't recall.

10 BY MR. KOTZ:

11 Q If there's nonpublic information but it
12 get released and so it's out there and it's
13 accurate, does it no longer become nonpublic
14 because it's out there? Does it remain nonpublic
15 even though the Wall Street Journal and the New
16 York Times is reporting it? Or is that at that
17 point the Chairman is free to confirm it because
18 the information is obviously public?

19 A I treat it as nonpublic. The Chairman
20 -- it places the Chairman in a difficult position
21 when she testifies in those kind of situations.
22 The -- I -- I believe that General Counsel had
23 indicated to her that if pressed that -- by the
24 committee that -- on something that had been
25 widely reported that it was possible for her to --

1 to -- to confirm it, but it never became an issue
2 because she was never asked the question.

3 MR. KOTZ: Let me show you the next
4 document. We're going to mark it as Exhibit 9.
5 It's an e-mail exchange from (b)(6),(b)(7)(C), 4-15-2010
6 at 6:38 p.m.

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

9 BY MR. KOTZ:

10 Q Did you participate in this 6:00 p.m.
11 conference call?

12 A I don't believe so, but I might have
13 stuck my head in at one point.

14 Q Do you know who was leading the call?

15 A I believe it was Myron.

16 Q Do you remember anything about what was
17 discussed on the call?

18 (b)(6),(b)(7)(C): You stuck your head in
19 where?

20 THE WITNESS: Into Myron's office during
21 the call. I was not -- I didn't dial in
22 separately that I recall. I just -- I just -- I
23 can't recall whether I was in there or not. I
24 know there was a logistical call that night. I
25 don't know if it was the same call, and there was

1 a discussion of timing for when things would be
2 released the next day.

3 BY MR. KOTZ:

4 Q Do you remember if there was any
5 discussion about why they chose a particular
6 timing?

7 A No, I don't recall.

8 Q Do you recall anything from that phone
9 conference call about why the Goldman case was
10 going to be filed on Friday as opposed to
11 Thursday?

12 A No. I just don't recall.

13 MR. KOTZ: Let me show you the next
14 document. Let me mark it as Exhibit 10. This is
15 an e-mail from Myron Marlin to Mary Schapiro,
16 4-16-2010 at 1:10 a.m.

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

19 BY MR. KOTZ:

20 Q The e-mail was sent to Mary Schapiro.
21 Was Mary Schapiro on that previous call that you
22 referenced the night before?

23 A No. Again, I -- I don't remember that
24 call, but she wasn't on the -- I mean, I remember
25 a logistical call and she was no on any of the

1 logistical calls the night before.

2 Q Do you remember any conversations with
3 Mary Schapiro about the logistics for the filing
4 of these different matters?

5 (b)(6),(b)(7)(C) : That he had?

6 MR. KOTZ: Yes.

7 THE WITNESS: I didn't have any with her
8 about the logistics of it.

9 BY MR. KOTZ:

10 Q Did anybody indicate to you Mary
11 Schapiro said this?

12 A I don't believe so. That doesn't
13 familiar.

14 Q In looking at Exhibit 10, does it
15 refresh your recollection as to why decisions were
16 made when to file certain things, like for
17 example, why Goldman was filed in the morning and
18 Stanford was filed in the afternoon?

19 A No. It -- it -- no. I mean, the one
20 thing I notice from this is the -- the response
21 regarding the redactions was the section that I
22 understood was still under discussion into the
23 morning of -- of the 16th.

24 Q Do you know when that discussion was
25 concluded and when it was ready to go?

1 A No. I think the last one came from -- I
2 want say Commissioner Paredes was maybe the last
3 signoff and determiner, and then we had to change
4 the -- we had to change the transmittal.

5 Q Do you remember when that happened?
6 Were you changing it that morning on Friday or was
7 that Thursday?

8 A That was Friday, that morning. My
9 impression is mid to late morning. Somewhere in
10 that timeframe.

11 Q Were you informed when the Goldman was
12 officially filed?

13 A Yes.

14 Q Do you remember there was a glitch in
15 the filing that morning?

16 A Yes.

17 Q What do you remember about that?

18 A I just remember being told not to
19 release anything, that there had been a delay in
20 filing and that we should all just stand by and
21 wait until we were informed before we sent
22 anything out.

23 MR. KOTZ: Let me show you the next
24 document marked as Exhibit 11 which is an e-mail
25 exchange between you and (b)(6),(b)(7)(C) on

1 4-16-2010 at 9:15 a.m.

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

4 BY MR. KOTZ:

5 Q When (b)(6),(b)(7)(C) says, "The Hill will
6 kill us if they see this on CNBC first," this is
7 what you were referring to when you were
8 discussing earlier?

9 A Yes, when were talking about them seeing
10 things on the media crawl before hearing it from
11 us.

12 Q Was this the first time when press was
13 asked to make sure that you can send this out
14 first, (b)(6),(b)(7)(C) on Friday morning?

15 A I think so, yeah. As far as I know,
16 that was the first time we asked the press. And
17 she's speaking quite literally about a minute
18 before.

19 Q How did the press respond?

20 A I believe -- my recollection is I
21 believe that they said that we could, that they
22 would give us a brief minute to send it before
23 they sent.

24 Q Did you send it a minute before they
25 sent it?

1 A I believe [] sent it as soon as she
2 was told she could send it.

3 MR. KOTZ: Let me show you the next
4 document. We'll mark it as Exhibit 12, an e-mail
5 exchange between you and Katie Beirne.

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

8 BY MR. KOTZ:

9 Q Why were you sending this press release
10 to Katie Beirne?

11 A Because we had done the press release a
12 couple of days earlier on self-funding and the
13 phrase in Kaufman's about whatever resources the
14 SEC needs jumped out at me as a possible person to
15 support their efforts on self-funding.

16 Q Was self-funding at that time something
17 the SEC was hoping that they would be granted?

18 A Yes.

19 Q Katie Beirne from Senator Schumer's
20 office was favorably inclined toward that?

21 A Yes.

22 Q Then she e-mails you, Are you available
23 to talk about Goldman and you give her I assume
24 that' your phone number.

25 A Yes.

1 Q Do you remember what that conversation
2 was about?

3 A Yes. I sent her the press release or I
4 either sent her or read her the press release and
5 I think -- we did a -- we did a press call or, I'm
6 sorry, a congressional call at -- at sometime
7 after 3 o'clock in the afternoon I think and we
8 invited her to sit in on that call.

9 Q What happened on that call?

10 A The -- I'm trying to remember who, Rob
11 -- no, Rob was in New Orleans. I think is was
12 Lorin Reisner and maybe Ken Lench basically walked
13 through the complaint for congressional staff on
14 the call and the -- answered questions. I think
15 the call ran about 30 minutes or so.

16 Q When you heard from folks on Capitol
17 Hill shortly after the SEC informed them that it
18 had filed its case against Goldman, did they
19 exhibit surprise that the SEC had done this? What
20 was their reaction?

21 A Their reaction was that they wanted to
22 know more. How could they find out more?

23 Q Did anyone say I didn't know this was
24 coming or was it finally you guys filed? Did you
25 have any sense of whether they knew this might be

1 coming?

2 (b)(6),(b)(7)(C): Which question? Did anyone
3 give you a sense that they knew it was coming?
4 Let's start with that.

5 THE WITNESS: I don't think so. My
6 recollection was that the few calls I got, folks
7 were interested in when they could -- when they
8 could hear more.

9 BY MR. KOTZ:

10 Q Did anybody indicate to you that they
11 thought that this action that the SEC brought
12 would help the SEC's efforts to get self-funding?

13 A No.

14 Q Did they indicate that it would hurt the
15 SEC's efforts to get self-funding?

16 A No, I don't think so.

17 Q But did you think that maybe Senator
18 Kaufman would be more in favor of self-funding
19 given his quote after the SEC brought its action
20 against Goldman?

21 A I thought he had stated whatever the
22 resources the SEC needs and that the self-funding
23 issue was about resources.

24 Q Would the fact that the SEC brought a
25 big case help its efforts with various legislative

1 initiatives?

2 [REDACTED]: When you say "various
3 legislative initiatives?"

4 BY MR. KOTZ:

5 Q Self-funding or other aspects of the
6 Financial Regulatory Reform Bill.

7 A No, I don't -- I mean, not directly, no.
8 I think that to the extent that the SEC could
9 indicate through all of its actions that it was
10 doing what it was supposed to do, that would be
11 useful to self-funding, but the problem -- the
12 political problem on self-funding was going to be
13 the appropriators who weren't going to give up
14 their jurisdiction. With financial reg relief or
15 ref reform, the -- we brought lots of cases in the
16 time period during which reg reform was out there.

17 Q Were there any cases that got as much
18 press coverage as the Goldman case?

19 A No.

20 Q When Katie Beirne who was in Senator
21 Schumer's office who was favorably disposed to
22 self-funding, she spoke to you after she found out
23 that SEC had charged Goldman, did she indicate
24 that this was a positive thing for her efforts to
25 try to get the SEC self-funding?

1 A No, not that I recall. My recollection
2 of the call was she just wanted more details about
3 the case.

4 Q You have no recollection of anybody on
5 Capitol Hill indicating the fact that the SEC
6 brought an action against Goldman would help the
7 SEC's reputation and thereby make it easier for
8 them to pass legislation that was favorable to
9 them?

10 (b)(6),(b)(7)(C) : Are you asking him --

11 MR. KOTZ: Can you let him answer the
12 question, please?

13 (b)(6),(b)(7)(C) : It's a complicated and
14 confusing question.

15 MR. KOTZ: But he can understand the
16 question. You're interrupting every question. I
17 can't do an interview this way.

18 (b)(6),(b)(7)(C) : I think the transcript will
19 be quite clear that I'm not interrupting every
20 question.

21 MR. KOTZ: I don't know that we're going
22 to be doing an interview. You want him to
23 cooperate but your attorney, and I've had a lot of
24 attorneys and I've never had who interrupted every
25 single question, frankly.

1 [REDACTED]: Hold on.

2 MR. KOTZ: So it's a real question of
3 whether you want to have cooperation in this thing
4 or not. But we're not going to continue where you
5 interrupt every single question I ask.

6 [REDACTED]: I think the transcript will
7 be clear --

8 MR. KOTZ: We can stop.

9 [REDACTED]: -- that I'm not
10 interrupting every question. And you asked a
11 question that I found to be confusing and I'm
12 asking you to clarify.

13 MR. KOTZ: Well, maybe he didn't find it
14 confusing. Why don't we ask the witness?

15 THE WITNESS: Could you repeat the
16 question, please?

17 BY MR. KOTZ:

18 Q At any point in time did anyone, either
19 a staffer or a member of Congress, ever indicate
20 to you that it was positive for the SEC with
21 regard to any of its legislative efforts that the
22 SEC had announced that they charged Goldman Sachs
23 with fraud?

24 A I don't recall directly anybody saying
25 that to me. I remember there was people giving

1 quotes in the press. It wouldn't surprise me if
2 someone did, but I don't -- I don't recall it
3 right offhand. I mean, and with regard to -- I
4 don't think -- I know that I didn't -- I don't
5 think I heard anybody say anything with regard to
6 -- I don't think I heard anybody say anything to
7 me with regard to -- with regard to reg reform.

8 Q You worked significantly on reg reform
9 through 2009 and 2010.

10 A Yes.

11 Q How often would you have contact with
12 either members of Congress or staff of members of
13 Congress about reg reform?

14 A Staff in particular almost daily.

15 Q What was the nature of those
16 conversations? You don't have to go into the
17 details, but just generally.

18 A Generally it varied from proposed
19 legislative ideas they had, testimony that we were
20 giving, questions they had, requests for technical
21 assistance, that kind of thing.

22 Q Was the SEC generally in favor of reg
23 reform going through?

24 A The -- the SEC had not taken a position.
25 The Chairman had testified in favor of elements of

1 reg reform and the -- and I believe Commissioner
2 Walter had testified in favor of certain aspects
3 of reg reform as well. But my recollection was I
4 think the Chairman's testimony was her testimony
5 only.

6 Q Did you understand from your position
7 that it would be a good thing if reg reform
8 eventually passed for the SEC or for the Chairman?

9 A Elements of it from the -- I mean there
10 were -- there was a mix of good and bad in the
11 bill and it evolved over time. The Chairman was
12 generally supportive of the broad outlines of the
13 reg reform proposal made by the administration.

14 Q Would you say there was more good than
15 bad overall in the reg reform bill?

16 A I think -- I mean I -- you're asking me
17 if I -- what her view was or my personal view or
18 whether there was more good than bad?

19 Q Why don't we start with your personal
20 view?

21 A My personal view was that there was
22 probably more good than bad in it. The -- some of
23 the key elements in terms of systemic risk and
24 resolution authority and the ability to bring some
25 unregulated entities under the regulatory umbrella

1 were I thought positive.

2 Q What was your sense of the Chairman's
3 view?

4 A Similar.

5 Q In any conversations that you had or to
6 your knowledge your staff had with either members
7 of Congress or staff of members of Congress
8 regarding reg reform, was there any discussion
9 about the filing of the Goldman case prior to the
10 case being filed?

11 A No.

12 Q Was there any discussion that it would
13 be helpful for the SEC to bring a high-profile
14 case as a way to enhance its reputation?

15 A No. I don't recall anything like that.

16 Q Did you have any contact with the White
17 House or any members or staff of the White House
18 regarding financial regulatory reform?

19 A Very limited on discrete legislative
20 issues. A handful of legislative issues. Very
21 rare.

22 Q What were those contacts?

23 A I can't recall. They would have just
24 been with (b)(6),(b)(7)(C) who is their (b)(6),(b)(7)(C)
25 (b)(6),(b)(7)(C) and it

1 would have been about a discrete legislative
2 issue.

3 Q Do you remember any discrete legislative
4 issues that you spoke to the White House about?

5 A No.

6 Q Did you have any conversations with the
7 White House about self-funding?

8 A No. I don't think so. It's possible I
9 gave (b)(6),(b)
(7)(C) a heads-up after we did the -- did the
10 press release.

11 Q Were you aware of conversations that
12 Didem Nisanci had with the White House about
13 self-funding?

14 A No.

15 Q Do you know if Didem had conversations
16 with the White House that you weren't on or
17 weren't aware of?

18 A I'm sorry?

19 Q Do you know if Didem had conversations
20 with the White House of which you were not aware
21 or you were not on the call?

22 A And I became aware afterwards?

23 Q Yes.

24 A I don't have any specific knowledge.

25 I'm sure she did talk to the White House about reg

1 reform.

