

1 other Wells meetings by you or other
2 representatives of Goldman Sachs that would give
3 the SEC the impression that this case was never
4 going to settle?

5 A. No. I should add Goldman Sachs has
6 been through this before, so has the SEC staff.
7 The SEC staff has been through this process before
8 including other major financial institutions that
9 I've represented. The overwhelmingly vast
10 majority of those discussions end up either in the
11 staff not recommending a proceeding or in a
12 resolution by agreement.

13 Q. Now the last time you believe that
14 there was a meeting between representatives of
15 Goldman Sachs and the SEC was on March 4th, 2010,
16 albeit in the context of a Wells meeting of
17 another employee, is that right? Before the
18 filing of the complaint?

19 A. That's the last meeting, I would say
20 it was a meeting between counsel for the second
21 employee and the SEC. There was a short meeting
22 after that with just me and the representatives of
23 the SEC which involved documents and potential
24 testimony that they wanted in the other
25 investigation, the CEO investigation, but that was

1 the last meeting.

2 Q. When was the last telephone call
3 between you or somebody representing Goldman
4 Sachs, to your knowledge, with the SEC about the
5 ABACUS investigation prior to the filing of the
6 complaint?

7 A. I don't recall. I'm sure we had
8 telephone calls over the course of the month and a
9 half. I know we submitted additional information.
10 How much of that was ABACUS versus the other
11 investigation, I don't know, but we were in
12 communication with the staff.

13 Q. In any of those telephone calls or in
14 the Wells meeting on March 4th, 2010, did you have
15 any indication from the SEC that it was poised to
16 file its action against Goldman Sachs?

17 A. No. We were waiting to hear about the
18 second employee.

19 Q. So what was your reaction when you
20 first read the press release that the SEC was
21 filing an action against Goldman Sachs in the
22 ABACUS case?

23 A. I was extremely surprised. It was
24 completely contrary to my experience as to how the
25 staff handles these matters for them to file an

1 action without first calling and indicating that a
2 decision had been made. And this was the last
3 opportunity or a last opportunity to put a
4 proposal on the table.

5 Q. Now I know this is hypothetical but if
6 you think the SEC had given Goldman Sachs one last
7 opportunity to put something on the table, that
8 that might have led to possible settlement
9 discussions, even fruitful ones, prior to the
10 complaint?

11 A. I have no doubt it would have led to
12 discussions, I have no doubt at all. Whether they
13 would have been fruitful, that's a hypothetical.
14 History indicates that it's extraordinarily rare
15 for a major financial institution to decide that
16 it would rather fight the SEC in court.

17 Q. And then of course in the end the case
18 did settle?

19 A. That's correct.

20 Q. Now, were you aware that the action
21 against Goldman Sachs was filed and announced
22 during the trading hours?

23 A. Very aware of it.

24 Q. Were you surprised by that?

25 A. I was surprised by the fact that we

1 had no warning, the client was caught entirely off
2 guard, the markets were in huge turmoil. It was a
3 very, very difficult situation for the client and
4 for those of us representing them.

5 Q. Did you think it was in some ways
6 unfair for the SEC to announce that kind of action
7 during market hours?

8 A. Normally in my experience, and this
9 tends to be in negotiated settlements, but
10 normally there is a discussion with the staff
11 about the desire to have an announcement either
12 before or after regular trading hours in order to
13 avoid a situation such as what happened when they
14 filed their complaint against Goldman Sachs.

15 Q. And what happened in terms of the
16 Goldman Sachs stock?

17 A. It lost a huge amount of market value.

18 Q. So there was a significant impact on
19 Goldman Sachs' shareholders as a result of the SEC
20 deciding to file during normal trading hours?

21 A. There certainly was a huge loss in
22 market value. How much of that was because they
23 announced during trading hours as opposed to the
24 fact that they just announced, I don't know. But
25 it certainly created a large amount of turmoil.

1 It was very difficult for the client to respond
2 because it had not gotten a warning, and that may
3 or may not have additionally affected the market.

4 Q. But in essence, Goldman Sachs became
5 aware of the SEC's filing of its action against it
6 by reading it in the press?

7 A. Yes. Now I should say that (b)(6),(b)(7)(C)
8 called my office because I got a message from my
9 secretary. I called him along with (b)(6),(b)(7)(C)
10 from Goldman Sachs and we were very unhappy, I
11 told (b)(6),(b)(7)(C) that it was unprecedented, in my view it
12 was contrary to decades of SEC experience that
13 they would file without calling and giving an
14 opportunity for the respondent to put a proposal
15 on the table.

16 (b)(6),(b)(7)(C) said that he had been told
17 to call my office as soon as the action had been
18 filed. I told him that that didn't make me happy
19 but I understood him to say that he had been told
20 to do it so I didn't see any real value in giving
21 him a hard time about it.

22 Q. Do you know if that message came in
23 before or after the SEC filed and announced its
24 action?

25 A. I believe it came in after, consistent

1 with what (b)(6),(b)(7)(C) said his instructions were.

2 Q. (b)(6),(b)(7)(C) said his instructions were
3 to call you immediately after the SEC filed its
4 case?

5 A. That's correct.

6 Q. Do you know whether the SEC gave the
7 New York Stock Exchange advance notice that they
8 were going to file their action?

9 A. I don't.

10 Q. Is Goldman Sachs required to give the
11 New York Stock Exchange advance notice of
12 potentially material news such that if it knew
13 that the SEC was planning to file an action
14 against it, it would have informed the New York
15 Stock Exchange in advance of the public
16 announcement?

17 A. I would think so.

18 Q. After the action was filed there were
19 settlement discussions, correct?

20 A. Correct.

21 Q. Who initiated those discussions?

22 A. I believe it was Goldman Sachs.

23 Q. But the SEC was at that point in time
24 interested in encouraging settlement?

25 A. Yes.

1 Q. When was a settlement in principle
2 reached between Goldman Sachs and the SEC in
3 connection with the ABACUS investigation?

4 A. These were very condensed negotiations
5 for a resolution of this sort and I was not on
6 every call. I think it was really in terms of an
7 agreement in principle, we had to receive board
8 approval. The Commission had to agree that the
9 board meeting to authorize officers of the company
10 to enter into the settlement was Wednesday evening
11 the 17th, and we signed the consent the evening of
12 the 17th and then I believe the Commission
13 approved the settlement the afternoon of the 18th.
14 Do I have the dates right?

15 Q. I'm not sure. I believe July 15th was
16 the Thursday that the case was filed.

17 A. So it should be the 14th and the 15th.
18 You could take a look at the actual consent and
19 hopefully -- you know what, it is the 14th, I know
20 that because we originally misdated it June 14th,
21 it was July 14th.

22 Q. So the actual consent was signed on
23 July 14th?

24 A. July 14th, right.

25 Q. When did Goldman's board authorize it?

1 A. That evening.

2 Q. You said it was condensed settlement
3 discussions for this kind of case, how do you
4 mean?

5 A. Well, in my experience there can be a
6 period of months as you proceed from engaging the
7 staff reaching kind of the outlines of what the
8 terms might look like and then negotiating the
9 papers, so that can go on for a period of time.

10 This discussion, Goldman Sachs wanted
11 affirmatively to reach resolution on a fairly
12 quick schedule, and the reasons were many. We had
13 this pending lawsuit, I believe this pending
14 lawsuit is not being helpful to the company. It
15 also had an earnings announcement coming up on
16 July 20th and there was concern that if we were in
17 the midst of discussions, it looked like they
18 would result in a significant payment, but had not
19 reached resolution at the time of the earnings
20 release, that that would create issues that we
21 would have to address and it would be better if we
22 can do it before the 20th.

23 Q. And was the SEC also interested in
24 moving the process forward along quickly?

25 A. Yes, there was also a concern by us

1 and the SEC about leaks. There was apparently
2 some form of some Wall Street report on whatever
3 the 13th or 14th of July, and we were concerned
4 about leaks.

5 Q. Was Goldman Sachs also required to
6 file its answer to the SEC complaint the following
7 week?

8 A. Yes, originally we had had a response
9 date that was earlier, perhaps the 5th of July,
10 and we agreed with the staff, we proposed a short
11 extension because we wanted to make sure the talks
12 kept moving and so we extended it till the 19th
13 because that was the return date for Mr. Tourre,
14 so yes, we were facing it a week before the need
15 to either move that date or do something on the
16 19th.

17 (b)(6),(b)(7)(C): If I could just ask
18 something real fast. And you've been explaining
19 when the papers responding you got board approval,
20 but putting aside the negotiating of the firms and
21 papers and the board approval, approximately when
22 was there an agreement on its broad terms, the
23 size of the penalty, the size of the disgorgement
24 and the charges?