2 Q In these conversations with the White
3 House, were any of them in person?

4 A Me?

5 Q Yes.

6 A No.

7 Q Do you know of anyone at the SEC who
8 went over to the White House to talk to folks
9 there about reg reform?

10 A I don't know. I didn't go.

11 Q The conversations you had with the White
12 House were over the phone?

13 A Yes.

14 Q And they were all with this same
15 individual?

16 A Yes. That's the only person I know at
17 the White House.

18 Q How many conversations would you say you
19 had with the White House?

20 A Minimal. Less than five.

21 Q In those conversations was there any
22 mention of the Goldman case?

23 A No.

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 related to or to advance
2 financial regulatory reform?

3 A No.

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

8 A No.

9 Q Are you aware of any information
10 indicating that the SEC coordinated its against
11 Goldman Sachs with the Executive Office of the
12 President, the White House or any of its
13 employees?

14 A No.

15 Q Are you aware of any information
16 indicating that anyone at the SEC shared any
17 information concerning its Goldman Sachs
18 investigation with the Executive Office of the
19 President, the White House or any of its employees
20 prior to the complaint being filed?

21 A No.

22 Q Do you know if the White House was
23 notified after the complaint was filed?

24 A I don't know.

25 Q Are you aware of any information

1 indicating that the SEC coordinated its action
2 against Goldman Sachs with any members of Congress
3 or any congressional employees?

4 A No.

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

11 A No.

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

18 A No.

19 Q Did you have any conversations with the
20 Democratic National Committee, the Democratic
21 Senate Campaign Committee, the Democratic
22 Congressional Campaign Committee or any of their
23 employees about reg reform?

24 A I will say no, but the only thing I
25 don't know is I have no idea whether or not any of

1 the Hill staff I was dealing with were employees
2 of any of those entities. I dealt with them only
3 as congressional staff and I did not coordinate or
4 discuss anything about the case before it was
5 filed with anybody outside the building.

6 Q Case meaning the Goldman case?

7 A Yes.

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

16 A No.

17 MR. KOTZ: Let me show you the next
18 document. We're going to mark it as Exhibit 13
19 which is an e-mail from you to Didem Nisanci,
20 Steve Cohen and Ricardo Delfin, 4-19-2010 at 10:15
21 p.m.

22 (Exhibit No. 13 was marked for
23 identification.)

24 BY MR. KOTZ:

25 Q If you'll to page 3, there's an e-mail

1 from you to Mary Schapiro and three others where
2 you say, "Mary, we believe the following two
3 questions will be asked tomorrow." Why did you
4 believe those two questions would be asked? I'm
5 particularly interested in the second question.

6 A The -- usually when I do that it's
7 because our folks in advance of a hearing will
8 call congressional staff and see if they'll tell
9 us what questions their bosses are likely to ask
10 that day.

11 Q So you think that's what [REDACTED]
12 [REDACTED] was telling you based on her conversations?

13 A Yes.

14 Q If you look at the front page where you
15 say, "Here is the full response, you say there
16 that the final redactions were completed on
17 Thursday, April 15." Does this refresh your
18 recollection? You had testified earlier that you
19 thought it was maybe Friday. Do you know which
20 one it was?

21 A I'm looking at his now. I think that
22 the -- my recollection is that -- in seeing this
23 my recollection is that I can't recall which day.
24 I know that Mary Schapiro signed off that morning
25 on the seriatim. I think we still had to change

1 the transmittals that morning, so I could be
2 confusing the two. But I'm almost -- I know that
3 we changed the -- the transmittals that morning to
4 reflect changes in the redactions.

5 Q That would be Friday morning?

6 A Friday morning.

7 Q According to this, the Commission signed
8 off on the release of the release of the report on
9 Thursday, April 15. Is that accurate?

10 A I don't have reason to doubt its
11 accuracy.

12 Q Were you aware that the SEC did not
13 inform Goldman that the Commission had approved
14 the staff's recommendation to file an action
15 against it before they filed the complaint?

16 A No. I heard that allegation after the
17 filing.

18 Q You weren't involved in those
19 discussions?

20 A No.

21 Q Are you aware of SEC regulations
22 requiring notification of defendants prior to
23 filing of an SEC action?

24 A No. I'm not an enforcement attorney.

25 MR. KOTZ: There's actually a press

1 policy about it, SEC Administrative Regulations.

2 SEC Administrative Regulations, Public Affairs

3 Press Relations, Policies and Procedures.

4 (Exhibit No. 14 was marked for
5 identification.)

6 BY MR. KOTZ:

7 Q If you're familiar with this document
8 and/or if you're familiar with the provision on
9 pages 6 of 12 at the bottom of the page.

10 A The notification of defendants
11 provision?

12 Q Right.

13 A No, I'm not aware of that.

14 Q Did you become aware at some point that
15 the SEC began settlement discussions with Goldman
16 Sachs after it filed its case against them?

17 A Yes.

18 Q When did you first learn of that?

19 A I think I may have heard that Goldman
20 came in within -- to discuss settlement within a
21 couple weeks after the filing of the complaint.

22 Q When did you become aware that the SEC
23 had come to a settlement agreement with Goldman?

24 A I think it was the week that the
25 Commission voted on it.

1 Q Was that something also that when the
2 SEC formally approved the settlement, you would
3 have to go out to Capitol Hill and give them a
4 heads-up?

5 A Absolutely, yeah.

6 Q Do you know why the SEC approved the
7 settlement on that day, July 15? I think it was a
8 Thursday.

9 A No. I mean, I didn't have anything to
10 do with the calendaring of the -- of the case.

11 Q Were you aware during that week that
12 Thursday, July 15, was the day that was set for
13 the Senate to vote on the financial regulatory
14 reform legislation?

15 A I became aware as the week progressed.
16 As of Monday it was not -- there was no date set
17 for it.

18 Q Do you know when during that week the
19 date became clear?

20 A No. I mean, various members were
21 announcing their willingness to -- to vote for a
22 motion to proceed during that week, so once they
23 -- I forget who the last member was, whether it
24 was Senator Brown or -- once they had the 60
25 votes, then it became clear that the leadership

1 was going to schedule a vote on that date.

2 Q So at some point during that week it
3 became clear not only that there was going to be a
4 vote on Thursday but that it would likely pass?

5 A Yes.

6 Q Were you aware that after the SEC
7 brought its action against Goldman, Congressman
8 Issa sent a letter to Mary Schapiro alleging that
9 the action brought against Goldman was done to
10 influence financial regulatory reform?

11 A Yes.

12 Q Given that that complaint had already
13 been made, was there any discussion about whether
14 it was advisable for the SEC to approve and
15 announce its settlement with Goldman on the same
16 day that the Senate voted to accept financial
17 regulatory reform?

18 A Yes.

19 Q What was the nature of those
20 discussions?

21 A The nature of the discussions were that
22 we would inevitably be accused by the same people
23 who accused of timing the first case with timing
24 of the second case and that we were going to
25 receive the same accusation again because it was

1 happening on the same day.

2 **Q Was there any consideration given to**
3 **having Goldman approved and announced on a**
4 **different day?**

5 A Yes. The question -- well, not
6 approved. It had already been approved before I
7 heard any of the discussions. The -- the -- the
8 question was whether announced -- whether it would
9 be announced on another day.

10 **Q What was discussed there?**

11 A Just whether there was any -- whether in
12 light of the fact that we'd already been accused
13 of timing the initial case, whether or not it made
14 sense to -- to move the date. I didn't think it
15 did because we were going to be accused of it no
16 matter what, so --

17 **Q Did anybody advocate in favor of moving**
18 **the date?**

19 A I don't think anybody advocated it. I
20 think they -- I think the issue was raised, does
21 it make sense, and folks took a look at it and
22 decided there was no -- no basis for -- for moving
23 it, we were in the situation we were in and we
24 should just proceed with the normal course.

25 **Q Who made the decision not to move it?**

1 A There was a discussion in the Chairman's
2 office and the decision was -- I guess it was her
3 decision. The decision was -- the general
4 consensus I think of everyone was that there was
5 no point in moving it.

6 Q Were you aware that a day or two before
7 the SEC announced its settlement with Goldman
8 there were news reports that discussions had been
9 ongoing?

10 A Yes.

11 Q Was there any concern expressed that the
12 information about the Goldman settlement would be
13 leaked prior to the SEC making its announcement?

14 A I'm sorry. Can you repeat the question
15 again?

16 Q Were there any discussions about the
17 concern or worry that information about the
18 Goldman settlement would be leaked prior to the
19 SEC announcing it?

20 A Yeah, I mean in that discussion that I
21 just referenced I indicated that I didn't there
22 was any point in waiting because I thought that
23 the information would leak inevitably as soon as
24 Goldman was notified that the Commission had
25 approved the settlement.

1 Q Do you know what day the Commission
2 approved the Goldman settlement? It was announced
3 on Thursday. Do you know what day the Commission
4 approved the settlement?

5 A My recollection was it was the same day.

6 Q Do you know if that was a regularly
7 scheduled Commission meeting or was that something
8 set up for that?

9 A I -- I -- I don't know. I wouldn't
10 know. I don't do enforcement.

11 Q Did you ever hear anybody discuss the
12 idea that it would make sense to schedule a
13 specific vote for the Commission on the Goldman
14 case because they were afraid that the information
15 was going to leak?

16 A No. The discussions I heard about the
17 leak were after the -- after the Commission had
18 already acted.

19 Q Were you aware as to whether the SEC
20 informed the New York Stock Exchange initially
21 when it filed the Goldman action that it was
22 filing the action during trading hours?

23 A No.

24 Q Were you aware?

25 A I wasn't aware.

1 Q And you weren't aware of that issue when
2 the SEC announced its settlement?

3 A I was aware that they were timing the
4 settlement after the market closed -- the
5 announcement of the settlement after the market
6 closed which did not make sense to me because the
7 press advisory I believe went out before the
8 market closed.

9 Q Do you know why it was timed after the
10 market closed?

11 A No.

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

13 Q Just to make sure I understand. When
14 you say the announcement, what you are referring
15 to versus the press release?

16 A The -- yeah, I mean the -- the release
17 of the press release. That's what I'm referring
18 to as the --

19 (b)(6),(b)(7)(C) : What is a press advisory?

20 THE WITNESS: The press advisory was --
21 is just a notice to reporters that the Press
22 Office sends out that says there will be some news
23 announced at 4:15. It doesn't say what the news
24 is. And in light of the -- in light of the -- the
25 previous press reports you'd -- you'd mentioned,

1 as soon as the press advisory went out, the
2 conclusion that everybody on TV jumped to was that
3 it would be a Goldman announcement.

4 BY MR. KOTZ:

5 Q But the actual press release announcing
6 the Goldman settlement was done after trading
7 hours?

8 A Yes. That's my understanding.

9 Q Do you know how long of a gap there was
10 between the two?

11 A No.

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

13 Q Do you know who decided to announce it
14 after market hours?

15 A I don't know for sure. I assume it was
16 the Press Office.

17 MR. KOTZ: Why don't we take a few
18 minutes? Let's go off the record and we'll see if
19 we have anything else.

20 (A brief recess was taken.)

21 BY MR. KOTZ:

22 Q I don't think we have anything else. Is
23 there anything else you would like to add or
24 anything else you think is relevant about these
25 issues that we didn't ask?

1 A Not really. I think that the -- I don't
2 think there was -- I think the -- no, I think I'll
3 just leave it at that. I mean, the -- the timing
4 allegation particularly on the settlement side I
5 think is silly because the -- had Senator Byrd not
6 died, the bill would have passed well before
7 anybody did anything on the settlement, so the
8 ability to time those kinds of things on reg
9 reform, I think that allegation is just specious
10 at best, but that's just my personal opinion.

11 Q You also say that at that point in the
12 reg reform process that the settlement wouldn't
13 have any effect on anything?

14 A Yeah, I mean, people had already
15 declared their vote and -- and I don't think
16 timing a settlement or having a settlement --
17 there are so many things that go into passage of
18 something as large reg reform that I don't think
19 either pro or con either at the front end or the
20 back end it -- it changes the dynamic to any real
21 extent.

22 Q Some folks have said that with respect
23 to the action, when the action against Goldman was
24 brought, that that provided some momentum for
25 financial regulatory reform. Do you think that's

1 **the case?**

2 A I don't think it did. I mean, I think
3 the momentum would have come about with or without
4 the action. I mean, PSI was going to do their
5 hearing anyhow. Members were still going -- the
6 Democrats were following a strategy of forcing the
7 Republicans to vote on cloture every date and then
8 telling them that it was protecting Wall Street.
9 I don't think you can separate those kinds of
10 things out.

11 Q **Were you surprised at the amount of**
12 **press coverage that the SEC got for the Goldman**
13 **case?**

14 A I was.

15 Q **We don't have any further questions.**
16 **The one thing I would ask, and this is**
17 **significant, in order to preserve the integrity of**
18 **our investigation, that you not discuss the**
19 **content of your testimony with anyone. Obviously**
20 **you can discuss it with counsel, but with anyone**
21 **at the Commission.**

22 A Okay. Okay. Sure.

23 MR. KOTZ: We're off the record.

24 (Whereupon, at 3:13 p.m., the examination was
25 concluded.)

REPORTER'S CERTIFICATE

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I, (b)(6),(b)(7)(C), reporter, hereby certify that the foregoing transcript of 77 pages is a complete, true and accurate transcript of the testimony indicated, held on August 3, 2010, at 1:33 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:

8/10/10

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 29
File Number: OIG-534
Date: Tuesday, August 3, 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)

8/10/10

(Date)

Chapter Break

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

ORIGINAL

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

WITNESS: Number 30

PAGES: 1 through 50

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

DATE: Tuesday, August 3, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 3:32 p.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, Inspector General

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

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7 Securities and Exchange Commission

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9 Washington, D.C. 20549

10

11 On behalf of the Witness:

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

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14 1801 K Street, N.W., Suite 411L

15 Washington, D.C. 20006

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

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C O N T E N T S

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WITNESS

EXAMINATION

Ricardo R. Delfin

5

EXHIBITS:

DESCRIPTION

IDENTIFIED

1

Confidentiality and Non-Disclosure
Statement

6

2

December 8, 2009, E-mail,

[REDACTED] and [REDACTED]

14

3

January 27, 2010, E-mail,

[REDACTED] and [REDACTED]

16

4

April 11, 2010, E-mail,

[REDACTED] to [REDACTED] and Delfin

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March 5, 2010, E-mail,

Delfin, [REDACTED] Cohen, and [REDACTED]

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April 14, 2010, E-mail,

[REDACTED] Lench, and [REDACTED]

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7

April 19, 2010, E-mail,

[REDACTED] to Nisanci, Cohen, and Delfin

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April 16, 2010, E-mail,

Marlin and Nestor

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April 16, 2010, E-mail,

Cohen to Delfin, Becker and Nisanc

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P R O C E E D I N G S

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MR. KOTZ: We are on the record at 3:32 p.m. on August 3, 2010, at the United States Securities and Exchange Commission.

I'm going to swear you in.

Would you raise your right hand?

Whereupon,

RICARDO R. DELFIN

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

BY MR. KOTZ:

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

A Richard Ramon Delfin, R-i-c-a-r-d-o R-a-m-o-n D- e-l-f-i-n.

Q Okay. Mr. Delfin, my name is David Kotz. I'm the inspector general of the United States Securities and Exchange Commission. I have with me my colleague from the Office of Inspector General, (b)(6),(b)(7)(C)

Would you like -- counsel, would you like to identify yourself for the record?

(b)(6),(b)(7)(C): Sorry. My name is (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) and I'm representing Mr. Delfin here.

BY MR. KOTZ:

1 Q This is an investigation by the Office
2 of Inspector General, Case No. OIG-534. I will
3 ask you certain questions and you'll be providing
4 answers under oath. The court reporter will
5 record and later transcribe everything that is
6 said. Please therefore provide verbal answers to
7 the questions as a nod of the head or another
8 nonverbal response won't be picked up by the court
9 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 that you understand the questions and
14 give accurate answers. If there is anything you
15 don't understand or anything you do not know or
16 are not sure about, please let me know; otherwise,
17 I will assume that you heard and understood the
18 question.

19 Do you understand those instructions?

20 A I do.

21 Q Great. I'll give you the perjury
22 warning. As you can see, your responses to
23 statements given today are provided after you've
24 sworn an oath and will be taken down verbatim by
25 the court reporter. This is an official U.S.

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

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

12 Do you understand those instructions?

13 A I do.

14 Q Okay, great. The first thing I want to
15 do is just put into evidence as Exhibit 1 the
16 Confidentiality and Non-Disclosure Agreement
17 signed by counsel.

18 (Exhibit No. 1 was marked for
19 identification.)

20 BY MR. KOTZ:

21 Q And if you could just attest to the fact
22 that this is your signature on Exhibit 1.

23 A It is.

24 Q Great. All right. Why don't we start
25 with some background. Could you describe for me

1 your education beginning with college?

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

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

4

5

6

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

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

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

10 Q

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

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

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

14

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

21

22

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

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

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

1

Q

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

2

A

3

Q

4

A

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

5

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

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9

Q

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

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

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17

Q

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

18

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

19

A

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

20

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

21

Q

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

22

A

23

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

24

25

Q

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

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

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

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

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

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

6

7

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

9 A

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

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

12 A

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

14

15

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

17 A

18 Q And that's when you started with the

19 SEC?

20 A Yes.

21 Q What was your first position with the

22 SEC?

23 A Counsel, my current position. Counsel

24 to the chairman.

25 Q Okay. What are your duties as counsel

1 to the chairman?

2 A I -- I guess I have several. I help her
3 prepare for testimony; help her prepare for
4 hearings; help her, you know, with her testimony.
5 I'll often review documents that, you know, she
6 might send out for testimony. I attend various
7 oversight board meetings with her. She's on
8 several boards, like the President's Working Group
9 or the Financial Stability Oversight Board. I'll
10 often go with her to those. I'll also -- my role
11 is generally policy, so to the extent, you know,
12 she's testifying on things like, you know,
13 systemic risk regulator or how we would approach
14 this new scheme, I would help her sort of talk
15 through the issues, what the tradeoffs are, in a
16 general policy sense.

17 Within the building, I'll often sort of
18 organize groups. You know, we're big on breaking
19 down silos. The old SEC was very siloed and so we
20 try to bring groups together, so to the extent we
21 have a policy question I'll often put together a
22 group of people who are in various divisions and
23 try to get together and talk through the policies
24 and sort of go through the pluses and minuses and
25 see if we can come to some sort of better policy

1 outcome through the sort of cross-pollinization.

2 Q What about communications with Capitol
3 Hill? Do you do that on behalf of the SEC?

4 A Occasionally, yes. I don't know if I'd
5 say on behalf of the SEC. I'll sometimes explain
6 Mary's policy positions or if they'll have
7 questions about something that's chairman-related,
8 I'll sometimes be involved in that. So, yes,
9 sometimes.

10 Q Who do you currently report to?

11 A Didem Nisanci and then the chairman.

12 Q All right. Did there come a time when
13 you became aware of the existence of an
14 investigation by the SEC into the sale of
15 collateralized debt obligations by Goldman Sachs
16 known as the ABACUS Investigation?

17 A Yes.

18 Q When did you first become aware of that?

19 A I don't know when I -- the short answer
20 is I don't know when I first became aware of it.

21 Q All right. But it was certainly after
22 you came to the Commission?

23 A Oh, of course.

24 Q Okay. So how long after you got to the
25 Commission did you become aware of it do you

1 think?

2 A I think it would have been months.

3 Q It was -- to maybe give you a sense, it
4 was first put on the calendar in December of 2009.

5 A Okay.

6 Q And then taken off the calendar, then
7 put back on the calendar in January of 2009, then
8 taken off the calendar, then filed in April.

9 A Okay.

10 Q So given that, do you think you knew
11 about it before it was first put on the calendar?

12 A I don't know.

13 Q Were you aware that the SEC-Goldman
14 matter was put on the calendar a couple of times
15 before it was finally approved?

16 A I don't think I knew that until after
17 this -- after it was finally approved. I think
18 that's the first I heard of it, was after the case
19 was filed. After -- I think that's the first I'd
20 heard of it going on and off. Does that make
21 sense?

22 Q Yes.

23 A I don't recall it being on or off. I
24 don't monitor the enforcement calendar.

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

1 **Q How did you first learn of the ABACUS**
2 **investigation?**

3 A So, I don't know about first. I do
4 recall -- I think there was a New York Times story
5 about ABACUS and/or Goldman because they later
6 took credit for breaking the story. I remember
7 reading that. I remember, I think, Khuzami once
8 spoke about, you know, that there is this case
9 coming our way, at sort of the regular Division
10 Directors' meetings. I don't know what would have
11 been first. I'm sorry, I don't know first.

12 BY MR. KOTZ:

13 **Q Do you understand that the ABACUS case**
14 **was an important, significant case for the SEC?**

15 A Sure.

16 **Q How did you have that understanding?**

17 A You mean before it was brought or after?

18 **Q Before it was brought.**

19 A Well, before it was brought my
20 recollection was that people didn't think it was
21 that big of a deal; that it was a relatively small
22 case. It was kind of a one-off. That the world
23 might be sort of disappointed that that's all you
24 had. But obviously, as soon as it was brought and
25 it turned into the biggest case in the world, it

1 was crystal clear.

2 Q Okay. When you said you found out after
3 the fact that the ABACUS case had been put on the
4 calendar and taken off, did you have an
5 understanding as to why?

6 A I didn't have an understanding as to
7 why. I think I remember, God, what was it? That
8 enforcement -- enforcement had put it on the
9 calendar and then it off, but -- is it -- my sense
10 is these things happen all the time because you
11 often have to get various commissioners there or
12 not and sometimes commissioners are traveling and
13 you have to get all their calendars together but I
14 don't know if that was this or not. So the short
15 is I don't know enough to know.

16 Q Okay. All right.

17 A Sorry.

18 Q Let me show you a document. I'm going
19 to mark it as Exhibit 2. E-mail exchange between

20 [REDACTED] and [REDACTED]

21 [REDACTED] 12/8/2009, 6:04 p.m.

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

24 THE WITNESS: Okay. I don't know who
25 these people are.

1 BY MR. KOTZ:

2 Q Okay.

3 A Should I?

4 Q At the bottom of the page there's an

5 e-mail from (b)(6),(b)(7)(C) and it says "To

6 Commission counsels." Would you have gotten that?

7 Are you among those Commission counsels?

8 A I do sometimes get -- yeah, I think I
9 am.

10 Q Do you remember receiving this? This is
11 about --

12 A No, I don't.

13 Q -- the decision to withdraw the ABACUS
14 case.

15 A I don't. My guess is I'm on the
16 Commission counsels' list so it might have been on
17 the thing.

18 Q But you probably wouldn't have paid much
19 attention to it?

20 A At all. I would have deleted it.

21 Q Okay. Well, let me just show you the
22 next one as well to see if you remember that.

23 We're going to mark it as Exhibit 3, an e-mail

24 exchange between (b)(6),(b)(7)(C) and

25 (b)(6),(b)(7)(C), 1/27/10, 2:21 p.m.

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

3 BY MR. KOTZ:

4 Q And again, at the bottom of the page is
5 the e-mail from [REDACTED] to Commission
6 counsels. This is about the decision to pull it a
7 second time. So again, do you recall receiving
8 this?

9 A Not at all. I'm sure that I -- well,
10 I'm not sure but I suspect I do routinely get
11 Commission counsel e-mails. I don't know if I
12 get them and my name is listed or if I get them
13 because I'm on the Commission counsels' list. I
14 think I'm on the Commission counsels' list because
15 I do sometimes get these [REDACTED] e-mails.

16 Q But you probably wouldn't have paid my
17 attention to it?

18 A At all.

19 Q All right. Let me show you the next
20 document. It's dated 4/11/2010, 6:47 p.m. from
21 [REDACTED] to [REDACTED] with a copy to you
22 and another individual. I'm going to mark that as
23 Exhibit 4.

24 (Exhibit No. 4 was marked for
25 identification.)

1 BY MR. KOTZ:

2 Q Take a minute to read it. Okay? Do you
3 remember generally that the Senate's Permanent
4 Subcommittee on Investigations was investigating
5 Goldman Sachs?

6 A Um-hum.

7 Q Yes?

8 A I remember the hearing.

9 Q Yes?

10 A Sorry. I saw the hearing.

11 You have to say yes or no.

12 THE WITNESS: Oh, could you repeat the
13 question?

14 BY MR. KOTZ:

15 Q Yeah, just um-hum isn't picked up.

16 A I'm sorry.

17 Q So just, were you aware generally that
18 the SEC -- I'm sorry, that the Senate's Permanent
19 Subcommittee on Investigation was investigating
20 Goldman?

21 A Yes. I saw the hearing.

22 Q Okay. But prior to the hearing were you
23 aware that they were conducting an investigation?

24 A Clearly I got this so I assume this is
25 before they had the hearing, right? Because they

1 were asking for witnesses.

2 **Q Right.**

3 **A So I guess certainly from this I would**
4 have known that they were looking for someone to
5 talk about Goldman.

6 **Q Do you remember this issue with Senator**
7 **Levin trying to get** (b)(6),(b)(7)(C)

8 **A Vaguely.**

9 **Q What do you remember about it?**

10 **A Well, I remember that Levin apparently**
11 liked (b)(6),(b)(7)(C) He has a fantastic reputation.
12 And he wanted him to come testify. And I think the
13 general view was that would be -- put the agency
14 in a real conflict first and also that, you know,
15 (b)(6),(b)(7)(C) has his own personal views as opposed to the
16 agency's views and would talk generally about his
17 things. So I remember the view being that the
18 agency wouldn't want to be in a conflict situation
19 with one of its people talking. Generally a
20 theory about something they didn't know very much
21 about.

22 **Q Was there any concern also about the**
23 **fact that the SEC was investigating Goldman at the**
24 **same time?**

25 **A No. This isn't -- short answer, no.**

1 Not that I recall.

2 Q [REDACTED] in this e-mail that you're
3 copied on Sunday, April 11th, references the
4 Goldman field will certainly plant questions to
5 undercut his views in any case we might have. Do
6 you remember that? Does that refresh your
7 recollection at all?

8 A Yeah, I don't remember that but that
9 makes sense.

10 Q Do you remember generally concern that
11 the SEC was about to bring its case on Goldman and
12 the Senate Permanent Subcommittee Investigation
13 was also investigating Goldman?

14 A I don't remember any tension there.

15 Q Okay. Why were you copied on this
16 e-mail? Do you know?

17 A I don't know but my guess is so that to
18 the extent, you know, we wanted to talk to [REDACTED]
19 about not doing it or suggest that we should get
20 someone else that I might talk to him or they
21 might talk to him.

22 Q Why would you be the one to talk to

23 [REDACTED]

24 A Well, sometimes because I'm from the
25 Chairman's office or sometimes because I [REDACTED]

1 [REDACTED] so, you know, people will, you
2 know, offer some deference to my sense that, you
3 know, this would put us in an awkward spot. But I
4 didn't talk to [REDACTED]

5 Q Did you talk to anybody at the PSI?

6 A No.

7 Q All right. Let me show you the next
8 document I'll mark as Exhibit 5. It's an e-mail
9 exchange between you, [REDACTED] Steve Cohen,
10 and [REDACTED] 3/5/2010, 1:45 p.m.

11 (Exhibit No. 5 was marked for
12 identification.)

13 THE WITNESS: Okay.

14 BY MR. KOTZ:

15 Q Do you remember this issue?

16 A Yeah. This is, what, Ben Bernanke -- my
17 recollection is that Ben Bernanke went out there,
18 testified somewhere, and said something like I'm
19 sure -- I'm sure the SEC is investigating that or
20 I'm sure -- it was -- I think it caught people by
21 surprise that he was the Fed chairman sort of
22 saying he knew something or suggesting that he
23 knew something was going on and I think people
24 were a little taken aback.

25 Q When you say investigating "that,"

1 **what's "that"?**

2 A I think this was the [REDACTED] CDS issue.

3 Is that -- I mean?

4 Q So a CDO issue related to Goldman Sachs?

5 **Is that what you're saying?**

6 A No, [REDACTED] had the CDS. [REDACTED] you
7 know, almost took -- down. So [REDACTED] had a CDS
8 exposure to Goldman and obviously [REDACTED] got into
9 a lot of trouble over it. And Bernanke was
10 testifying and my recollection was he said
11 something like, I'm sure the SEC is looking into
12 it.

13 Q Was the SEC looking into it?

14 A I don't -- I don't think the SEC was
15 looking -- well, I don't know is the short answer.

16 Q But it wasn't the ABACUS case?

17 A It's an odd thing. No, not -- my
18 recollection is this was a one off [REDACTED] Goldman
19 issue that was unrelated to ABACUS. I don't know
20 if they were also looking into this. It would be
21 hard to find a hook but that's not my space.

22 Q Why was Mary trying to say the most she
23 could say? [REDACTED] says anything else we
24 should add to this Goldman statement before I pass
25 it along to Mary? She asked for the most I can

1 say. And you say, I'd just stick to the
2 statement.