25 THE WITNESS: It wasn't that long

1 before that but I recall the last week involving
2 mainly the papers, so I would have to go and
3 check, but roughly a week before, and we were
4 still trying out whether we could possibly get a
5 slightly better deal. As you know, it's a 17(a)
6 resolution, we were still seeing what we could do
7 about that.

8 There were also discussions on the
9 tail end about the disgorgement point about who
10 would get the money because of the concern that
11 IKB in particular might not be the party that
12 actually suffered the loss.

13 So there were matters of substance
14 still being discussed as well as language of our
15 press release and language of the actual final
16 judgment.

17 Q. So the consent was signed and the
18 Goldman board approved on July 14th, when did you
19 learn what day that the SEC was going to submit it
20 for Commission approval and then announcement?

21 A. Well, we knew that they were aiming
22 towards submitting on Thursday. My understanding
23 is that's when the Commission meets, and we wanted
24 to get it so that they could submit it on that
25 Thursday, because again, we wanted to resolve this

1 if we possibly could before the 20th of July. So
2 we were aiming for that Thursday as we were
3 proceeding.

4 Q. How long in advance did you know that
5 the Commission had a meeting on the 15th, was that
6 a week or two or you just found out a couple of
7 days before?

8 A. No, we knew that there was a meeting
9 scheduled that we were aiming towards.

10 Q. A couple of weeks before it, correct?

11 A. Probably.

12 Q. Did you have discussions with the SEC
13 about whether how long after the Commission
14 actually approved the settlement were they going
15 to file it and announce it?

16 A. We had conversations with the staff
17 about when to file. They were from our side,
18 besides wanting to know so we can react, they were
19 in part we were trying to work through how this
20 would affect the court with who was -- the judge
21 was out of town and we just wanted to make sure we
22 were comfortable with how that sequence worked
23 out. Because we wanted to present the court with
24 the papers promptly so that she found out from us,
25 not the press.

1 Q. Were there any discussions or concerns
2 on either side about trying to have the matter
3 filed and announced immediately after the
4 Commission approved it or was there discussion
5 about waiting until the next day?

6 A. We had various -- discussions and
7 various possibilities. Do we do it the morning of
8 Friday, do we do it at the end of the day Friday.
9 There was always the possibility of Thursday
10 evening. I think the concern there was how
11 quickly could everybody get things in line in
12 order to be able to do that. And even the
13 possibility of Monday before the opening of the
14 market. So we discussed various times.

15 Q. Do you recall what the SEC's
16 preference was?

17 A. Not really.

18 Q. In the end though it was announced and
19 filed on that Thursday toward the end of the day?

20 A. After the close of the morning, yes.

21 Q. Was that discussed that at this time
22 the settlement should be filed after the close of
23 the market?

24 A. We -- yes, in our discussions we were
25 always talking about either prior to the open or

1 after the close.

2 Q. And so how did it -- there were these
3 various discussions about Thursday, Friday, even
4 Monday, how did it come to be that the decision
5 was made to file it on Thursday?

6 A. I don't know, that was the staff or
7 Commission's decision.

8 Q. Was there any discussion at all about
9 the fact that financial regulatory reform was
10 about to pass the Senate on that same day?

11 A. No, I'm not so sure I knew that.

12 Q. But unlike in the situation where the
13 action was filed, Goldman Sachs was aware exactly
14 when the SEC was going to announce the settlement
15 and therefore was prepared to respond?

16 A. That's correct. And we also had a
17 response that then worked out so that we knew the
18 staff was comfortable with it. So we had a
19 response to put out that was clear, stated our
20 position and we were confident wouldn't result in
21 a reaction by the Commission.

22 Q. You said that previously there were
23 concerns about leaks, was there any discussion
24 about moving things up even earlier in order to
25 avoid leaks?

1 A. Well, part of the discussion of
2 Thursday after the close, Friday morning, Friday
3 after was concerned about leaks, and I mentioned
4 this Wall Street Journal piece which the staff was
5 very unhappy about. They thought that it came
6 from Goldman, and Goldman was sure it didn't come
7 from them, but it was out there and it added to
8 the concern.

9 Q. So that was maybe part of the reason
10 that the decision was made to have it filed and
11 announced on Thursday immediately after the
12 Commission approval rather than waiting Friday or
13 Monday?

14 A. I don't know that. It was part of the
15 conversation that we had with the staff about when
16 to announce.

17 Q. Did you read that the information
18 about the actual vote in the Commission, both with
19 respect to the initial decision to approve the
20 recommendation, bring an action and then a
21 decision to approve the recommendation to settle,
22 was leaked to the press?

23 A. I only know that I read an article in
24 the Wall Street Journal about the vote, so
25 somebody got it to the Journal.

1 Q. Do you have any idea who might have
2 leaked it?

3 A. No.

4 Q. Did you ever have a conversation with
5 anyone from the SEC about who might have leaked
6 that?

7 A. No.

8 MR. KOTZ: [REDACTED], do you have anything
9 else?

10 [REDACTED]: No, I don't think so,
11 unless you think it's worth talking for a minute
12 or two.

13 MR. KOTZ: Could we go off the record.

14 (Recess taken)

15 MR. KOTZ: I just have a couple of
16 things I want to clarify.

17 BY MR. KOTZ:

18 Q. I just want to clarify a couple of
19 matters. The telephone call you had with [REDACTED]
20 [REDACTED] where he indicated that he was given
21 instructions about when to call you, who else was
22 on that call, if anybody?

23 A. [REDACTED].

24 Q. Who is she?

25 A. She's [REDACTED] at

1 Goldman Sachs.

2 Q. Do you know if there was anyone on the
3 call from the SEC?

4 A. I don't believe so.

5 Q. You discussed in your testimony a
6 request made for a more senior meeting.

7 A. Actually not a request, I said we may
8 be asking for a meeting with the senior people.

9 Q. So a specific request was not made, it
10 was an internal discussion about whether to have
11 that senior meeting?

12 A. Well, it was just my posting them on
13 the fact that Goldman Sachs, which had not had a
14 meeting since the original meeting in September,
15 may be requesting a meeting, and their response
16 that if we made a request we should understand
17 that we would not necessarily have a right to that
18 meeting.

19 Q. Who was there, who said that?

20 A. It was a whole -- actually who said
21 that response, I seem to think (b)(6),(b)(7)(C), but at
22 the meeting where Mr. Khuzami, (b)(6),(b)(7)(C), Mr.
23 Lench, (b)(6),(b)(7)(C), a lot of people.

24 Q. This was at the March 4, 2010 meeting?

25 A. Right.

1 Q. So even though the March 4, 2010
2 meeting related to this third employee's Wells
3 issues, there was something said by you to the SEC
4 folks that you were contemplating requesting a
5 more senior meeting on Goldman?

6 A. Right.

7 Q. And that's when they said back to you,
8 you can request it but it may not necessarily --
9 it may not be granted?

10 A. Correct.

11 MR. KOTZ: [REDACTED] anything else?

12 [REDACTED]: No, I don't think so.

13 [REDACTED]: David, is it okay if we
14 clarify something?

15 MR. KOTZ: Please.

16 THE WITNESS: I mentioned my own
17 experience for the cases I was in charge of in
18 terms of SEC investigations. I should also note
19 that we at Sullivan & Cromwell generally do a
20 large number of SEC investigations and tend to be
21 consultative, and I've either been consulted on a
22 number of other investigations or have simply
23 discussed them with my colleagues who have been
24 involved with them.

25 So my statements about my

1 understanding of SEC practice draws on that
2 knowledge as well.

3 BY MR. KOTZ:

4 Q. That statement essentially was that
5 you've never seen a situation before where there
6 was no heads-up given to a respondent prior to the
7 filing of the complaint?

8 A. Correct.

9 Q. Anything else you want to add?

10 A. No.

11 (b)(6),(b)(7)(C) : Not me.

12 MR. KOTZ: I don't have any further
13 questions. The one thing I would ask is in order
14 to preserve the integrity of our investigation
15 that you not discuss the content of your testimony
16 with anyone, obviously you can discuss it with
17 counsel. And with that, we're off the record.

18 (Time noted: 12:30 p.m.)
19
20
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SCOPIST'S CERTIFICATE

I, (b)(6),(b)(7)(C), hereby certify that the foregoing transcript consisting of 44 pages is a complete, true and accurate transcript of the investigative hearing, held on August 6, 2010, at Three World Financial Center, New York, New York, in the Matter of Interview of Witness #33.

I further certify that this proceeding was reported by Lisa Rosenfeld and that the foregoing transcript has been scoped by me.

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

8/10/10
Date

1
2 UNITED STATES
3 SECURITIES AND EXCHANGE COMMISSION
4 REPORTER'S CERTIFICATE
5
6

7 I, (b)(6),(b)(7)(C), reporter, hereby certify
8 that the foregoing transcript of 44 pages is a
9 complete, true and accurate transcript of the
10 testimony indicated, held on August 6, 2010, at
11 Three World Financial Center, New York, New York,
12 in the Matter of Interview of Witness #33.

13 I further certify that this proceeding was
14 reported by me and that the foregoing transcript
15 was prepared under my direction.
16
17

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

19 8/10/10
20 Date
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PROOFREADER'S CERTIFICATE

In the Matter of OIG-534

Witness: Number 33

File Number: OIG-534

Date: August 6, 2010

Location: Three World Financial Center, New York,
New York

This is to certify that I, (b)(6),(b)(7)(C)
the undersigned, do hereby swear and affirm that
the attached proceedings before the United States
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
Date

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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



WITNESS: Number 34

PAGES: 1 through 23

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

DATE: Monday, August 9, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 2:40 p.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, Inspector General

5 (b)(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

Kathleen L. Casey

4

EXHIBITS:

DESCRIPTION

IDENTIFIED

1

April 19, 2010, E-mail,

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

 to Casey

10

1 PROCEEDINGS

2 MR. KOTZ: We are on the record at 2:40 p.m. on
3 August 9, 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 KATHLEEN L. CASEY

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

11 EXAMINATION

12 BY MR. KOTZ:

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

15 A Kathleen L. Casey. That's K-a-t-h-l-e-e-n,
16 middle initial L., Casey, C-a-s-e-y.

17 Q Okay. My name is David Kotz. I'm the
18 Inspector General of the United States Securities
19 and Exchange Commission. I have with me my
20 colleague from the Office of Inspector General,

21 (b)(6),(b)(7)(C) This is an investigation by the
22 Office of Inspector General, Case Number OIG-534.

23 I'm going to be asking you certain questions and
24 you'll be providing answers under oath. The court
25 reporter will record it and later transcribe

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

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

15 Do you understand those instructions?

16 A I do.

17 Q All right, let's start with a little bit
18 of background. If you could just describe for me
19 your education beginning with college?

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

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

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

23 A

24 Q

25 A

1

Q

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

2

A

3

Q

4

A

5

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

6

Q

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8

**And could you just briefly summarize
your work experience after graduation before
joining the SEC?**

9

A

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

10

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

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Q

17

**And then when did you start working for
the SEC?**

18

A

2006.

19

Q

20

**And as Commissioner, who do you
officially report to?**

21

A

22

23

24

25

I am -- I report essentially to the
President, I guess. I mean, I -- it's a
presidential appointment and it's -- I'm
accountable to the public and, again, to Congress
with respect to oversight responsibilities, so

1 since I was confirmed by the -- by the Senate.

2 It's a presidential appointment.

3 **Q Great. And if you could just give me**
4 **very generally your duties and responsibilities as**
5 **a Commissioner of the SEC.**

6 **A** Responsible for administering the
7 securities laws and enforcing the securities laws,
8 and that plays out in a variety of different
9 functions, including both -- making and our
10 enforcement, but -- securities laws, enforcement
11 administration.

12 **Q At what point did you become aware of**
13 **the existence of the investigation by the SEC into**
14 **the sale of collateralized debt obligations by**
15 **Goldman Sachs known as the ABACUS Investigation?**

16 **A** I think at -- with respect to the case
17 itself it was when -- it would have been
18 essentially calendared that I was aware that we
19 were being asked to consider bringing a case
20 against Goldman Sachs, so whenever it was first
21 formalized by the Enforcement Division and when it
22 was calendared, I guess. I don't know if there
23 was any other earlier briefing or in a more
24 formalized way in terms of the work of the
25 Enforcement Division in the CDO space that would

1 have mentioned that there might be an -- that
2 there was an investigation of Goldman. But in a
3 formal way the first would have been the calendar
4 that I would have known that we were bringing a
5 case -- that they were asking us to consider
6 bringing a case.

7 Q Right. Now, I don't know whether you
8 knew this or not, but it was initially calendared
9 in December and then taken off the calendar, then
10 put back on the calendar in January and taken off
11 the calendar. And then in April, finally put on
12 the calendar where it was then reviewed by the
13 Commissioners and approved.

14 A No.

15 Q Were you aware the fact that it was put
16 on the calendar both in December and in January?

17 A If I was, I don't recall it, only -- I
18 don't. I wouldn't recall that it was put on and
19 put on. Put on and put on.

20 Q And to your knowledge, did you or any
21 Commissioner play in any role in decisions to take
22 it off the calendar on those two occasions?

23 A No.

24 Q All right. And so the time that you say
25 you recalled when it was put on the calendar and

1 **you were asked to review it, that was in April**
2 **2010, right?**

3 A Yes, when -- when we ultimately --

4 Q **Decided on it.**

5 A -- took a judgment.

6 Q **Right.**

7 A Right.

8 Q **Okay. And did you have an understanding**
9 **of when after the Commission had approved the**
10 **recommendation to go forward with the action**
11 **against Goldman Sachs when it was going to be**
12 **filed?**

13 A I didn't. I didn't have any
14 understanding of that.

15 Q **So once the Commission makes its**
16 **decision is it fair to say you're kind of out of**
17 **the loop on what they do after that in terms of**
18 **filing and issues like that?**

19 A Yes.

20 MR. KOTZ: All right. I'm going to show
21 you a document. I'm going to mark this as Exhibit
22 1. This is an e-mail from (b)(6),(b)(7)(C) to you
23 with a copy to (b)(6),(b)(7)(C), 4-19-2010, 8:54
24 a.m. We're going to mark it as Exhibit 1.

25 THE WITNESS: Okay.

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

3 BY MR. KOTZ:

4 Q And in this e-mail -- and take whatever
5 time you need to read it -- in this e-mail there's
6 a reference to an article which is entitled, "Firm
7 Contends It Was Blindsided by Lawsuit." And so
8 were you aware generally that the SEC had not
9 informed Goldman Sachs that it intended to file an
10 action against it immediately before filing the
11 action?

12 A No. I would have -- I had no
13 information about the process by which we brought
14 the case.

15 Q Are you aware generally that it was
16 Enforcement's practice after the Commission would
17 approve the recommendation to go forward with a
18 case to go to the entity and kind of say to them,
19 look, this is going to be brought, here's one last
20 opportunity for you to resolve it?

21 A I think I had a general sense that those
22 are the kinds of communications that the
23 Enforcement Division had generally engaged in.

24 Q Do you know why in this case that wasn't
25 done?

1 A No.

2 Q And so in this e-mail your [] talks
3 about how -- some disturbing stuff about how we
4 handled the case. I mean, it's a reference to the
5 article. But did you make any inquiries with
6 Enforcement to find out why in this case Goldman
7 wasn't given this heads-up?

8 A I don't think that I did personally
9 about why we would have done anything different.
10 When was this? This was the day after we brought
11 it, right, essentially?

12 Q Yes.

13 A Is this the news report?

14 Q It's Monday, so it was brought on
15 Friday, so it's the first business day afterward.

16 A No, I -- I don't recall that I did. I
17 don't recall it, whether or not we inquired to
18 say, you know, why did we handle this differently?
19 I don't know whether [] had made any inquiries
20 or not, but I don't remember taking any action to
21 say, you know, why was this the case. I just -- I
22 -- I don't remember.

23 Q Do you have a view on whether it is good
24 policy or appropriate for the Enforcement Division
25 to engage in that kind of heads-up? And the way

1 it was conveyed to us, just for your edification,
2 is that, you know, when a company gets a Wells
3 notice, so they are still in that point going to
4 argue that the case shouldn't be brought, so if
5 you have a Wells notice brought against a company,
6 the company says the case shouldn't be brought.
7 You don't hear anything for an extended period of
8 time --

9 A Right.

10 Q -- you may assume the case is not going
11 to be brought. You weren't going to come in with
12 a settlement offer if you thought the case wasn't
13 going to be brought.

14 A Right.

15 Q But the benefit of going to a company at
16 that point, after the Commission had approved the
17 recommendation to go forward with the case, is the
18 company then understands that the case will be
19 brought and gives them an opportunity to try to
20 resolve it --

21 A Yeah.

22 Q -- so that, you know, certain resources
23 would be lessened.

24 A That's definitely the -- that is
25 definitely what has been the policy and practice

1 historically with respect to trying to resolve
2 cases. And I think, again, without -- just
3 looking at this story and how (b)(6),(b)(7)(C) was
4 characterizing it was that it did appear to be a
5 departure with how we have traditionally reached
6 back out to a company when those decisions have
7 been taken. And, again, without understanding why
8 it was necessarily -- why that decision was
9 ultimately taken to do something different, we
10 didn't have any insight into that.