3 A I don't -- I don't know. She asked for
4 the most I can say. Oh, I don't want to
5 speculate. My guess is that this is something
6 that's very much in our space and we want to be
7 looking to make sure that if a company was somehow
8 selling fraudulent CDS or, you know, just, you
9 know, manipulating the markets or helping a
10 country sort of trick investigators in that
11 country that that's something we'd want to look
12 into.

13 Q So Mary wanted to give the impression
14 that the SEC was looking into not necessarily this
15 matter but generally on the job, so to speak.

16 A Yeah. That's the way I read it. Show
17 the world we're on the job. We're not sort of
18 being left behind here.

19 Q And at the same time she doesn't want to
20 confirm the existence of an investigation.

21 A Obviously.

22 Q So she was trying to find out what's the
23 most she can say without going over the line?

24 A Well, I don't know. I don't know.

25 You'd have to ask her whether she was trying to --

1 the most I can say to not go over the line or just
2 what's the right thing to say.

3 Q And do you remember why you said I'd
4 just stick to the statement?

5 A No. Well --

6 (b)(6),(b)(7)(C): I think the question is do
7 you remember what was said.

8 THE WITNESS: I don't remember.

9 BY MR. KOTZ:

10 Q Okay. All right. Do you recall when
11 the SEC actually filed its complaint against
12 Goldman in April?

13 A Um-hum.

14 Q Yes?

15 A I remember that day. Sure.

16 Q Okay. When did you first become aware
17 that the SEC was about to file its case?

18 A I think it was Wednesday. It was
19 Wednesday when the Commission voted. My
20 recollection was the Commission voted and then we
21 found out they were going to --

22 Q And did you have any understanding as to
23 why the case was filed on Friday?

24 A My understanding was they voted
25 Wednesday. Thursday there was another big case.

1 Was it a pay-to-play case or something I think?

2 Q Was it (b)(6),(b)(7)(C)

3 A My recollection is it was a big
4 pay-to-play case and I think we worked with the
5 New York Attorney General or someone on it. So I
6 think that was Thursday and this was the next day.
7 So I think that's the timing.

8 Q All right. Let me show you a document.

9 We're going to mark it as Exhibit 6. An e-mail
10 exchange between (b)(6),(b)(7)(C) Ken Lench, and (b)(6),(b)(7)(C)
11 (b)(6),(b)(7)(C) 4/14/2010, 11:06 p.m.

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

14 BY MR. KOTZ:

15 Q You're not specifically on it but I
16 wanted to ask you about -- the complaint is being
17 sent around and then they say attached a new draft
18 complaint. And then Ken Lench -- well, let me
19 give you a second to read it.

20 (b)(6),(b)(7)(C): Let him read it.

21 THE WITNESS: Okay.

22 BY MR. KOTZ:

23 Q It seems as though from this e-mail and
24 some other testimony we've had that the case, the
25 Goldman case was ready to go on Thursday and that

1 at least according to this, whose idea was it to
2 file Friday? Thanks. Answer, front office. Just
3 don't know their thinking.

4 Do you know whether that's true that the
5 front office made the decision?

6 A I don't know.

7 Q Do you know what they were thinking?
8 Why that decision was made?

9 A I don't.

10 Q So you're aware that there was this
11 other case with the New York AG's office?

12 A Um-hum.

13 Q Yes?

14 A Yes, sorry.

15 Q Was it -- was it the case that the SEC
16 wouldn't want to fly all and/or announce both
17 cases on the same day?

18 A I don't know if it was a -- the short
19 answer is I don't know. I don't know if it was a
20 resources issue, like people doing one, people
21 doing the other. If it was, you know, I guess my
22 recollection was they had to do, for some reason,
23 the NY AG case on Thursday and therefore they
24 couldn't do this one on Thursday. And then was
25 the complaint then amended Thursday night so that

1 they couldn't have done it Thursday anyway and
2 they had to do it Friday? That's probably fifth
3 hand though. So, the short answer is I don't
4 know.

5 Q Okay. Do you remember any discussion or
6 that it might have been the case that they
7 wouldn't want to issue and file two reports on the
8 same day because to the extent they would get
9 positive press coverage it would be less if they
10 both issued on the same day?

11 A I don't -- I don't recall that. My
12 sense though as sort of an outsider, I don't think
13 people were convinced the press from Goldman was
14 going to be positive. I don't think they thought
15 it would be as big a deal as it was. I think
16 people were a little surprised by that.

17 Q And do you think -- was it the sense
18 that the Quadrangle press would be positive?

19 A I have -- I don't know.

20 Q But you weren't --

21 A I recall that being a big case but, you
22 know, there are big cases and smaller cases. And
23 I remember people talking about that as a bigger
24 case.

25 Q But you weren't in the loop in terms of

1 decisions on when actually to file.

2 A No.

3 Q You were just aware that it was going to
4 happen?

5 A Right.

6 Q Do you know when you became the decision
7 was made for Goldman to be filed on Friday?

8 A No.

9 Q Were you aware that at the same time
10 there was an Office of Inspector General report
11 that was being, I guess, made public?

12 A I knew there was a Stanford IG report
13 coming.

14 Q Did you know when that was coming?

15 A I think -- my recollection -- yeah, I
16 think people knew that was coming Friday.

17 Q When did people know that? Earlier in
18 the week?

19 A Yeah, that week.

20 Q And did you hear anything about the fact
21 that it might make sense to announce one of the
22 two enforcement cases the same day as the Stanford
23 case?

24 A No.

25 Q Was there concern that there would be

1 negative press associated with the announcement of
2 the Stanford OIG report?

3 A Yeah, I think people thought that would
4 be a tough report. I mean, as far as our office
5 was concerned it wasn't -- it was an old SEC, new
6 SEC thing. I mean, so things like Madoff/Stanford
7 were old SEC so it wasn't as if this was going to
8 be terrible for the Chairman's Office. It was,
9 you know, going to be a big deal for the agency
10 but not for the chairman.

11 Q There was, I guess, some discussion that
12 we've heard back and forth about the question of
13 whether to announce an enforcement case on a
14 Friday with one view being you never announce an
15 enforcement case on a Friday because you're not
16 going to get the press from Saturday. The other
17 view being that might have been the case
18 historically but now we've got this 24/7 news
19 cycle; it doesn't matter. Do you remember that
20 discussion?

21 A Nothing to do with that.

22 Q Okay. Do you remember discussions about
23 the fact that if there's a negative report that it
24 would make sense to issue that on a Friday?

25 A Unh-unh.

1 Q No? Just say yes or no.

2 A I'm sorry. No, I don't remember that.

3 Q All right. All right. Did you -- okay.

4 Let me show you another document. Let me get this

5 one. I'm going to mark it as Exhibit 7. This is

6 an e-mail from [REDACTED] to Didem Nisanci,

7 Stephen Cohen, and you, dated 4/19/2010, 10:14

8 p.m.

9 (Exhibit No. 7 was marked for
10 identification.)

11 BY MR. KOTZ:

12 Q Okay? So all right, first of all, why
13 were you involved in this exchange?

14 A Well, I think this is to prepare
15 questions that were going to be asked of the
16 Chairman when she testified. Was she testifying
17 the next day? It say something like --

18 Q I believe she was going to be
19 testifying.

20 A Right. So we're trying to -- this is,
21 you know, make sure -- what's she going -- we have
22 to think through what are questions she might be
23 asked? And so think of the questions that might
24 be asked. How is she going to answer? And so my
25 view is she should just lay it all out. Ba ba ba

1 ba ba ba.

2 Q Right. And you understood that she
3 might be asked a question about whether the SEC
4 staged the Goldman announcement to hide the
5 Stanford Report?

6 A Um-hum.

7 Q Yes?

8 A Yes. After the press of the Goldman
9 report we expected to get questions like that.

10 Q Did you get questions like that?

11 A No. I don't think so. I don't think
12 she was asked anything about Goldman in that
13 testimony. I'm sure the press asked her after. I
14 think right after she left the testimony she got a
15 question like did you time Goldman. And she said
16 absolutely not.

17 Q So take me through the process of what
18 you recall. There was concern that this question
19 was going to come up. And then what do you
20 remember?

21 [REDACTED]: About this exchange?

22 BY MR. KOTZ:

23 Q Yeah. Just in general. So you were
24 preparing the chairman for testimony.

25 A Right.

1 Q And there was a concern about this
2 particular question.

3 A Right.

4 Q So what do you remember? Did you go to
5 try to find out what happened? I mean, what was
6 the process that you remember took place?

7 A So as soon as the case was brought
8 obviously there was a lot of press. That whole
9 issue got big. We got all this sort of, well,
10 they're trying to do this and that. So we tried
11 to prepare her for those questions. So we would
12 have asked, okay, what are the facts? When was it
13 brought? Why was it brought here? How does she
14 answer? When were things done? What's the
15 timeline? And so I think if you look at my e-mail
16 it's we need the real facts. IG finished the
17 report on this day. GC did this. Lay it all out
18 so there's no ambiguity. There's no running.
19 It's just here it is. Here are the facts. This
20 day, this day, this day.

21 Q But so you have the facts of when the
22 Stanford Report was finished. What about the
23 facts of when the Goldman case was ready?

24 A My recollection was the Goldman case was
25 voted on Wednesday. Thursday was that Quadrangle,

1 the pay-to-play case, and then it was brought
2 Friday. It was one, two, three.

3 Q But in your efforts to try to come up
4 with answers to this question for the chairman,
5 did you ever inquire how come we didn't file the
6 Goldman case on Thursday?

7 A I don't remember asking but my
8 understanding was that it was because there was a
9 big pay-to-play case on Thursday. That's why.

10 Q I guess my question is it seems like the
11 answer was determined based on when the Stanford
12 Report was issued. It just doesn't seem like
13 there's a lot of discussion about when the Goldman
14 case was issued. One would think that if you're
15 preparing that kind of answer, an important
16 question to answer would be if the Goldman case
17 was approved on Wednesday, how come they waited
18 until Friday to release it?

19 A I don't understand. I thought it was
20 voted on Wednesday, major Quadrangle pay-to-play
21 case Thursday, and then brought first thing
22 Friday.

23 Q Did you brief the chairman on the fact
24 that there was this Quadrangle case so she would
25 be ready?

1 A No. I don't know anything about that
2 case or any -- I mean, I just ask questions and
3 think through, okay, you get the people who
4 actually know the substance. So --

5 Q Who -- do you remember who told you
6 about this issue, that there was the Quadrangle
7 case on Thursday and then Goldman was on Friday?
8 Where you learned that?

9 A It would have been someone from
10 Enforcement. I don't remember who. My guess is
11 Steve Cohen or -- yeah, my guess is Steve Cohen
12 but I don't know that for sure. But he's our
13 Enforcement counsel so he would be the logical
14 person.

15 Q All right. All right. Let me show you
16 another document.

17 All right. We're going to mark this as
18 Exhibit 8. It's dated 4/16/2010, initially
19 between Myron Marlin and John Nestor.

20 (Exhibit No. 8 was marked for
21 identification.)

22 BY MR. KOTZ:

23 Q Okay? Do you remember this issue with
24 this phone call with Jim Duffy?

25 A I don't.

1 Q You were just, I guess, Steve Cohen sent
2 it to you along with two other people.

3 A Right.

4 Q But do you remember anything about the
5 conversation?

6 A No.

7 Q That [REDACTED] had?

8 A Unh-unh.

9 Q No?

10 A No.

11 Q Do you remember generally that there was
12 a concern expressed by the New York Stock Exchange
13 that they weren't given a heads up about --

14 A Yes.

15 Q What do you remember about that?

16 A I remember I think it was on CNBC that,
17 you know, the Exchanges were upset that, you know,
18 this would be done during the trading day and that
19 they weren't given a heads up.

20 Q And do you know why they weren't given a
21 heads up?

22 A I don't.

23 Q Do you know if there's a policy in
24 general about whether the SEC were to file a case
25 against a publicly traded company during the

1 trading hours?

2 A I don't.

3 Q Do you know if there was any discussion
4 about maybe filing it after trading hours?

5 A I don't.

6 Q Do you know whether in connection with
7 the settlement of the Goldman case, whether the
8 New York Stock Exchange was given a heads up at
9 that point?

10 A I don't.

11 Q And were you aware that in connection
12 with the settlement of the Goldman case the case
13 was announced after the trading hours?

14 A I do know that it was after, yes.

15 Q Do you know why?

16 A I don't.

17 Q You were aware, I assume, of the
18 Financial Regulatory Reform legislation?

19 A Yes.

20 Q And were you involved in communications
21 with Capitol Hill about that?

22 A Sometimes.

23 Q How often?

24 A I guess I'd say regularly, although
25 there are many different paths, you know, I'm

1 trying to explain. So I'd say at least once a
2 week I'd probably communicate -- most of our
3 communications go through Legal Affairs and go up.
4 There are particular issues over which different
5 people have a role. And so there were a couple of
6 issues that I had a role in. And so to the extent
7 those issues came up I might get a call from the
8 Hill or something about that.

9 **Q Was the chairman generally favorably,**
10 **disfavorably disposed towards Financial Regulatory**
11 **Reform?**

12 A Yes.

13 **Q Did she want it to pass?**

14 A She supported the legislation.

15 Obviously, there were things in it that she liked
16 more than other things.

17 **Q But overall did she -- did she want the**
18 **legislation to pass?**

19 A Yes. I don't know any -- we had a huge
20 financial crisis. It fixed a whole lot of gaps.
21 There's no way -- yes. I don't know how you
22 couldn't.

23 **Q Is it fair to say there were sort of**
24 **ebbs and flows in the legislation over time?**

25 A Absolutely.

1 Q Sometimes it seemed like it was more
2 likely to pass, other times it seemed like it was
3 less likely to pass?

4 A Yes.

5 Q Now, someone speculated that when the
6 SEC brought its Goldman case it provided some
7 momentum to the Financial Regulatory Reform
8 legislation. Do you think that that's accurate?

9 A I think folks have said that, yes.

10 Q Do you think that it's true though?

11 A That it provided momentum? It certainly
12 was seized upon by people who were in favor of the
13 bill to push an agenda, as was every other case
14 and every other issue. But, yeah.

15 Q And during the times that the Financial
16 Regulatory Reform as it was going forward seemed
17 to be less likely to be passed, was there some
18 disappointment expressed in the Chairman's Office
19 that it was not looking good?

20 A No. Not that I recall.

21 Q Do you recall anyone commenting, any
22 agency, that this announcement of the Goldman case
23 seemed to have helped push through some momentum
24 for Financial Regulatory Reform?

25 A No. No.

1 Q In all your conversations that you had
2 with folks on Capitol Hill, whether they were
3 members of Congress or staff of members of
4 Congress, regarding Financial Regulatory Reform,
5 was the Goldman investigation ever raised prior to
6 the filing of the complaint?