11 **Q What about the decision to file the**
12 **complaint against Goldman Sachs at 10:30 in the**
13 **morning during trading hours? Do you have any**
14 **concerns about that and the effect that that had**
15 **on the market itself and/or the stock price and**
16 **shareholders of Goldman Sachs?**

17 **A** Yeah. I -- I didn't have any
18 perspective at all at the time because I didn't
19 know when the division intended to file the case.
20 And certainly aware -- second, I guess, aware
21 after it was reported that that was when the case
22 was chosen to be filed. And then again, that as a
23 general matter there has been sensitivity brought
24 -- sensitivity given to when cases are -- are
25 brought during trading hours in the past. But I

1 didn't have a perspective on that because I didn't
2 have any understanding of how we were making --
3 how the Enforcement Division was making those
4 judgments in this case. So it's mostly then
5 through how the press was characterizing the
6 decision and the previous practice.

7 **Q Do you think that the possible effect of**
8 **a stock price should be a factor in considering**
9 **whether to announce a case like this in the middle**
10 **of the trading day?**

11 A I don't know if I do have a view on
12 that. I think that -- I don't know that I do in
13 terms of whether or not those kinds of issues
14 heavily influence when we decide to file a case
15 once the Commission has taken a judgment that, you
16 know, it's important to bring a case, although --
17 and, again, I don't -- I don't know enough about
18 what -- what the -- the -- the policy
19 considerations are that are -- it's not something
20 that the Commission decides at this point.

21 **Q Right.**

22 A I would tell you that's something that
23 the Enforcement Division has historically done.
24 And I'm not privy to how they have given
25 consideration to that in the past.

1 Q Were you aware that there was concern
2 expressed by the New York Stock Exchange that the
3 SEC didn't inform the New York Stock Exchange in
4 advance that it intended to file a complaint
5 against Goldman Sachs?

6 A I did not know that.

7 Q Now, were you aware when it came to the
8 settlement of Goldman case that there were
9 conversations between the SEC and the New York
10 Stock Exchange and that, in fact, the announcement
11 of the Goldman settlement was after trading hours?

12 A No.

13 Q All right. And so just to be clear, so
14 it was a Wednesday, I guess, the 14th of April,
15 when you participated in the Commission discussion
16 about whether to approve the recommendation to
17 file the Goldman case. But is it accurate that
18 you didn't have any idea when it was going to be
19 filed and you don't know why it was filed on
20 Friday?

21 A That's correct.

22 Q All right. And with respect to the
23 settlement, that was on a Thursday, if you recall.
24 That was the day, I believe, early afternoon, when
25 the Commission was asked to recommend going

1 forward with the settlement of the Goldman case.

2 And then the case -- the actually documents

3 representing the settlement and the announcement

4 was made shortly thereafter on that day. Do you

5 know why the decision was made to have that

6 announced on the same day?

7 A I do not.

8 Q And I understand that with respect to

9 the news media, you are aware, I guess, that there

10 were reports in the newspaper about the particular

11 vote of the Commission, both in the first

12 Commission meeting about the action and then the

13 second Commission meeting about the settlement?

14 A Yes.

15 Q And I understand that you expressed some

16 concern that this information was leaked?

17 A I did.

18 Q And so what was that concern exactly?

19 A Well, that the vote was publicly

20 disclosed and the details of our meeting were

21 similarly disclosed. So I was disturbed that --

22 probably more on the details than the vote itself,

23 although I think it's also disappointing that our

24 internal deliberations were leaked. So I had -- I

25 did express my concern about the leaks and that I

1 felt it undermined both the -- well, certainly
2 it's contrary to our rules and our obligations,
3 but that also I thought it undermined --
4 undermined our process and our case.

5 Q And do you know if anyone is looking
6 into the question of how this non-public
7 information was released to the newspaper?

8 A I don't. I don't.

9 Q Do you have any idea how this non-public
10 information was provided to the newspaper?

11 A I do not. I mean, that's always pure
12 speculation, just --

13 Q Right.

14 A -- you know, again, given the sheer
15 amount of people that have access to either
16 sitting in on the meetings or perhaps learn
17 secondhand, so.

18 Q Right. And are you aware that there
19 have been other instances of non-public
20 information regarding the SEC appearing in the
21 newspaper.

22 A Oh, yes, very well aware. Yes.

23 Q And, you know, just to cover all bases,
24 you're not aware of anyone in your office who's
25 ever shared --

1 A I am not. Offhand I --

2 Q -- non-public information?

3 A -- I haven't. Again, I'm not aware of
4 anybody in my office on this case.

5 Q Are you aware of anybody in your office
6 who ever shared --

7 A No.

8 Q -- non-public information with the
9 newspaper?

10 A No.

11 Q And you consider it a serious matter if
12 somebody were to?

13 A I do generally. And on the Enforcement
14 staff, you know, try to --

15 REPORTER: I'm sorry, just for the
16 record, if you could --

17 BY MR. KOTZ:

18 Q Yes, I'm sorry. Let me just finish the
19 whole question.

20 A I'm sorry. Sorry.

21 Q So you consider it an important matter
22 if someone had shared non-public information with
23 a reporter or with somebody outside the SEC?

24 A Yeah, I -- I think that we've always
25 tried to take our responsibilities very serious

1 when it comes to the confidentiality around our
2 Enforcement cases, so yes.

3 Q All right. Now, I know that you have
4 sort of a limited window on what happened with the
5 entire Enforcement action. But nevertheless, I'm
6 going to ask you a series of questions about
7 whether you know of any improprieties.

8 So you are, I assume, aware of the
9 Financial Regulatory Reform Legislation passed by
10 Congress?

11 A Yes.

12 Q Has anybody at the SEC ever mentioned
13 Financial Regulatory Reform Legislation in
14 connection with the Goldman Sachs investigation or
15 in connection with the filing of an action against
16 Goldman Sachs?

17 A No.

18 Q Do you have any reason to believe that
19 the SEC's action against Goldman Sachs or the
20 timing of that action was in any way related to or
21 specifically to advance Financial Regulatory
22 Reform Legislation?

23 A I have no information.

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

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

4 A I have no information.

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

9 A I do not have any information.

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

16 A No information. I have no information.

17 Q And you're not aware of anyone sharing
18 any information about Goldman Sachs with either
19 the White House, Executive Office of the
20 President, the Congress, or any Democratic
21 committee?

22 A I'm not aware of any.

23 Q All right. That is all the questions we
24 have. The one thing I would ask in order to
25 preserve the integrity of the investigation that

1 you not discuss the content of the testimony with
2 anyone until we finish.

3 A Sure.

4 Q Okay?

5 A Happy to.

6 MR. KOTZ: With that, we're off the
7 record.

8 (Whereupon, at 3:00 p.m., the examination was
9 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 21 pages is a complete, true and accurate transcript of the testimony indicated, held on August 9, 2010, at 2:40 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:

8/13/10
(b)(6),(b)(7)(C)

Official Reporter:

Diversified Reporting Services, Inc.

PROOFREADER'S CERTIFICATE

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In the Matter of: OIG-534
Witness: Number 34
File Number: OIG-534
Date: Monday, August 9, 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)

8/13/10
(Date)

Chapter Break

ORIGINAL

Page 1

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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

WITNESS: Number 35

PAGES: 1 through 121

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

DATE: Tuesday, August 10, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 9:33 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 DAVID KOTZ, ESQ., Inspector General

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6 Office of the Inspector General

7 Securities and Exchange Commission

8 100 F Street, N.E.

9 Washington, D.C. 20549

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

11

12

13 On behalf of the Witness:

14 LORIN REISNER, PRO SE

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C O N T E N T S

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2			
3	WITNESS:		EXAMINATION
4	Lorin Reisner		5
5			
6	EXHIBITS:	DESCRIPTION	IDENTIFIED
7	1	E-mail dated 12/07/2009	11
8	2	E-mail chain dated 12/8/2009	13
9	3	E-mail chain dated 12/14/2009	17
10	4	E-mail chain dated 12/29/2009	20
11	5	E-mail chain dated 1/4/2010	21
12	6	E-mail chain dated 1/5/2010, 7:52 p.m.	28
13	7	E-mail chain dated 1/5/2010, 7:07 p.m.	29
14	8	E-mail chain dated 1/15/2010	32
15	9	E-mail chain dated 1/22/2010, 6:09 p.m.	33
16	10	E-mail chain dated 1/22/2010, 6:59 p.m.	36
17	11	E-mail chain dated 1/25/2010, 8:24 p.m.	37
18	12	E-mail chain dated 1/26/2010, 1:24 p.m.	38
19	13	E-mail dated 1/26/2010, 1:27 p.m.	38
20	14	E-mail chain dated 1/24/2010	40
21	15	E-mail chain dated 1/25/10 2:37 p.m.	41
22	16	E-mail chain dated 1/27/2010	43
23	17	E-mail chain dated 3/5/2010	49
24	18	E-mail chain dated 3/22/2010	50
25	19	E-mail chain dated 4/7/2010	52

1	EXHIBITS:	DESCRIPTION	IDENTIFIED
2	20	E-mail chain dated 4/13/2010	56
3	21	E-mail chain dated 4/14/2010, 11:06 p.m.	56
4	22	E-mail chain dated 4/14/2010, 10:11 p.m.	56
5	23	E-mail chain dated 4/14/2010, 6:08 p.m.	63
6	24	E-mail chain dated 4/15/2010, 3:29 p.m.	64
7	25	E-mail chain dated 4/15/2010, 6:33 p.m.	65
8	26	E-mail chain dated 4/15/2010, 7:42 p.m.	70
9	27	E-mail chain dated 4/16/2010, 1:10 a.m.	72
10	28	E-mail chain dated 4/16/2010, 9:56 a.m.	74
11	29	E-mail dated 4/16/2010, 1:25 p.m.	76
12	30	E-mail chain dated 4/17/2010, 12:12 p.m.	78
13	31	SEC Administrative Regulations	85
14	32	E-mail chain dated 4/18/2010	93
15	33	E-mail chain dated 4/16/2010, 3:55 p.m.	95
16	34	E-mail dated 4/16/2010, 4:57 p.m.	95
17	35	E-mail chain dated 6/28/2010	101
18	36	E-mail chain dated 7/8/2010	105
19	37	E-mail chain dated 7/15/2010	111
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1 PROCEEDINGS

2 MR. KOTZ: Okay. We're on the record at 9:33 a.m.
3 on August 10, 2010 at the United States Securities and
4 Exchange Commission.

5 I'm going to swear you in.

6 Would you please raise your right hand?

7 Whereupon,

8 LORIN L. REISNER

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

11 EXAMINATION

12 BY MR. KOTZ:

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

15 A Lorin L. Reisner. L-o-r-i-n. Middle initial L.
16 Reisner, R-e-i-s-n-e-r.

17 Q Okay. My name is David Kotz. I'm the Inspector
18 General of the United States Securities and Exchange
19 Commission. I have with me my colleague from the Office of
20 the Inspector General (b)(6),(b)(7)(C) This is an investigation
21 by the Office of Inspector General, case number OIG-534. I'm
22 going to ask you certain questions. You'll be providing
23 answers under oath. The court reporter will record and later
24 transcribe everything that is said. Please therefore provide
25 verbal answers to the questions, as a nod of the head or

1 another non-verbal response won't be picked up by the court
2 reporter.

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

11 A I do.

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

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

1 A I do.

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

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

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

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

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

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

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

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

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

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

1 Q And so when exactly did you join the SEC?

2 A August 3, 2009, I think. It might have been August
3 5th, but I think August 3rd.

4 Q Okay. August though?

5 A Yes.

6 Q And what is your current position?

7 A I'm the deputy director of the enforcement
8 division.

9 Q Okay. What are the duties and responsibilities of
10 that position?

11 A To help with the supervision of the enforcement
12 division.

13 Q And who do you report to?

14 A Rob Khuzami.

15 Q All right. Did there come a point where you became
16 aware of the existence of an investigation by the SEC into
17 the sale of collateralized debt obligations by Goldman Sachs,
18 known as the Abacus investigation?

19 A Yes.

20 Q Okay. Do you remember when that was?

21 A I don't recall exactly when that was.

22 Q Okay. It was certainly after August 2009?

23 A Definitely.

24 Q Okay. And so what do you remember about first
25 hearing about this case?

1 A I don't remember what I first heard about the case,
2 but at some point I did learn that there was an investigation
3 involving collateralized debt obligation that had been
4 structured and marketed by Goldman Sachs. My best guess
5 would be that I began hearing about this matter in the
6 November 2009 time period, but that's a -- that's sort of a
7 guess.

8 Q Did you understand that this investigation was
9 considered a national priority investigation for the SEC?

10 A At some point I knew that it was one of our
11 national priority investigations.

12 Q Okay. What does that mean, a national priority
13 investigation?

14 A We have a list of cases that we categorize as
15 national priority investigations. That list generally ranges
16 from roughly 60 to 65 cases to 90 or so cases. We get a
17 weekly or biweekly reports on those cases. By we, I mean the
18 senior staff at the enforcement division.

19 Q Right.

20 A And it's a method for us to be able to more easily
21 track the matters that some might view as the, you know, most
22 important or highest priority matters in the division.

23 Q Did there come a time where you would brief the
24 Chairman's office on these high priority matters?

25 A Not me, and not formally. There are weekly

1 meetings with the Chairman's office that Rob generally
2 attends. I sometimes attend those in his absence. And at
3 those meetings occasionally we may touch upon a national
4 priority matter, but there's no vehicle by which we sit down
5 and we, you know, review formally national priority matters.
6 It's more that we will give reports to the Chairman
7 concerning matters under investigation, and inevitably they
8 will involve national priority matters.

9 Q These weekly meetings -- does the Chairman herself
10 attend them?

11 A As far as I know, yes.

12 Q Do you remember any specific instance where you
13 briefed the Chairman or the Chairman's office about the
14 Abacus case?

15 A I don't recall a specific instance in which I
16 briefed the Chairman or the Chairman's office about the
17 Abacus case. But I know there were at least a couple of
18 meetings where either just before the filing or maybe just --
19 I think more likely just after the filing we gave her a
20 briefing on where things stood. And the weekly meetings -- I
21 should be clear. Those are weekly meetings that the Chairman
22 has with all of the division directors.

23 Q Right. So that briefing would have been around the
24 time that the case was filed. Do you remember if there was
25 any briefing much before that, you know, in the 2009

1 **timeframe or early in 2010?**

2 A I don't recall any such briefing.

3 MR. KOTZ: All right. Let me show you the first
4 document. We're going to mark it as Exhibit 1, an e-mail
5 from you to Robert Khuzami, 12/7/2009, 11:28 a.m.

6 (Exhibit No. 1 was marked for
7 identification.)

8 THE WITNESS: It's a walk down memory lane.

9 MR. KOTZ: Yeah. We're going to do quite a bit of
10 that, unfortunately, for you.

11 BY MR. KOTZ:

12 Q And so, you know, go back in time. And we'll show
13 you the other documents as well, but just to refresh your
14 recollection, so in December 2009 this was actually
15 calendared, and, you know, was looking like it would be ready
16 for the Commission to approve. And it looks like there was
17 some kind of disagreement among the enforcement staff. And I
18 think this e-mail refers to that disagreement, specifically
19 that (b)(6),(b)(7)(C) asked to be taken off the Goldman case. So
20 what do you remember, I guess generally, about the
21 disagreement between (b)(6),(b)(7)(C) and some of the other folks
22 on the team?

23 A Yeah. I would probably describe it as, you know,
24 part personality conflict and part substantive disagreement.

25 Q Right.

1 A The personality conflict portion of it, I think
2 that (b)(6), (b)(7)(C) and some members of the investigative team, as
3 sometimes happens in matters, bumped up against each other in
4 a disagreeable way. And I attribute that to just different
5 personalities and styles and approaches, and part of it was
6 substantive. (b)(6), (b)(7)(C) had a certain view of theory of the matter
7 that wasn't shared by some other members of the team, and I
8 think that contributed to the disagreement as well.

9 Q Okay. And you weighed in at some point in that
10 disagreement?

11 A Well, yes. But I think this e-mail that you're
12 focusing on was probably before I weighed in, at least the
13 way I would use weighed in. By weighed in I -- there was a
14 point at which I expressed some views, opinions, analyses
15 beliefs on the substantive issue. I don't think we were
16 there yet in December. I think what this e-mail reflects is
17 upon learning from Mark Adler that (b)(6), (b)(7)(C) was
18 being --asked to be taken off the case -- I don't remember
19 specifically speaking to Mark, but I remember what I was
20 thinking at this time, which was this seemed like a pretty
21 severe step, and I wanted to make sure that I understood what
22 the issues were before we took such a severe step.

23 Q Now, did you understand that somebody asked (b)(6), (b)(7)(C)
24 (b)(6), (b)(7)(C) to be taken off the case, or he, himself, wanted to be
25 off the case?

1 A As I understood it, (b)(6),(b)(7)(C) himself asked to be
2 taken off the case.

3 Q Because he was frustrated?

4 A You know,, you'd have to ask him, but my
5 impression, from having spoken to him, was that he was
6 frustrated.

7 Q And so you thought it would be better to keep him
8 on the case?

9 A No. I thought it would be better to speak with him
10 and to understand what the issues were before making a
11 decision on how to proceed.