7 A Oh, no.

8 Q At any point in time in any of those
9 conversations with either staffers or members of
10 Congress, anyone say it would be really helpful if
11 the SEC brought a big case?

12 A No.

13 Q Have you ever had any contact with the
14 White House regarding Financial Regulatory Reform?

15 A No.

16 Q Are you aware of anyone in the SEC who
17 has?

18 A No.

19 Q Was the self-funding aspect -- potential
20 aspect of the legislation something that the
21 chairman was very much in favor of?

22 A Yes.

23 Q Did anybody ever indicate that perhaps
24 the filing of the Goldman case helped in the SEC's
25 efforts to try to get self-funding?

1 A No.

2 Q Was there any point in time in the
3 discussions you had with folks on Capitol Hill
4 where it was mentioned that the SEC had some
5 negative effects to its reputation because of the
6 Madoff case or other matters and that that had
7 some impact on whether the reform legislation
8 would go through in a favorable way to the SEC?

9 A Could you -- I'm sorry. So I'm just
10 trying to under --

11 Q Did anybody on Capitol Hill, either
12 staffers or members of Congress, ever indicate
13 that the fact that the SEC's reputation had taken
14 a hit because of Madoff or whatever other matter,
15 that that had some impact on --

16 A No. I don't remember anyone ever saying
17 that.

18 Q Do you have any reason to believe that
19 the SEC's action against Goldman Sachs or the
20 timing of that action was related to or to advance
21 Financial Regulatory Reform legislation?

22 A Absolutely not.

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

1 or specifically to advance Financial Regulatory
2 Reform legislation?

3 A No. Isn't that the same question?

4 Q Well, one -- no, they're slightly
5 different. One is whether information was
6 relayed. One is just general.

7 A I see. No.

8 Q Okay.

9 A I'm aware of no information of any
10 connection whatsoever.

11 Q All right. Now I'm going to go through
12 a series of questions --

13 A Fire away.

14 Q Are you aware of any information
15 indicating --

16 (b)(6),(b)(7)(C): Let him finish the whole
17 question before you --

18 THE WITNESS: Okay. Sorry.

19 BY MR. KOTZ:

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

25 A No.

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

7 A No.

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

12 A No.

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

19 A No.

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

1 A No.

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

10 A No.

11 Q Did you have any communications with the
12 Democratic National Committee, Democratic Senate
13 Campaign Committee, or Democratic Congressional
14 Campaign Committee about the National Regulatory
15 Reform?

16 A No.

17 Q Do you know of anyone else who did?

18 A No.

19 Q Are you aware of any information
20 indicating that anyone at the SEC shared any
21 information concerning its Goldman Sachs
22 investigation with the U.S. Department of
23 Treasury, the Federal Reserve, or any of their
24 employees prior to the complaint being filed?

25 A No.

1 Q You are aware that certain nonpublic
2 information about the votes, the Commission
3 decisions on Goldman Sachs both with respect to
4 the initial action and the settlement were leaked
5 to the press?

6 A Yes.

7 Q Do you know who leaked that?

8 A I do not.

9 Q Do you know if any efforts were made to
10 try to figure out who might have leaked that?

11 A I don't know.

12 Q Are you aware of anyone who leaked any
13 nonpublic information about Goldman Sachs' --

14 A No.

15 Q -- investigation to the press?

16 A No.

17 Q Are you aware of whether the SEC
18 informed Goldman Sachs that the Commission had
19 approved the staff's recommendation to file an
20 action against them before they actually filed?

21 A No.

22 Q Are you aware that there were reports
23 that Goldman was complaining they didn't receive a
24 heads up?

25 A Yes.

1 Q Do you know if that's true?

2 A I don't -- let's see. I remember
3 reports of Goldman complaining they didn't get a
4 heads up. Then I remember reports of, you know,
5 the SEC having been in there for months and
6 talking to them but that's the extent of it. It
7 was all after the fact.

8 Q Are you aware of SEC regulations or
9 policies that require the notification of
10 defendants prior to the filing of an SEC action?

11 A I'm not.

12 Q I'm going to show you another document.
13 I'm going to mark this as Exhibit 9. This is
14 dated 4/16/2010, 2:31 p.m., from Stephen Cohen to
15 you and David Becker and Didem Nisanci.

16 (Exhibit No. 9 was marked for
17 identification.)

18 THE WITNESS: Yes.

19 BY MR. KOTZ:

20 Q So you sent an e-mail out to these
21 folks. What do you recall about this?

22 A I received -- so, a former colleague
23 that I used to work with went to work for Goldman
24 Sachs.

25 Q Who is that?

1 A His name is (b)(6),(b)(7)(C)

2 And on the day of the suit I got a call from a
3 former colleague on the Hill saying that there
4 were rumors around town -- and you'll see it in
5 the e-mail -- that Goldman was tipped off to the
6 case and they were shorting their own stock.

7 Q Who was the person on the Hill who told
8 you that?

9 A His name was (b)(6),(b)(7)(C) And so he
10 said that and I said, well, that's a big deal.
11 And then he said because you knew (b)(6),(b)(7)(C) people
12 might think you tipped him off. And I said, well,
13 that's crazy. And in addition, you're telling me
14 that there's people who are trading on inside
15 information. So, you know, I sent this e-mail
16 because I wanted to make sure that to the extent
17 there's anything in here that's remotely true I
18 want the agency to go and run it down.

19 Q So was the allegation or the rumor that
20 you had done it or just that somebody had done it
21 and they were worried that somebody might think it
22 was you?

23 A Yeah. That -- the rumor was that
24 Goldman was shorting its own stock and they would
25 have gotten a tipoff from the SEC. And because

1 you two know each other people might think it was
2 you. And he wanted to give me a heads up which I
3 thought was, you know, crazy. And so I
4 immediately put it in an e-mail and sent it so
5 that we could, to the extent there was anything
6 real there they'd run it down.

7 Q And do you know if an investigation or
8 an inquiry was opened?

9 A I don't know.

10 Q Did you ever follow up to find out what
11 happened?

12 A No. Well, I feel like there'd be a
13 conflict if I did. I wouldn't want to weigh in if
14 there was any --

15 Q So you don't know anything that happened
16 with respect to this matter subsequent to you
17 sending this e-mail?

18 A I don't.

19 Q And the only response you got was this
20 one from Stephen Cohen?

21 A Sure. I called David Becker about it
22 because I was shaken up that anyone would even
23 assert something so ridiculous. And I e-mailed
24 Steve who said he'd send it on to, you know, I
25 assume the enforcement people and others to run it

1 down.

2 Q And what did David Becker say in that
3 call you had with him?

4 A Well, that it was silly and that we're
5 living in crazy times and to, you know, it would
6 be okay. But I wanted to make sure that everyone
7 knew about this because I didn't want some silly
8 issue, you know, God forbid a rumor becomes more
9 than a rumor.

10 Q And just for the record, you never
11 provided any information --

12 A Never.

13 Q -- let me finish.

14 A Sorry.

15 Q Did you ever provide any nonpublic
16 information about Goldman to this individual at
17 Goldman Sachs or anyone else?

18 A No.

19 Q All right. All right. Why don't we
20 take a minute. We'll go off the record and see if
21 we have anything else. All right?

22 A Okay.

23 (A brief recess was taken.)

24 BY MR. KOTZ:

25 Q -- ask and this is important that in

1 order to preserve the integrity of the
2 investigation that you not discuss the content of
3 your testimony with anyone. Obviously, you can
4 discuss it with counsel but not with anyone else.
5 All right?

6 A Yes.

7 Q All right. With that we're off the
8 record. All right. Thank you very --

9 (Whereupon, at 4:19 p.m., the examination was
10 concluded.)

11 * * * * *

REPORTER'S CERTIFICATE

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I, (b)(6),(b)(7)(C) reporter, hereby certify that the foregoing transcript of 48 pages is a complete, true and accurate transcript of the testimony indicated, held on August 3, 2010, at 3:32 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:

8/10/10

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 30

File Number: OIG-534

Date: Tuesday, August 3, 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)

8/10/10

(Proofreader's Name)

(Date)

Chapter Break

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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

 **COPY**

WITNESS: Number 31

PAGES: 1 through 40

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

DATE: Wednesday, August 4, 2010

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

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, Inspector General

5 (b)(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

1			
2			
3	WITNESS		EXAMINATION
4	Kayla L. Gillan		4
5			
6	EXHIBITS:	DESCRIPTION	IDENTIFIED
7	1	Notice of Rights	6
8	2	January 24, 2010, E-mail,	
9		Cohen to Gillan	11
10	3	April 14, 2010, E-mail,	
11		[REDACTED] and Lench	13
12	4	April 14, 2010, E-mail,	
13		[REDACTED] and [REDACTED]	13
14	5	April 14, 2010, E-mail, from [REDACTED]	14
15	6	April 16, 2010, E-mail, from Marlin	15
16	7	April 7, 2010, E-mail Chain	18
17	8	April 16, 2010, E-mail,	
18		Gillan and Cohen	24
19	9	April 20, 2010, E-mail,	
20		Marlin to [REDACTED]	26
21			
22			
23			
24			
25			

1 PROCEEDINGS

2 MR. KOTZ: We are on the record at 1:05 p.m. on
3 August 4, 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 KAYLA L. GILLAN

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 Kayla, K-a-y-la, Jean, J-e-a-n, Gillan,
16 G-i-l-l-a-n.

17 Q Ms. Gillan, my name is David Kotz, I'm
18 the Inspector General of the United States
19 Securities and Exchange Commission, and 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 and you'll be providing the answers under oath.
25 The court reporter will record and later

1 transcribe everything that is said. Please,
2 therefore, provide verbal answers to the
3 questions, as a nod of the head or another
4 non-verbal response won't be picked up by the
5 court reporter.

6 Also, so the record will be clear,
7 please let me finish my question before you
8 provide your response, and I'll try to let your
9 finish your response before I ask the next
10 question. In addition, it is important that you
11 understand the questions and give accurate
12 answers. If there's anything you don't understand
13 or anything you do not know or are not sure about,
14 please let me know, otherwise I will assume that
15 you heard and understood the question. Do you
16 understand those instructions?

17 A Yes.

18 Q I'm going to give you the perjury
19 warning. As you can see, your responses and
20 statements given today are provided after you've
21 sworn an oath and will be taken down verbatim by
22 the court reporter. This is an official U.S.
23 Government law enforcement investigation. The
24 claims asserted in this case are serious ones. It
25 is very important you tell me everything you know

1 about the matter at hand and are completely
2 forthcoming and truthful with me. I'm formally
3 advising you that your testimony today is -- the
4 laws of perjury, providing false or misleading
5 testimony under oath is a serious offense. If the
6 evidence shows the testimony you've given is
7 false, we may refer it as appropriate. Do you
8 understand those instructions?

9 A Yes.

10 Q All right. Why don't we start with a
11 little bit of background? Actually, why don't we
12 first put this into evidence? We're going to mark
13 as Exhibit 1 a U.S. Securities and Exchange
14 Commission, Office of Inspector General warning,
15 Notice of Rights. And could you just confirm that
16 this is your signature on Exhibit 1?

17 A Yes, it is.

18 (Exhibit No. 1 was marked for
19 identification.)

20 BY MR. KOTZ:

21 Q All right. If you could tell me, please, your
22 education beginning with college.

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

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

25

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

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

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

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

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

6 Q

7 A

8 Q

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

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

11 Q

12 A

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

18

19

20

21

22

23

24

25

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

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

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

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

5

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9

10 (b)(6),(b)(7)(C) In February of 2009, I joined
11 the SEC staff.

12 Q What is your position at the SEC?

13 A I'm Deputy Chief of Staff.

14 Q And what are your duties generally?

15 A I am the -- sort of the official counsel
16 to the chairman on -- for two subject areas, which
17 is Corpfin and Chief Accountant's Office, so I'm
18 sort of her liaison. I work in the chairman's
19 office, so I'm her liaison on those two issues.
20 In addition, I perform somewhat liaison
21 responsibilities with regard to the Office of the
22 Inspector General, and all of the administrative
23 arm of the Commission.

24 Q Who do you currently report to?

25 A Mary Schapiro.

1 **Q And what, if any, involvement do you**
2 **have with actions brought by the Enforcement**
3 **Division?**

4 **A Occasional.**

5 **Q When would that be?**

6 **A I think I've been involved in two closed**
7 **sessions on enforcement matters. One of them was**
8 **the first month I came to work here. I have no**
9 **recollection at all what the subject was, I just**
10 **went because I had never been to one and decided I**
11 **was unlikely to come to very many of them. I was**
12 **at one executive session on a BOA matter because**
13 **it involved some corporate governance related**
14 **provisions as far as a settlement, and I had**
15 **consulted with the court then about those.**

16 **Q Okay. That's Bank of America?**

17 **A Yes, Bank of America.**

18 **Q Are you briefed regularly on enforcement**
19 **investigations that are ongoing?**

20 **A No, I receive the priority report, I**
21 **rarely read it.**

22 **Q All right. Did there come a time when**
23 **you became aware of the existence of an**
24 **investigation by the SEC into the sale of**
25 **collateralized data obligations by Goldman Sachs**

1 known as the Abacus investigation?

2 A I became aware of an investigation
3 concerning Goldman.

4 Q You didn't necessarily know it as
5 Abacus?

6 A No, not until after it became impressed.

7 Q When did you first become aware of an
8 investigation involving Goldman?

9 A Within a few days of the data that they
10 brought it to the Commission for approval to bring
11 the action.

12 Q In April?

13 A Yeah, it would have been April.

14 Q So prior to that, you didn't know that
15 it was kind of coming down the line?

16 A I mean somebody might have mentioned it,
17 but I have no recollection and wasn't involved in
18 any discussions.

19 Q Okay. Let me show you some documents so
20 you have everything in front of you. Were you
21 aware that the Goldman Sachs investigation known
22 as Abacus was put on the calendar in December,
23 taken off, and then put on the calendar again in
24 January and taken off?

25 A I found that out in April. I believe

1 that was -- knew that that was happening.

2 **Q After the case was filed?**

3 **A Around that same week, just before the**
4 **closed session in April.**

5 **Q All right. So I -- have to put this**
6 **into evidence, but this is a document** [REDACTED]
7 **sends out to Commission counsels providing**
8 **information about enforcement cases.**

9 **A Yeah; I get those, I pretty much always**
10 **delete them, I don't read them.**

11 **Q All right. Let me show you another**
12 **document, we're going to mark this as Exhibit 2.**
13 **This is an e-mail from Stephen Cohen to you and**
14 **two others, Sunday, January 24, 2010, 9:56 a.m.**
15 **So do you remember receiving this?**

16 **A No.**

17 (Exhibit No. 2 was marked for
18 identification.)

19 BY MR. KOTZ:

20 **Q Okay, it was on a Sunday.**

21 **A Yeah, I -- I'm sure I did on -- I don't**
22 **-- I -- I'm quite sure I didn't read any**
23 **attachment, and I'm quite sure I either just filed**
24 **it in my enforcement e-mails or deleted it.**

25 **Q And it says you asked to be kept**

1 **apprised of cases that were significant, was that**
2 **you, because it's to more than one person?**

3 A I believe it was probably Didem. I've
4 never asked to be kept apprised.

5 Q **All right. And so in the week -- during**
6 **the week that the SEC filed this action against**
7 **Goldman, that's when you became aware that there**
8 **was an action coming?**

9 A Yeah, where it actually penetrated into
10 my thought processes.

11 Q **But you had some facts about the case?**

12 A I -- I don't really think I have very
13 many facts.

14 Q **Okay.**

15 A Prior to the Commission action, I had an
16 appreciation that it was considered by people to
17 be a big case.

18 Q **And so do you remember when during that**
19 **week you became aware of that? So the case was**
20 **filed on Friday, and the Commission vote was on**
21 **Wednesday.**

22 A Probably early in the week. I mean it
23 might have been late of the previous week, but it
24 was around the week before.

25 Q **All right. Let me show you two**

1 additional documents to put in together. Exhibit
2 3 is an e-mail exchanged between (b)(6),(b)(7)(C) and
3 Kenneth Lench, 4-14, 2010, 10:11 p.m., and Exhibit
4 4 is an e-mail from (b)(6),(b)(7)(C) and Kenneth Lench
5 and (b)(6),(b)(7)(C) 4-14, 2010, 11:06 p.m.

6 (Exhibit Nos. 3 and 4 were marked for
7 identification.)

8 BY MR. KOTZ:

9 Q And you're not actually on these e-mails,
10 but I'm just showing to you the context when I ask
11 the question. And you can take what time you want
12 to read these e-mails. But what we're interested
13 in is, it looks like on Wednesday, there was a
14 draft complaint, and then there was some
15 discussion about why it was decided that the
16 Goldman case would be filed on Friday.

17 And in the exchange here, these are the
18 enforcement lawyers who were working on the case,
19 one says no idea, and then later he says, front
20 office just don't know their thinking. And so
21 what we're trying to figure out is, if you know
22 why if the Goldman case was approved by the
23 Commission on Wednesday was it not filed on
24 Thursday, but filed on Friday.

25 A I don't know.

1 Q Were you aware that there was another
2 matter called Quadrangle that was also coming out
3 that week involving Attorney General Cuomo's
4 office?

5 (b)(6),(b)(7)(C) : Was that --

6 THE WITNESS: Oh, yeah, actually yeah,
7 New York --

8 BY MR. KOTZ:

9 Q Right.

10 A Yeah.

11 Q So do you remember anything about that
12 case also being issued or announced that week?

13 A I don't remember.

14 Q Okay. Do you remember generally that it
15 was a busy week, there were a lot of things going
16 on within the SEC in terms of announcements?

17 A Yes.

18 Q Okay. And then there are these talking
19 points which I will show you, that you, among
20 many, many, many other people were copied on. I
21 don't know how much you paid attention. But we'll
22 mark as Exhibit 5 an e-mail from (b)(6),(b)(7)(C) to a
23 variety of people, 4-15, 2010, 6:30 p.m. And then --

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

1 THE WITNESS: Which day of the week was
2 this? Oh, Thursday.

3 BY MR. KOTZ:

4 Q So the 15th was a Thursday, right.

5 A And then was it filed on Friday?

6 Q Correct.

7 A Okay.

8 Q And here's another one, let me show you
9 this, as well, this is dated 4-16, 2010, 1:10 a.m.
10 --

11 A Is that from Myron?

12 Q -- from Myron Marlin, yeah.

13 A I remember that e-mail.

14 Q We'll mark that as Exhibit 6.

15 (Exhibit No. 6 was marked for
16 identification.)

17 BY MR. KOTZ:

18 Q So you were copied or e-mails were sent
19 to you, among many other people. Did you
20 participate in the drafting of these talking
21 points or this schedule?

22 A I participated in the talking points in -- in
23 the fact it's Stanford report.

24 Q Okay.

25 A Not the talking points for anymore

1 cases. I didn't even look at them, I -- making
2 sure that we had talking points for the release of
3 the Stanford report.

4 Q And so is it fair to say during that
5 week, you were focused on when the Stanford OIG
6 report was going to get out?

7 A Yes.

8 Q And you weren't involved in the
9 decisions about when the Goldman case would be
10 filed?

11 A Correct.

12 Q Or the Quadrangle case?

13 A Yeah, no.

14 Q Or there was also a briefing that Mary
15 Schapiro did about self-funding that week, a
16 conference call.

17 A Oh, yeah.

18 Q Were you involved in that?

19 A Yes, I was.

20 Q Do you remember anything about how
21 decisions were made with respect to the timing of
22 all these different matters? So there's like five
23 or six different matters going on at the same
24 time, so what do you remember about them?

25 A The self-funding, I believe the timing

1 of it was set by Senator Schumer.

2 Q Okay.

3 A And my involvement in that was, I know
4 some of the former chairmen who he wanted to be at
5 that -- was it the same press conference where the
6 former chairman came?

7 (b)(6),(b)(7)(C): I'm not sure.

8 THE WITNESS: I think it was. I helped
9 him get the former chairmen together and got his
10 office in contact with some of them, so that was
11 my involvement with that. And I -- I don't
12 believe, like I said, we have a role in the timing
13 of it, I think we were just following Senator
14 Schumer's lead. The IG report was what I was
15 focused on, and I was working with your office, as
16 well as General Counsel, in -- in helping it get
17 through the Commission release process. And I was
18 motivated, and my incentive was to try to get it
19 out as soon as possible, but not on a Friday
20 afternoon.

21 Q How come?

22 A Because you and I had a conversation
23 about the fact that it's perceived very negatively
24 in the public, that if we release things on Friday
25 afternoons, that we're trying to hide them, and so

1 I was trying to push it to try to get as early in
2 the -- as early as possible that week. And as I
3 recall, I don't remember when Mary, who was the
4 last person to sign off on the release, if it was
5 Thursday or Friday morning, but there were some
6 last minute slight changes that I think a couple
7 of Commissioners had wanted, so we didn't get it
8 as early in the week as I had hoped.

9 Q All right. Let me move to this
10 document, we're going to mark as Exhibit 7,
11 because this relates to what you just said. This
12 is an e-mail exchange between you and (b)(6),(b)(7)(C)
13 (b)(6),(b)(7)(C) Richard Humes, Mark Cahn, Barry Walters,
14 dated 4-17, 2010, 9:50 a.m.

15 (Exhibit No. 7 was marked for
16 identification.)

17 BY MR. KOTZ:

18 Q And so you're asking about the review
19 progressing, and then you say, just to be more
20 clear about Mary's goal, it would be most ideal if
21 we could release this report no later than next
22 Wednesday, April 14th. You're referring to the
23 Stanford report there, right?

24 A Yes.

25 Q Okay. And then he says it would be

1 tight, but I believe we can accommodate this goal
2 and come very close. And then you say, the closer
3 we get to April 20th, the more difficult that
4 hearing will be for her; what did you mean by
5 that?

6 A That if it -- if it comes out -- if the
7 IG report came out very close to April 20th, then
8 her testimony that was supposed to be about Lehman
9 would be more about the Stanford matter, so I was
10 trying to encourage them to do it as early as
11 possible.

12 Q So during that week, that week of April
13 12th, you were focused on trying to get the
14 Stanford report out as quickly as you could; is
15 that fair?

16 A Yes.

17 Q But it was unable to be released until
18 Friday?

19 A Yes, I don't believe that all of the
20 redactions were completed and a review process was
21 completed. I have to look at the documents, but
22 my recollection, it was either late Thursday or
23 early Friday.

24 Q At that time, did you coordinate with
25 anyone else with respect to all the other

1 different things that were being issued or filed
2 that week?

3 A I let Myron and Didem and perhaps others
4 in my office, I don't recall, but I know
5 specifically them, know that, you know, we have --
6 a release of that report was progressing. And at
7 some point when it became clear that it wasn't
8 going to be on Wednesday or Thursday and it was
9 more likely to be on Friday, I would have let them
10 know.

11 Q But do you remember anybody saying
12 anything about when the Goldman case would be
13 issued that week?

14 A I believe that, at that time, people
15 were saying -- everything was very close to the
16 same amount of time. At one point I thought
17 somebody said Wednesday, and then at some point I
18 became aware that it was going to be Friday.

19 Q But you don't know why?

20 A No.

21 Q And do you know who made the decision as
22 to when the Goldman report was to be issued?

23 A The Goldman?

24 Q I'm sorry, the Goldman action was to be
25 filed?

1 A No, I don't know that.

2 Q All right. Let me show you the next
3 document we're going to mark as Exhibit 8. It's
4 an e-mail from Myron Marlin to Mary Schapiro. This
5 one.

6 A Okay.

7 Q I'm sorry, Exhibit 6. So there's a
8 timeline on page two of three of this exhibit. Do
9 you know who created the timeline?

10 A I believe Myron did.

11 Q Did you have any input into the
12 timeline?

13 A I might have had an input on Stanford
14 and that I didn't want it to be any later than
15 what it was.

16 Q Okay. Was there any thought about
17 flipping it, so having Stanford first and then
18 Goldman second; do you know if that was ever
19 discussed?

20 A I don't -- don't -- I don't recall ever
21 having that conversation. I -- as I recall it, I
22 was -- Myron indicated that the band width of OPA
23 was limited so that we couldn't, you know, that
24 they basically had planned the time for the
25 Goldman and so we couldn't simultaneously do the

1 Stanford report at the same time, that it had to
2 follow what he was planning on enforcement.

3 And at one point, on Friday, Myron
4 wanted to move the Stanford to some later time in
5 the afternoon because he was getting so many press
6 calls on the Goldman case and I objected, and he
7 agreed to try to -- I don't remember exactly the
8 time that he released the Stanford thing, but it
9 wasn't going to be as late as he had wanted it to
10 be.

11 Q So you didn't want the Stanford report
12 to be related later in the afternoon on Friday?

13 A Correct.

14 Q And he gave in and had it issued before
15 he had originally wanted to?

16 A Not originally, but -- sometime I was
17 actually on the train coming back [REDACTED]
18 [REDACTED] and I got an e-mail from him
19 somewhere around the time that I had understood
20 the Stanford report was going to be released, and
21 he said he wanted to do it later in the day
22 because they were so busy answering calls on
23 Goldman, and we spoke on the phone, and I
24 objected. He sent -- got it out sometime soon.
25 thereafter.

1 Q There was a conference call at 6:00 p.m.
2 Thursday night to discuss the logistics for the
3 next day; did you participate in that conference
4 call?

5 A I think I did.

6 Q Do you remember anything specific that
7 was said in that conference call?

8 A All I remember is it was sort of going
9 through the time -- timeline and asking about the
10 status of where the talking points were.

11 Q And do you remember any discussion in
12 that conference call about what the hold up with
13 the Goldman case was or anything about the timing
14 of the Goldman case?

15 A There might have been, but I didn't
16 focus or listen on it at all.

17 Q Did you know that the morning that the
18 SEC filed the Goldman case, there was a glitch
19 with the filing and it was held up for an hour or
20 two?

21 A No.

22 Q All right. Let me show you this
23 document we're going to mark as Exhibit 8. This
24 is an e-mail exchange between you and Stephen
25 Cohen dated 4-16, 2010, 4:21 p.m.

1 A Yes, I remember this.

2 (Exhibit No. 8 was marked for
3 identification.)

4 BY MR. KOTZ:

5 Q And so why were you asking Stephen Cohen
6 about the Commission vote?

7 A Because I was curious.

8 Q But you obviously weren't at the actual
9 executive session?

10 A No, I was on the train as I was doing
11 that.

12 Q Okay. And in terms of the subsequent
13 discussion you had with Stephen Cohen, I assume
14 you had a discussion with him?

15 A Yes.

16 Q I assume that just related to the
17 approval of the Goldman case?

18 A Yes.

19 Q Okay. It didn't really have anything to
20 do with the timing?

21 A No, it was -- he just told me it was --

22 Q Were you aware that the Senate Permanent
23 Subcommittee on Investigations was also
24 investigating Goldman Sachs at the time that the
25 SEC was investigation Goldman Sachs?

1 A No.

2 Q No, okay.

3 [REDACTED]: Stephen Cohen rather than
4 just answering the questions, I'll fill you in
5 when we talk, do you know he didn't just say --

6 THE WITNESS: I think he was probably
7 pretty sensitive about it being an e-mail, and he
8 probably wanted to know exactly why I wanted to
9 know. It was an unusual question for me to ask.

10 BY MR. KOTZ:

11 Q All right. So we have an e-mail where
12 Myron Marlin says we are shifting the release of
13 the Stanford report to 2:30 instead of 1:30, and
14 then it says, okay, we're going to revert back to
15 a 1:30 release; do you think that related to the
16 conversation you were having?

17 A Yes.

18 Q Okay.

19 A Yeah, there should be an e-mail from me
20 back to him with some I have concerns about this
21 or something and then we spoke on the phone.

22 Q Are you comfortable with how that's
23 going to be portrayed, that's the -- you're
24 talking to?

25 A Yeah.

1 Q All right. Let me show you this
2 document that we'll mark as Exhibit 9. It's an
3 e-mail from Myron Marlin to [REDACTED] with a
4 copy to you and several other folks dated 4-20,
5 2010, 8:32 a.m. And there's a question there,
6 couldn't you have filed on Thursday, and the
7 answer, we had a significant pay to play case that
8 was being worked on and had to be filed Thursday;
9 do you see that?

10 A Uh-huh.

11 (Exhibit No. 9 was marked for
12 identification.)

13 BY MR. KOTZ:

14 Q Do you know why, if you had -- assuming
15 this is accurate, if you have a significant pay to
16 play case that was being worked on and had to be
17 filed Thursday, why you couldn't file both things
18 on Thursday?

19 A No.

20 Q All right.

21 A My involvement on this was the Stanford
22 part.

23 Q Okay. Were you aware of financial
24 regulatory reform legislation that was making its
25 way through Congress and was recently approved?