12 Q Okay. So rather than just immediately put somebody
13 else on the case you wanted to hear what he had to say, why
14 he wanted to get off the case, and how that might effect the
15 substantive issues?

16 A I wanted to understand more clearly what the issues
17 were.

18 MR. KOTZ: All right. Let's go to the next
19 document, mark it as Exhibit 2, an e-mail exchange between
20 Joan McKown and Cheryl Scarboro dated 12/8/2009, 10:58 a.m.

21 (Exhibit No. 2 was marked for
22 identification.)

23 BY MR. KOTZ:

24 Q And so do you recall that the Abacus case was first
25 put on the calendar in December?

1 A I honestly don't recall that. I have no reason to
2 doubt it, but I don't know whether I knew it at the time, and
3 I certainly don't recall now knowing it at the time.

4 Q Okay. Well, you did know it at the time, at least
5 assuming you got this e-mail. So do you know why it was then
6 taken off the calendar?

7 A Well, what I said was I don't know why it was --
8 assuming it was on the calendar for December 17th, which
9 seems to be baked into this e-mail, I don't recall -- I don't
10 recall precisely why it was taken off the calendar. I
11 remember some things that were happening around this time .

12 Q Okay.

13 A What I remember happening around this time was --
14 and I think it was in December. It may have been in early
15 January. I was learning a little bit more about the details
16 of the case.

17 Q Right. Right.

18 A And the facts, and issues, and allegations, and
19 theories. And among the things that I felt was important
20 during this time period was that testimony be taken from an
21 individual named (b)(6),(b)(7)(C)

22 Q Right.

23 A Before any final decisions had been made on how to
24 proceed with the case. And that was around this time period.
25 Inferring --but I don't really have this recollection, but

1 I'm inferring that the reason why this matter may have been
2 calendared and taken off the calendar was to provide an
3 opportunity for the staff to take the testimony of [REDACTED]

4 [REDACTED] I think that timing makes sense.

5 Q Yeah. We have an e-mail to show you. But so do
6 you recall a disagreement among folks working on this case as
7 to whether [REDACTED] testimony should be taken?

8 A You know, I don't recall -- I don't know that I'd
9 call it a disagreement. I remember there being different
10 views as to the need for taking [REDACTED] testimony before
11 making a recommendation. I remember that one or more folks
12 felt that it was important to take [REDACTED] testimony before
13 making a recommendation, and one or more folks thought that
14 we could proceed with the recommendation before taking [REDACTED]
15 testimony. I remember what my view was. My view was that it
16 was -- that the right way to proceed was to take [REDACTED]
17 testimony before making any recommendation.

18 Q How come you came to that decision?

19 A As I learned more about the facts, my view was that

20 [REDACTED]
21 [REDACTED] Abacus COLLATERALIZED DEBT
22 OBLIGATION. [REDACTED]

23 There were e-mails that, to me, demonstrated that [REDACTED]

24 [REDACTED]
25 [REDACTED] And I thought that the most thorough and

1 professional approach was to take his testimony before making
2 any final decisions.

3 Q And so was a decision made to take (b)(6),(b)(7)(C)
4 testimony to determine if perhaps he could be somebody that
5 could be charged in the case?

6 A The way I would describe it is it was important to
7 take his testimony so that we could get the most thorough
8 understanding of the facts, the involvement of a range of
9 folks at Goldman and outside Goldman in this transaction, and
10 also to better understand (b)(6),(b)(7)(C) role and what decisions we
11 should be making with respect to (b)(6),(b)(7)(C)

12 Q What did you understand the argument was to not
13 take his testimony? I mean so it's been presented to us, and
14 we've obviously listened to different folks. But, you know,
15 one individual presented to us to say, well, why wouldn't you
16 take his testimony?; what's the harm in taking his
17 testimony?; even if you don't think you're going to gain a
18 lot, you never know. What's the harm in -- so I've had
19 difficulty understanding the argument we shouldn't even take
20 his testimony.

21 A Well, just to be clear, that wasn't my view.

22 Q Right. I understand.

23 A So I'm probably not the best person to articulate
24 that view. But as I understood it the view was in essence,
25 you know, we understand we need to understand based on the

1 testimony that already has been taken and the documents that
2 already have been reviewed. And, you know, in any -- you can
3 always make the argument David that you've made, which is,
4 well, why not take person X's testimony?; there's no downside
5 to it; you'll learn a little bit more.

6 And I -- you know, at some point you have to
7 exercise good judgment in knowing where to draw the line.
8 Because if you took everybody's testimony who possibly was
9 involved in any transaction your investigation could last ten
10 years, and that wouldn't be a good thing either. So what I
11 viewed my role as at this point in time was bringing some
12 decent judgment to bear on this issue, and my judgment was
13 that the testimony should be taken.

14 Q Okay. And so did you make the final decision to
15 take [REDACTED] testimony?

16 A I don't know that any one person made the final
17 decision. We were meeting, I think, around this time period
18 as a team, as a group. And I think that at the end of the
19 day there was a consensus that that was the right approach.

20 MR. KOTZ: All right. Let me show you the next
21 document. I'm going to mark it as Exhibit 3. This is an
22 e-mail exchange between you and Cheryl Scarboro, 12/14/2009,
23 7:46 p.m.

24 (Exhibit No. 3 was marked for
25 identification.)

1 BY MR. KOTZ:

2 Q So there's e-mails here that have some impressions
3 of the action memo. Cheryl Scarboro sends you an e-mail with
4 some comments. And then you respond, "I'm scheduled to meet
5 with (b)(6),(b)(7)(C) on Friday morning. I'll get back to you with
6 my assessment and suggestions after I meet with (b)(6),(b)(7)(C)." Do you
7 remember anything about that meeting or what your assessments
8 were?

9 A To be completely honest, I don't remember this, or
10 I don't remember it clearly. What I remember -- what I
11 remember is that I had a number of meetings with (b)(6),(b)(7)(C) and I
12 asked (b)(6),(b)(7)(C) to put together a lot of -- I was probably making
13 him crazy, because I was asking him to put together binders
14 of materials and collections of materials for me to review,
15 because I really felt that I needed to take a deep dive into
16 the facts here and better understand really the details of
17 the transaction and the various participants in the
18 transaction.

19 And I remember spending a lot of time with (b)(6),(b)(7)(C)
20 because I wanted to make sure that his views were, not only
21 completely aired, but thoroughly analyzed. I came into this
22 ready to be persuaded by (b)(6),(b)(7)(C) or anybody else who had the best
23 of the argument, and I remember spending time with (b)(6),(b)(7)(C) and
24 others, hearing them out. That's the best I can do.

25 Q Sure. Were you impressed by (b)(6),(b)(7)(C) and his

1 presentation? We've heard some somewhat maybe disparaging
2 things. I mean what was your sense?

3 A I think [REDACTED] was making arguments in good faith. I
4 was impressed with some of his arguments. I wasn't impressed
5 with some other of his arguments. I thought that what I was
6 trying to do was to bring a more disciplined approach to
7 [REDACTED] analysis and the team's analysis. Sometimes when
8 you're deep into an investigation, as you know, you make
9 assumptions and arguments and don't always check back with
10 the evidence and the documents. And what I was encouraging
11 [REDACTED] to do, and what I was doing myself, was to not only make
12 arguments as an advocate, but to check back with the facts
13 and the documents to make sure that we got it right.

14 Q Was it unusual for you to be involved in something
15 like this?

16 A Not really. You know,, I like to get involved in
17 helping investigative teams and the litigators with their
18 cases. It's one of my favorite parts of the job, and from
19 time to time I take very deep dives into cases.

20 MR. KOTZ: Okay. All right. Let me show you the
21 next document. It's dated 12/29/2009. We're going to mark
22 it as Exhibit 4, an e-mail sent from Robert Khuzami to [REDACTED]
23 [REDACTED] Cheryl Scarboro, you, [REDACTED] and [REDACTED]
24 And it's at 2:19 p.m.

25 (Exhibit No. 4 was marked for

1 identification.)

2 BY MR. KOTZ:

3 Q So do you remember that this article, I guess about
4 Goldman, was in the newspaper and Rob was sending it around?

5 A I remember the article was in the newspaper. I
6 didn't remember that Rob had sent it around. But I remember
7 the article.

8 Q And what was your -- was there any concern about
9 the fact that there was an article? I mean there was -- was
10 there -- what's been expressed at some points was some
11 concern about how the press was getting certain information
12 about Goldman.

13 A It's funny. I don't remember that being a concern
14 in this timeframe. Maybe I'm wrong, but my reaction to this
15 article when it appeared was that -- I don't remember having
16 a concern that there was information coming from the SEC. I
17 recall my impression was that this article, at least to me,
18 seemed to be a pretty well-researched piece that looked like
19 the reporters had, you know, done some good reporting with
20 Goldman and the investors and others involved in the deal.