1 A Yes.

2 Q And did you spend time working on
3 various aspects of it?

4 A Yes.

5 Q What was, just generally, what kind of
6 interactions did you have relating to financial
7 regulatory reform?

8 A I was involved in the self-funding
9 provisions, I was involved in reviewing and
10 providing some technical input on the corporate
11 governance related provisions. I -- I might have
12 had some minor involvement with others, but those
13 are the ones that I was primarily involved in; oh,
14 the provisions regarding PCOD and their authority
15 over --

16 Q Did the chairman's office generally
17 favor financial regulatory reform?

18 A That's a very hard question to answer.

19 Q Okay.

20 A Generally, yes, but there were a lot of
21 provisions that changed over the course in both
22 ways that were perceived by my office as both
23 favorable and unfavorable and then back again
24 multiple times during the whole progress of it, so
25 I think the chairman has made public statements

1 that she does favor -- she does think it's -- I
2 can't remember the words she's used, but
3 generally, yes.

4 **Q Now, some have said that when the SEC**
5 **filed its Goldman action, that provided momentum**
6 **to the financial regulatory reform; based on your**
7 **knowledge, do you think that that's the case?**

8 **A No.**

9 **Q Why not?**

10 **A First of all, I don't think our office**
11 **had any appreciation for how big Goldman was going**
12 **to be perceived.**

13 **Q Right.**

14 **A Myron has said that to, you know, we**
15 **have no idea it was going to have the kind of**
16 **public effect that it -- it had. And I don't**
17 **think that -- our office has never been involved**
18 **in talking about external things to try to**
19 **motivate Congress, much more involved in -- is**
20 **this provision, the provision that we want, is**
21 **this -- is this handling the policy issue the way**
22 **we want the policy issue to be handled.**

23 **Q Were you surprised at how much coverage**
24 **the Goldman case got?**

25 **A I was surprised, but I didn't really**

1 know much about it, so --

2 Q So in the course of conversations you've
3 had -- let me back up. Have you had conversations
4 with either members of Congress or staff of
5 members of Congress about financial regulatory
6 reform?

7 A I spoke to I believe Senator Dodd's
8 office about self-funding, I believe those are the
9 only -- is the only office I spoke to about -- I
10 might have spoken to one or two other offices
11 about the proxy access provision.

12 Q So the conversations you had with staff
13 or members of Congress, did the Goldman
14 investigation that the SEC conducted ever come up?

15 A No.

16 Q At any point --

17 A Not in any conversation I was involved
18 in.

19 Q Did at any point anyone say perhaps from
20 Congress, it would be good if the SEC would bring
21 a big case, that would help us in terms of
22 financial regulatory reform?

23 A Not that I've ever heard.

24 Q Have you had any contact with the White
25 House in connection with financial regulatory

1 reform?

2 A No.

3 Q Do you know anybody in the SEC who has?

4 A No.

5 Q Are you familiar with the letter that
6 Congressman Isa sent to Chairman Schapiro where
7 allegations were made about the Commission's
8 independence and impartiality relating to the
9 Goldman action and financial regulatory reform?

10 A Yes, I've seen the letter.

11 Q Do you have any idea why your name would
12 be specifically mentioned in the letter?

13 A No, I have some assumptions, but I don't
14 have any idea.

15 Q Okay. Tell us what the assumptions are.

16 A I thought that he might have gotten it
17 from you.

18 Q From me?

19 A I don't know -- I don't know anyone on
20 his staff and I -- so I --

21 Q I don't know anyone on his staff either,
22 but -- all right. Any other idea?

23 A No.

24 Q All right. Just to go through a series
25 of questions now. Has anybody at the SEC ever

1 mentioned the financial regulatory reform
2 legislation in connection with the Goldman Sachs
3 investigation or in connection with the filing of
4 an action against Goldman Sachs?

5 A Only in the context of the Isa letter
6 and -- and the accusations both in the press and
7 by certain members of Congress.

8 Q But no one ever mentioned the
9 legislation in connection with the Goldman Sachs
10 investigation or the filing of an action against
11 Goldman Sachs prior to the action being filed?

12 A No.

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

18 A No.

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

23 A No.

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

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

4 A No.

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

11 A No.

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

16 A No.

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

23 A No.

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

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

5 A No.

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

14 A No.

15 Q And just to be clear, since you're named
16 in this letter, have you had any communication
17 with the Executive Office of the President, the
18 White House, the Democratic National Committee
19 Organizing for America, the Democratic Senate
20 Campaign Committee, the Democratic Congressional
21 Campaign Committee or any member of the House or
22 Senate or any employee of the House or Senate with
23 respect to the action that the SEC brought against
24 Goldman?

25 A No.

1 Q Are you aware of any information
2 indicating anyone with the SEC shared any
3 information concerning its Goldman Sachs
4 investigation with the U.S. Department of
5 Treasury, the Federal Reserve or any of their
6 employees prior to the complaint being filed?

7 A No.

8 Q Were you aware of the issue of whether
9 the SEC informed Goldman Sachs prior to filing the
10 complaint that the Commission has approved the
11 recommendation to bring an action against them?

12 A No, I'm only aware of that in the press.

13 Q What about the issue related to the SEC
14 informing the New York Stock Exchange that it
15 intended to file a complaint against Goldman; were
16 you aware that the New York Stock Exchange came
17 forward and expressed some concern about that?

18 A I don't have any information about that.

19 Q At what point did you learn that the SEC
20 was engaged in settlement discussions with
21 Goldman?

22 A I think the first time I heard it is
23 when I read it in the newspaper or become aware of
24 the concept, and then I think I -- I -- Mary
25 Schapiro has weekly staff meetings, and the

1 division directors of the big divisions come and
2 report on things that are going on, and I think
3 Rob or someone from Enforcement representing him
4 at one of those meetings maybe two or three weeks
5 before the settlement was announced mentioned that
6 they were having settlement discussions.

7 Q Okay. Were you involved at all in
8 decisions on when the settlement of the case with
9 Goldman Sachs would be approved by the Commission?

10 A No.

11 Q Were you involved at all in decisions
12 regarding when the settlement against Goldman
13 Sachs would be announced to the public?

14 A No.

15 Q Were you aware during that week that the
16 Goldman case was announced, it was announced on a
17 Thursday, were you aware that that was coming?

18 A Yes.

19 Q Do you know when during that week you
20 became aware of that?

21 A It was -- it was either the latter part
22 of the previous week or on Monday.

23 Q Do you know why it was announced on that
24 Thursday?

25 A My understanding, and this is fourth and

1 fifth hand, was that it had to do with the timing
2 of when the Goldman board was meeting.

3 Q You were aware during that time period
4 that the SEC had been -- there was an allegation
5 from Congressman Isa that the SEC had
6 inappropriately coordinated with various officials
7 to assist and help financial regulatory reform,
8 you were aware of that allegation generally from
9 this letter, right?

10 A Yes.

11 Q And so was there any consideration given
12 during the week that the SEC was about to announce
13 the settlement of Goldman to perhaps not have that
14 be announced the same day that the financial
15 regulatory reform was finalized by the Senate?

16 A I remember some people speculating that
17 the timing of the release would be criticized
18 similarly to the timing of the -- of the case
19 initiation. And I remember Mary making the
20 statement, we don't time our cases or our
21 settlements for anything external to, you know,
22 our cases, and so she said we can't change.

23 Q So if you had changed it because you
24 were concerned about a perception based on the
25 finalizing of the financial regulatory reform

1 through Congress, then potentially you would have
2 actually changed the date, which is exactly what
3 you were potentially going to be accused of doing?

4 A Yeah, the discussion was if we want to
5 be able to say with honesty and sincerity that we
6 don't time our cases or our settlements for
7 external factors, then we have to be consistent
8 with that throughout.

9 Q And so you're not aware of any other
10 matters that effected the timing of the SEC
11 settlement with Goldman?

12 A I -- I heard that in addition to the --
13 and again, fourth and fifth hand, in addition to
14 the timing of the board meeting, that Goldman was
15 anxious to have a settlement that was before some
16 quarterly earnings call, but I don't -- again,
17 that was just what somebody had mentioned, and I
18 don't know the dates of those things.

19 Q Were you aware during that week that on
20 Thursday was going to be the day that the Senate
21 was going to vote on financial regulatory reform?

22 A No; I think I probably became aware
23 somewhere maybe late Tuesday or Wednesday.

24 Q All right.

25 Why don't you give us a minute, we'll go off the

1 **record and --**

2 **(A brief recess was taken.)**

3 MR. KOTZ: We're back on the record. We
4 have no further questions.

5 The one thing I would ask is, in order to preserve
6 the integrity of the investigation, that you not discuss the
7 content of your testimony with anyone.

8 THE WITNESS: Okay.

9 MR. KOTZ: All right. And we're off the
10 record.

11 (Whereupon, at 1:44 p.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 38 pages is a complete, true and accurate transcript of the testimony indicated, held on August 4, 2010, at 1:05 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:

8/11/10

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 31
File Number: OIG-534
Date: Wednesday, August 4, 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)

8/11/10

(Proofreader's Name)

(Date)

Chapter Break

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the matter of:

OIG-534

)

) File No.:

) OIG-534

WITNESS: WITNESS # 33

PAGES: 1-44

PLACE: Sullivan & Cromwell LLP
125 Broad Street
New York, New York

DATE: August 6, 2010

The above-entitled matter came on
for hearing at 11:32 a.m.

ORIGINAL

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

UNITED STATES SECURITIES AND EXCHANGE

COMMISSION

100 F Street N.E.

Washington, D.C. 20549

By: H. DAVID KOTZ, ESQ.

(Via Teleconference)

SULLIVAN & CROMWELL LLP

Attorneys for the Witness

125 Broad Street

New York, New York 10004-2498

By:

P R O C E E D I N G S

W I T N E S S #33,

having been first duly sworn by Mr. Kotz, was examined and testified as follows:

MR. KOTZ: We're on the record at 11:32 a.m. at the law offices of Sullivan & Cromwell LLP, 125 Broad Street, New York, New York.

EXAMINATION BY MR. KOTZ:

Q. Could you state and spell your full name for the record, please?

A. Richard Klapper, it's R-i-c-h-a-r-d, last name K-l-a-p-p-e-r.

Q. Mr. Klapper, my name is David Kotz, I'm the inspector general of the United States Securities and Exchange Commission. I have with me on the phone my colleague from the Office of Inspector General, (b)(6),(b)(7)(C)

MR. KOTZ: And would your counsel like to announce themselves for the record.

(b)(6),(b)(7)(C): Certainly. This is (b)(6),(b)(7)(C) from Sullivan & Cromwell, and with me is (b)(6),(b)(7)(C)

Q. This is an investigation by the Office of Inspector General, case number OIG-534. I'm

1 going to ask you certain questions and you'll be
2 providing answers under oath. The court reporter
3 will record and later transcribe everything that
4 is said. Please therefore provide verbal answers
5 to the questions, as a nod of the head or another
6 non-verbal response won't be picked up by the
7 court reporter.

8 Also so the record will be clear,
9 please let me finish my question before you
10 provide your response.

11 In addition, it is important that you
12 understand the questions and give accurate
13 answers. If there is anything you don't
14 understand or anything you don't know or are not
15 sure about, please let me know, otherwise I will
16 assume that you heard and understood the question.

17 Do you understand those instructions?

18 A. I do.

19 Q. Let's start with a little background
20 if we could. Could you describe for me your
21 education beginning with college?

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

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

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

2 (b)(6),(b)(7)(C) with a particular emphasis on
3 matters relating to securities regulation or the
4 SEC.

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

6 started working at Sullivan & Cromwell in October
7 of 1980 as an associate. I became a partner in
8 1987. I've had a variety of matters of civil
9 cases in federal and state courts and regulatory
10 work over the years. I've had -- I was just
11 reminded the other day on a matter that (b)(6),(b)(7)(C)
12 worked on that I had an SEC investigation in the
13 1984-1985 time period representing Carnation that
14 led to a 21A report.

15 I certainly had over the years a lot
16 of SEC matters, some of which were as simple as a
17 subpoena, others were major matters.

18 For United Health Group, AIG, Goldman
19 Sachs, Bank of Montreal. SafeNet Inc., which is
20 one we just settled with the staff last year, last
21 fall. I won't go into more depth about them, but
22 for Goldman Sachs in particular, over the last ten
23 years I had numerous investigations concerning
24 mutual funds. I was lead counsel for them on the
25 mutual fund investigations out of New York and

1 Washington and other offices, and Dallas and
2 Chicago I think we had some things.

3 I also was lead counsel on an
4 investigation in the early to mid 2000's involving
5 Freddie Mac, transactions with Freddie Mac and
6 Goldman Sachs which resulted in no action being
7 taken by the Commission.

8 And then with respect to mortgage and
9 subprime matters, we've had a lot of different
10 investigations out of New York, and certainly the
11 ABACUS investigation, the general CEO
12 investigation. So I've had a fair amount of
13 experience in SEC enforcement investigations.

14 Q. And your current position is a partner
15 in the law firm of Sullivan & Cromwell?

16 A. That's correct.

17 Q. Did Sullivan & Cromwell represent
18 Goldman Sachs in the SEC's investigation of
19 Goldman Sachs known as the ABACUS investigation?

20 A. Yes.

21 Q. Do you recall when Goldman Sachs
22 received a Wells notice from the SEC staff in
23 connection with this investigation?

24 A. Yes.

25 Q. When was that?

1 A. The Wells call and written notice was
2 at the end of July of 2009.

3 Q. When did Goldman Sachs make the Wells
4 submission back to the SEC?

5 A. Well, we had our Wells meeting on
6 September 15th, I think it was relatively near to
7 that, so I think it was somewhere around the 11th
8 or 10th of September.

9 Q. Did you participate in the Wells
10 meeting on September 15th, 2009?

11 A. Yes.

12 Q. Who attended the meeting?

13 A. From the SEC staff level, the most
14 senior person was Sheryl Scarboro, [REDACTED]
15 [REDACTED] I believe [REDACTED]
16 [REDACTED] but I'm not certain, and [REDACTED] I
17 believe was there.

18 Q. And who was there from Goldman Sachs?

19 A. Myself representing Goldman Sachs, I
20 believe [REDACTED]
21 perhaps [REDACTED] I'm not certain about all of
22 those people, [REDACTED] and [REDACTED] I'm pretty
23 sure.