21 Q Okay. And so in the e-mail Rob says, "We're going
22 to get a lot of attention." Is it fair to say that you knew
23 at this point that an action against Goldman of this nature
24 would be something that would get significant attention?

25 A No. I mean at this point -- at this point we were

1 still sort of developing what our recommendation would be.
2 You know, I think what Rob probably meant here was that there
3 was a media focus on this transaction and that if we did
4 something, if we brought an action, recommended an action,
5 with respect to this matter, it would get a lot of attention.

6 MR. KOTZ: All right. Let me show you the next
7 document. I'm going to mark it as Exhibit 5. And this an
8 e-mail from Stephen Cohen to (b)(6),(b)(7)(C) 1/4/2010, 7:16 p.m.

9 (Exhibit No. 5 was marked for
10 identification.)

11 BY MR. KOTZ:

12 Q So if you look on the second page -- and feel free
13 to take your time and read the whole thing.

14 A Yeah. Give me just one second to orient myself.

15 Q Sure.

16 A Okay.

17 Q All right. So on the second page, the e-mail from

18 (b)(6),(b)(7)(C) dated December 8, 2009 at 4:09 p.m. says, "The
19 above-captioned matter has been withdrawn from the December
20 17th Closed Meeting agenda by the staff. In consultation
21 with the Trial Unit, it was determined that staff will take
22 testimony from (b)(6),(b)(7)(C)

23 (b)(6),(b)(7)(C) prior to making a recommendation to the Commission."

24 A My recommendation -- my recollection was okay.

25 Q And so then there's some talk about when they'll be

1 resending the recommendation up, you know, and some dates,
2 the 14th. Then Rob says, "The 14th is a bit aggressive.
3 Let's stick with the 21st." And so what we're getting from
4 this and from the other testimony -- I just want to get your
5 recollection on -- is that it was taken off the calendar
6 specifically to take (b)(6),(b)(7) testimony, and then once (b)(6),(b)(7)
7 testimony would be taken it would be put on the calendar,
8 which is why, you know, at the time period that shortly after
9 it was taken off the calendar they were already looking to
10 dates.

11 A That sounds too mechanical to me.

12 Q Okay.

13 A You know, I think that at least my mindset was
14 after (b)(6),(b)(7) testimony was taken there would have to be a
15 careful evaluation of what he had to say, how it fit in with
16 whatever --

17 Q Right. No. Obviously there'd be an evaluation.

18 A And, you know, when the matter got calendared would
19 be a function of, you know, when we thought we were ready to
20 proceed after taking those steps. And I'm sure those steps
21 would include, you know, additional meetings with the team to
22 talk about, you know, impressions, views, reactions,
23 thoughts, as a result of (b)(6),(b)(7) testimony and the entire
24 investigative record.

25 Q All right. No. I didn't mean to give the

1 impression there wasn't going to be analysis, just that the
2 investigative step, you know, kind of outside the Commission
3 that was going to be taken was (b)(6),(b)(7)(C) testimony. That was
4 the one investigative step that we've seen they felt needed
5 to be taken before the matter was ready.

6 A But there were other investigative steps. I think
7 that we were still -- I was still looking very carefully at
8 the evidence, also reading some cases, and trying to figure
9 out the best way to proceed in the matter. So the (b)(6),(b)(7)(C)
10 testimony was important, but it wasn't the only step being
11 taken.

12 Q All right. Did you participate in the (b)(6),(b)(7)(C)
13 testimony?

14 A I was not there, but I did help the team prepare
15 for the testimony.

16 Q Okay. And you probably read the transcript?

17 A I did read the transcript. I also prepared an
18 outline of some questions for the team in advance of the
19 testimony.

20 Q Okay. And there was some kind of disagreement
21 about what happened at the testimony, you know, kind of one
22 side says it was exactly the way I thought, there was nothing
23 to -- no more information really we needed, and the other
24 side says something to the effect of the questions were asked
25 in such a way to illicit the information that they wanted,

1 and, you know, maybe, you know, they almost put words in (b)(6),(b)(7)(C)
2 (b)(6),(b)(7)(C) mouth in order to get the result. Do you have any --
3 I mean you didn't sit there, but what is your sense of how
4 that testimony went?

5 A I don't remember reacting the way that you just
6 described it, that anybody was putting words in (b)(6),(b)(7)(C) mouth.
7 To the extent that I remember having a reaction to the
8 testimony, I think I did sort of a summary of the testimony
9 and sent it -- sent around what my reactions, impressions, to
10 the testimony were. I may not have done that, but I have
11 some recollection of having done that. And, you know, I
12 thought the testimony was fine. I didn't think it was the
13 most perfect examination I've ever read of a witness, but I
14 thought it was fine.

15 Q Now, in this same e-mail, in Exhibit 5, in this
16 e-mail exchange, (b)(6),(b)(7)(C) sends an e-mail to you, Rob
17 Khuzami, and Cheryl Scarborough in the middle of the page, where
18 he references a conversation with Steve Cohen. And he says,
19 "Steve agreed that it made sense to file against Goldman and
20 Toure and then amend if the evidence supports charging (b)(6),(b)(7)(C)

21 A I see.

22 Q First of all, what was Steve Cohen's role in these
23 decisions?

24 A In my view? No role in the enforcement division's
25 recommendation.

1 Q Okay.

2 A I think that, you know, Steve -- he obviously works
3 in the Chairman's office; he's an experienced guy; he's
4 smart, been at the Commission longer than I've been at the
5 Commission, and Steve has -- you know, contributes his views
6 and insights to us on occasion. It sounds like he was
7 communicating some views to (b)(6),(b)(7)(C) around this point in time.
8 But in my mind the recommendation that the enforcement
9 division made in this case and all cases is the
10 responsibility of the enforcement division.

11 Q Okay. Do you remember this sort of debate about
12 whether to file now and then amend and file later, or to just
13 wait until you have all the evidence and file at one time?

14 A I don't remember any such debate. And if I had
15 participated in a discussion -- and I don't remember that I
16 did or didn't -- I would have strongly advocated against any
17 notion of any subsequent amendment.

18 Q Okay. So explain why. Why is it better to just
19 bring it all at once?

20 A In my mind, it's just cleaner that way. You
21 exercise your -- you take the investigative steps that you
22 need to take to understand the facts, and then you exercise
23 your best judgment as to how to proceed. And where you know
24 that something is in the universe of decision-making around
25 that set of facts, you're always best making those decisions

1 at one point in time where you can, rather than doing it
2 serially. I think that it leads to good decision-making, and
3 it also -- your perception, among those who are watching what
4 you're doing, is that these guys know what they're doing;
5 they're not doing things piecemeal or haphazard.

6 Q What about the notion that if you have sort of a
7 related case, and you bring an action against one individual
8 or a company, and then you wait to amend against somebody
9 else? Then that person, or that person's lawyer, has some
10 information out there, by virtue of the first action. And so
11 it potentially makes things more difficult.

12 A That one doesn't grab me so much.

13 Q No?

14 A But -- that one doesn't grab me so much.

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

16 Q Speaking more broadly, could it impact the drafting
17 or the structuring of the complaint, knowing that you have an
18 understanding as to who the entire universe is likely to be
19 of who you're going to charge?

20 A Really depends on the case. I mean, look, there
21 are some cases where you have to make decisions about a more
22 limited group of subjects, knowing that there may be an
23 amendment down the line. I don't mean to rule that out.
24 Sometimes that's what makes the most sense. Here, my
25 judgment was that we -- you know, this investigation had been

1 going on for a while; we had the sense that we knew what the
2 facts and issues were, and that we ought to take
3 responsibility for making a judgment at one time.

4 (b)(6),(b)(7)(C): Okay.

5 BY MR. KOTZ:

6 Q We have the document that shows -- and your
7 recollection and most people's recollection is that the
8 reason that the case was taken off the calendar in December
9 was primarily to take (b)(6),(b)(7)(C) testimony. But we also some
10 evidence that there were efforts to take (b)(6),(b)(7)(C) testimony
11 prior to December, and then there was some problem with dates
12 or some pushback from (b)(6),(b)(7)(C) counsel. Do you remember any of
13 that?

14 A No.

15 Q Okay. All right. Going back to this Exhibit 5 for
16 a second, the e-mail right below the one I referenced, which
17 is an e-mail from (b)(6),(b)(7)(C) sent Monday, January 4, 2010,
18 4:15 p.m. In that he says, "This is a high-profile
19 enforcement case that recently became time sensitive." Do
20 you see that?

21 A Yeah.

22 Q Do you know what -- how it recently became time
23 sensitive?

24 A I don't. I don't know what he means by that.

25 Q Okay. Do you remember at any point this matter

1 becoming time sensitive?