24 Q. Was the possibility of settlement
25 discussed at this meeting?

1 A. No.

2 Q. Did Goldman Sachs then make a
3 supplemental Wells submission after the
4 September 15th meeting?

5 A. Yes.

6 Q. When was that, do you recall?

7 A. It was fairly close to the meeting, I
8 don't know if it was late September or early
9 October but fairly close.

10 Q. Do you think September 25th sounds
11 about right?

12 A. It could very well be.

13 Q. Did Sullivan & Cromwell play any role
14 in the representation of Fabrice Tourre?

15 A. Yes.

16 Q. And did Tourre receive a Wells notice
17 from the SEC staff in connection with the ABACUS
18 investigation?

19 A. He did.

20 Q. When was that?

21 A. Well, the actual Wells call, what
22 happened was the staff indicated on
23 September 15th, after the meeting they called us
24 while we were on the tarmac shuttle, that they
25 wanted to arrange a call. At that point we

1 recognized that Mr. Tourre would require separate
2 counsel. We didn't represent the firm as well.
3 So we had to work with Mr. Tourre so he can obtain
4 separate counsel that ended up being Allen &
5 Overy, and in particular (b)(6),(b)(7)(C)

6 So the Wells call itself, and I don't
7 know that I was on the Wells call, it might have
8 been (b)(6),(b)(7)(C) who was on the Wells call, was a
9 little bit after that, so it was again late
10 September, the beginning of October.

11 Q. Did Sullivan & Cromwell play any role
12 in preparing the Wells submission for Tourre?

13 A. We did. We remained co-counsel at
14 that time.

15 Q. When was that Wells submission?

16 A. End of October.

17 Q. Did Sullivan & Cromwell and/or Goldman
18 Sachs or representatives of Goldman Sachs meet
19 with the SEC in connection with Tourre's Wells
20 submission?

21 A. Wells meeting?

22 Q. Yes.

23 A. Goldman Sachs, no, Sullivan &
24 Cromwell, yes. I was there, I believe another
25 member of our team was there, I forget which one.

1 Q. Do you recall that was also at the end
2 of October 2009?

3 A. Yes.

4 Q. Were the SEC's potential charges
5 against Goldman Sachs as opposed to the case
6 against Tourre discussed at this meeting?

7 A. No, but I would qualify that to say
8 the charges against Tourre were factually and
9 legally the charges in many respects as against
10 the firm, the difference being the focus on Tourre
11 personally in his personal role as opposed to --
12 and who he was as opposed to generally the firm.

13 Q. Was the possibility of settlement
14 between Goldman Sachs and the SEC discussed at
15 Tourre's Wells meeting?

16 A. No.

17 Q. Did Sullivan & Cromwell play any role
18 in the representation of another [REDACTED] employee?

19 A. Yes.

20 Q. Did that [REDACTED] employee receive a
21 Wells notice from the SEC in connection with the
22 ABACUS investigation?

23 A. Yes, he did.

24 Q. Do you know when that was? We have it
25 at the end of January 2010.

1 A. That sounds right.

2 Q. And so was that employee represented
3 by Sullivan & Cromwell also as co-counsel?

4 A. Yes.

5 Q. Did that employee make a Wells
6 submission?

7 A. Yes, he did.

8 Q. We have that as late February 2010,
9 does that sound right?

10 A. That's correct.

11 Q. Did Sullivan & Cromwell and/or
12 representatives of Goldman Sachs meet with the SEC
13 in connection with that employee's Wells
14 submission?

15 A. No member of Goldman Sachs attended
16 the meeting with respect to that employee which
17 was on March 4th, 2010. The attendees were myself
18 and then [REDACTED] and [REDACTED] who
19 are at Lankler Siffert & Wohl, who were co-counsel
20 for that employee.

21 Q. Were the SEC's potential charges
22 against Goldman Sachs as opposed to the charges
23 against this other [REDACTED] employee discussed at
24 all at that March 4 meeting?

25 A. No, with the same caveat, although

1 even more so, that the charges against the second
2 employee entailed many of the same issues as the
3 charges against the firm, but this was the focus
4 on that second employee, who he was, what his
5 involvement was.

6 (b)(6),(b)(7)(C): In what capacity was
7 Sullivan & Cromwell representing this second
8 senior employee?

9 THE WITNESS: We were co-counsel.

10 Q. Was the possibility of settlement
11 between Goldman Sachs and the SEC discussed at the
12 March 4, 2010 meeting?

13 A. No.

14 Q. Were there any settlement discussions
15 at all between Goldman Sachs and the SEC
16 throughout the entire ABACUS investigation?

17 A. No.

18 Q. Did Goldman Sachs ever raise the
19 possibility of settlement?

20 A. Goldman Sachs raised, we had
21 discussions throughout the staff concerning the
22 facts and the legal issues that were raised, and
23 after the first Wells meeting for the firm we
24 never had an official Goldman Sachs meeting with
25 the staff. But we certainly had an ongoing

1 dialogue with the staff.

2 At the March 4th meeting the staff
3 made the point, and we agreed, that the focus
4 should be on the issues that related to the second
5 employee rather than on firm issues, and at the
6 end of the meeting I indicated to the staff, to
7 Mr. Khuzami and Mr. Reisner in particular, that
8 Goldman Sachs might be requesting its own meeting
9 with them, that is the senior people at the
10 Enforcement Division, and the response was that I
11 should understand, as I did, that under their new
12 procedures we would not necessarily be entitled to
13 a set meeting.

14 So no official request was made for a
15 meeting with them but I noted that we might make a
16 request in the future.

17 Q. What would be the purpose of that
18 meeting, the second meeting?

19 A. Well, the purpose of a senior meeting,
20 given that the most senior person was Ms.
21 Scarboro, would be to go through the issues with
22 the staff, the head of the Enforcement Division
23 and the associate head of the division, and to
24 explain to them how Goldman Sachs viewed the
25 issues and see how they viewed the issues.

1 And normally at meetings like that if
2 there's not a discussion of settlement, there is
3 at least an exchange of views as to what a
4 reasonable resolution on the matter would be.

5 Q. Did Goldman Sachs request that second
6 meeting?

7 A. No.

8 Q. How come?

9 A. We were waiting to hear what the
10 staff's decision was or even what their reaction
11 was to the presentation we had made in the written
12 Wells and in the meeting on behalf of the second
13 employee.

14 Q. So you were essentially waiting to
15 hear back from the SEC about the issues related to
16 the second employee that were discussed at the
17 March 4th meeting?

18 A. Correct.

19 Q. And once you heard back from them you
20 would then make a decision about whether you
21 wanted to request a meeting on the Goldman Sachs
22 issue?

23 A. Correct. We needed to know whether
24 the staff knew one or two or potentially more
25 employees as being culpable.

1 Q. When was the last occasion in which
2 Goldman Sachs or their counsel met with the SEC in
3 connection with the ABACUS matter?

4 A. That's an interesting question. We
5 certainly spoke frequently. Now many of those
6 compensations during that time period dealt with
7 another somewhat overlapping investigation in
8 remarketing and structuring of CEO products as to
9 which we were producing documents, and they were
10 asking about potential testimony of witnesses.
11 But we spoke on a number of occasions throughout.
12 I don't believe we met between March 4th and
13 filing the complaint.

14 Q. Were you ever contacted prior to the
15 filing of the complaint to be notified that the
16 complaint was going to be filed?

17 A. No.

18 Q. Did someone leave a voicemail for you
19 that morning that the complaint was going to be
20 filed?

21 A. Not to my knowledge.

22 Q. So how did you first learn that the
23 SEC was filing an action against Goldman Sachs?

24 A. I was representing a witness who was
25 being interviewed in Washington in the offices of

1 the permanent subcommittee on investigations, and
2 BlackBerry, I learned that there were press
3 reports that the Commission had filed a lawsuit.

4 Q. Do you know if anyone else
5 representing Goldman Sachs or Goldman Sachs itself
6 was notified prior to the SEC announcing or filing
7 its lawsuit that a lawsuit was going to be brought
8 against Goldman Sachs?

9 A. I'm certainly not aware of that and I
10 would be shocked if there were such a person, both
11 because I would be the logical contact and because
12 that person by now would have indicated that the
13 call occurred.

14 Q. Based on your experience in handling
15 matters before the SEC, were you surprised that
16 there were no discussions about settlement at all
17 in the entire process of the investigation between
18 the time the investigation began and when the
19 action was filed?

20 A. No, in my experience investigations
21 can go on for years where the issues or the facts
22 or legal theories you can engaged with the staff,
23 and even engage with the staff at the level of the
24 reasons why they shouldn't proceed or why they
25 should proceed in certain ways without reaching

1 the point of discussing a resolution.

2 The SafeNet case, for example, started
3 in April I believe 2006. And I think we got to
4 talking about the terms of the resolution in
5 perhaps the summer of 2009, and that was a case in
6 which the company was cooperating with the staff
7 throughout. I may have my dates wrong but it
8 was -- and involved the Wells process, and the
9 company put in a Wells which largely talked about
10 the policy reasons to cooperation, that it would
11 not be a sensible policy choice to bring
12 proceeding against that company.

13 So it's not unusual. In fact if you
14 take the Freddie Mac situation, I mean we were
15 throughout engaged in discussions with the staff
16 up to the level, and I think in that instance the
17 associate director and I believe Goldman Sachs
18 engaged the director of the Enforcement Division
19 again on the level of why it would not be a
20 sensible thing based upon the facts of the law to
21 bring a proceeding in that matter.

22 (b)(6),(b)(7)(C): Can we read the question
23 back then because I think there was a piece in
24 there that he missed.

25 Q. I understand what you're saying that

1 the passage of time was not unusual.

2 A. Right.

3 Q. But what I'm asking is was it unusual
4 for the entire process to go forward and be
5 completed such that an action was filed without
6 any discussion at all about possible resolution?

7 A. Yes, in my experience there comes a
8 point where either the staff says we're about to
9 go or we have gone to the Commission, and if you
10 have in response to our position the staff's
11 position which normally would be set out in the
12 Wells call and was here, you have a proposal to
13 make, you should make it.

14 Q. So generally it's your understanding
15 it's the SEC's regular practice to inform a
16 company that either the Commission is about to
17 authorize the staff to file an action or the
18 Commission has authorized the staff to file an
19 action to give the company kind of one last
20 opportunity to resolve the matter before the
21 filing of an action?

22 A. I'm unaware of it ever happening.
23 That that kind of discussion does not occur. My
24 understanding is that the policy of the
25 Enforcement Division is to encourage settlements

1 because the division does not have the resources
2 to try the cases that it would have to try if
3 there were not resolutions. And in my experience
4 there is always a point, usually at the very tail
5 end of the investigation, where a point is made to
6 the respondent you should put something on the
7 table because we're about to move forward, and if
8 you have something to say, say it.

9 Q. But that did not happen in the Goldman
10 Sachs case?

11 A. That's correct.

12 Q. Do you know why that didn't happen?

13 A. No.

14 Q. Do you think the SEC didn't want to
15 settle with Goldman prior to filing of an action?

16 A. I can't say that I can say that what
17 they did was, I don't know about unheard of
18 because I don't know the facts of matters that I
19 wasn't engaged in, but in my experience it was
20 unheard of for them to file a complaint without
21 having at least solicited a proposal by the
22 respondent to settle.

23 Q. Now you said that normally your
24 understanding of the Division of Enforcement
25 practice is to encourage settlement. Are you

1 aware of any specific procedure in a manual or
2 otherwise that would require or even encourage the
3 SEC to give that last chance notification to a
4 company before they file an action?

5 A. No. I suppose I can go through the
6 enforcement manual and see whether it's there, but
7 it certainly has been a clear, to my mind as a
8 practitioner over the years, a clear policy that
9 once the Commission, the Enforcement Division or
10 the Commission itself has decided to proceed to
11 attempt to work out a resolution, that would avoid
12 the need for contested litigation.

13 Q. In your view as a practitioner over
14 the years, do you believe that is a good policy,
15 and if so, why?

16 A. I do, I believe it's a good policy in
17 civil litigation as well. The reason is because
18 litigation is uncertain, litigation is expensive
19 and time-consuming. And if the parties can
20 resolve the matter by agreeing on common ground
21 without having to go into litigation, that should
22 be encouraged.

23 Q. And do you think there is an impact on
24 a company as an individual who has represented
25 many companies, that there is an impact on a

1 company when the SEC comes and says either the
2 Commission is authorized or we're about to
3 authorize it, and that would often prompt some
4 kind of settlement discussion?

5 A. Yes. And the reason is that most
6 clients, and this client certainly is typical of
7 that, will have had discussions and have had
8 consideration about what they might do should the
9 Enforcement Division not accept the arguments,
10 that they should simply close the investigation.
11 But those -- but those discussions don't tend to
12 come to a head until a decision has to be made.
13 And especially in significant matters, those
14 discussions internal to the client have to involve
15 a number of different people, it can't simply be
16 the lawyers handling the matter.

17 And to go to those people and make
18 sure that they agree with the approach, usually
19 you need to say that something needs to be done,
20 and that can happen early on if the client decides
21 that it simply wants to resolve the matter, but I
22 would say it's the more typical process that that
23 happens at the point where the Commission has done
24 what it needs to do and has reached a decision
25 point.

1 Q. Is it fair to say that from your
2 experience if a client still believes that there
3 are arguments against the filing of an action may
4 win the day, they're unlikely to discuss
5 settlement because they believe that the action
6 may never be brought, and it isn't to the point
7 where they know for sure that the action is
8 brought that they may want to discuss resolution?

9 A. Correct, first position of most
10 clients in any matter that has arguments in their
11 favor is that they would like to convince the
12 staff not to recommend a proceeding.

13 Q. In this case do you think that based
14 on the discussions that occurred between the SEC
15 and representatives of Goldman, whether they were
16 at the initial Wells meeting or subsequent Wells
17 meeting, even though they dealt with different
18 individuals, that those discussions were so clear
19 that no settlement was going to occur, that it
20 would have been a waste to have that discussion?

21 A. Not at all. There is always the
22 difference between advocating the position for the
23 client or for that matter the client itself coming
24 to a meeting and advocating itself, the strength
25 of its position. Any discussion of settlement. A

1 weak case can be settled. A strong case for the
2 government can be settled.

3 But the advocate's job is to engage
4 the staff in a discussion of the weaknesses that
5 the advocate sees in the staff's position, just as
6 it's the staff's job to point out the strengths of
7 their case and the weakness of the defense. And
8 in this case we had numerous discussions with the
9 staff along those lines.

10 I would also add that the arguments
11 that were made by (b)(6),(b)(7)(C) and by me in the
12 meeting with respect to the second employee were
13 again on behalf of that employee and were arguing
14 that there was no basis to bring claims against
15 that employee. Had they come back and said they
16 were going to proceed against that employee, we
17 would have had to make a decision as to how to
18 react to that on behalf of the employee.

19 Q. So was there anything that was said at
20 that particular Wells meeting on March 4, 2010 by
21 you or other representatives of Goldman Sachs that
22 made it very clear that this case was not going to
23 settle?

24 A. No.

25 Q. Was there anything that was said at