2 A I mean all matters are time sensitive in a way.
3 The goal is to -- as you know, David --- bring the cases as
4 close in time to the conduct as you can. But I can't think
5 of anything in the January time period that made the case any
6 more or less time sensitive.

7 Q Okay.

8 A Maybe we were pressing -- purely speculating, maybe
9 I was -- we were pressing the investigative team to just move
10 as quickly as they could, but we do that in a lot of matters.

11 MR. KOTZ: Right. Right. Okay. All right. I'm
12 going to go to the next document. I'm going to mark the next
13 document as Exhibit 6. This is an e-mail from Rob Khuzami to
14 [REDACTED] Stephen Cohen, [REDACTED] and you, 1/5/2010,
15 7:52 p.m.

16 (Exhibit No. 6 was marked for
17 identification.)

18 BY MR. KOTZ:

19 Q Do you remember at some point in time you heard
20 that the Senate Permanent Subcommittee on Investigations was
21 also looking at Goldman?

22 A Vaguely. I mean I certainly knew later on that
23 they were.

24 Q Right.

25 A Because I -- you know, I met with them in the April

1 time period, I think after -- after the case was filed.

2 Q Right.

3 A I have some vague recollection of what is reflected
4 in this e-mail exchange. But that's about it.

5 Q So and your vague recollection is what exactly?

6 A My vague recollection is seeing some of these
7 e-mails as they crossed my e-mail and not really being
8 actively engaged in this issue, as I recall.

9 MR. KOTZ: Okay. All right. Let me show you the
10 next document. We're going to mark it as Exhibit 7, an
11 e-mail between Stephen Cohen, and you, and Robert Khuzami,
12 1/5/2010 7:07 p.m.

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

15 BY MR. KOTZ:

16 Q This is also a discussion, I guess, about the
17 dates.

18 A Okay.

19 Q Okay. And so the previous e-mail string I showed
20 you, Robert Khuzami sends an e-mail saying that he heard that
21 late January or February the Senate Permanent Subcommittee on
22 Investigations was planning to have a hearing, and then there
23 were efforts from the legislative staff to find out if that
24 was the case, and I think they got some information back
25 saying that wasn't the case, and that there was no immanent

1 hearing. And I think this came up around the time that there
2 were decisions made on when to put it back on the calendar
3 after taking [REDACTED] testimony.

4 And so you say in this e-mail on Monday, January 4,
5 2010, 10:55 p.m. to Robert Khuzami and Stephen Cohen,
6 "January 21 is best. If that's not possible, I think January
7 28 is the better alternative, unless there is a vital need to
8 target January 14th." And then you say, "And the latest
9 intelligence is that there may be no need to expedite." Were
10 you referring to the intelligence regarding the Permanent
11 Subcommittee on Investigations?

12 A You know, I don't remember. That seems logical to
13 me. But I don't -- I honestly don't remember. If you can
14 see from the next two or three sentences, you can see what I
15 was focusing on, which was having time after the testimony
16 "to consider the impact of the testimony, make decisions/
17 develop consensus about next steps, make any necessary
18 judgments to the action memo and provide a reasonable period
19 for comments." I was, frankly, focused on making sure that
20 he had the time to make good decisions here and to examine
21 all of materials that had been compiled in the investigative
22 record. That was really my focus.

23 Q Okay. And then as you see, Stephen Cohen responds,
24 "There is no meeting on the 21st. Despite Mary's willingness
25 to do it from LA, Aguilar, Casey, and Walter are all out.

1 So, should we calendar this for the 28th?" It just seems
2 generally that there was somewhat of an urgency -- I guess
3 maybe because it was calendared already -- to get it back on
4 the calendar. Do you recall that?

5 A I don't recall feeling any sense of urgency. What
6 I recall was lots of discussion about when this should be
7 calendared, as reflected in the e-mail. And I remember my
8 focus, and I think -- I know Rob's focus too, was on making
9 sure we had the time to do everything we needed to get done.

10 Q Okay. One question. And this is something that, I
11 guess, you know, in our report, in our investigation, we're
12 going to likely need to explain outside of the Commission.
13 And so if you put something on the calendar -- right? -- and
14 then it's taken off the calendar because of something that
15 the investigative team or the enforcement team came up with,
16 it kind of seems a little odd that that decision wouldn't be
17 made before it was put on the calendar.

18 So when you put something on the calendar you think
19 that it must have been because of something one of the
20 Commissioners said or the Chairman. And then it was taken
21 off the calendar. I mean how do you explain that this
22 disagreement that was internal wasn't resolved before it was
23 put on the calendar the first time?

24 A Yeah. I don't agree with that characterization.

25 Q Okay.

1 A It doesn't -- it doesn't really seem odd to me.

2 Q Okay.

3 A Matters get put on the calendar and taken off the
4 calendar on a relatively routine basis is my impression, for
5 all different types of reasons.

6 Q But to the best of your recollection, the decision
7 to take the Abacus case off the calendar in December related
8 to internal issues within the division of enforcement. It
9 didn't have anything to do with feedback from the
10 Commissioners or the Chairman?

11 A That's my recollection.

12 MR. KOTZ: All right. Let's go to the next
13 document. I'm going to mark this as Exhibit 8, an e-mail
14 from Robert Khuzami to (b)(6),(b)(7)(C) you, and Cheryl Scarboro,
15 1/15/2010, 10:51 a.m.

16 (Exhibit No. 8 was marked for
17 identification.)

18 THE WITNESS: Okay.

19 BY MR. KOTZ:

20 Q All right. It seems like in this e-mail Rob is at
21 least contemplating this parallel tracks idea. Is that
22 something that you had discussions with him about?

23 A I don't remember any conversations with Rob on that
24 topic. We may have had them, I just don't -- I don't
25 remember. This also may have been -- you know, sometimes

1 somebody has a thought they put in an e-mail, and it's a
2 thought they had in one moment, and it's fleeting, and it
3 changes in another moment. But I don't remember any -- I
4 don't remember any conversations with Rob along these lines.

5 Q And do you know what he might be referring to when
6 he says, "The inquiry may be one additional reason to proceed
7 with the case and Wells (b)(6),(b)(7)(C) on parallel tracks"?

8 A I don't know what he meant. My assumption is that
9 the inquiry refers to the Permanent Subcommittee on
10 Investigation inquiry.

11 Q Do you remember any conversations with Rob about
12 that?

13 A I mean I do in the April time period.

14 Q Okay.

15 A I don't in the January time period. Although we
16 may have had them, I just don't remember any in the January
17 time period.

18 MR. KOTZ: Okay. All right. Let me show you the
19 next document. We're going mark it as Exhibit 9, 1/22/2010,
20 e-mail from Cheryl Scarboro to (b)(6),(b)(7)(C) at 6:09 p.m.

21 (Exhibit No. 9 was marked for
22 identification.)

23 THE WITNESS: I'm just going to read the --

24 MR. KOTZ: Please.

25 THE WITNESS: Just from the bottom, just to get a

1 --

2 MR. KOTZ: Sure.

3 THE WITNESS: Get some context. Okay.

4 BY MR. KOTZ:

5 Q All right. So it looks like it was put back on the
6 calendar on January 28th, which I think was the date that you
7 had suggested. And there's a discussion between [REDACTED]
8 [REDACTED] sends an e-mail to you, [REDACTED] and Cheryl
9 Scarboro, Friday, January 22nd.

10 A I'm just going to interrupt you, because I didn't
11 see the part that says it was put back on the calendar for
12 the 28th. It may be, but I just didn't --

13 Q Okay.

14 A I just didn't see that.

15 Q So [REDACTED] says in this e-mail, "Ken Lench and I
16 talked about the timing of our action, assuming we get
17 authorized Thursday, 1/28."

18 A Okay.

19 Q And then he says, "Unless people have a different
20 view, our preference is to file our complaint the morning of
21 Friday, 1/29." And then Cheryl Scarboro and says, "I would
22 prefer not to file on a Friday. I suggest Monday, Feb 1."

23 [REDACTED] "I realize that's the approach we have taken
24 in the past. My sense is we're really on a 24-7 news cycle
25 nowadays. Look at how much attention Gretchen NYT, New York

1 Times, article got, and it ran on Xmas eve." And then Cheryl
2 Scarboro says, "I disagree." Do you remember that
3 discussion, about whether to file on Friday or Monday?

4 A No. And I view this as just a bunch of chatter. I
5 mean this was not going to get filed until we were ready to
6 file.

7 Q But were you aware that, I guess, traditionally --
8 and we've heard this from a number of people, that
9 traditionally in the enforcement division actions that would
10 get public attention were not filed on Friday?

11 A I'm actually not aware of that within the
12 enforcement division, but I do know that there's this
13 conventional wisdom that, you know, I heard in other parts of
14 my life, including the private sector and previously in
15 government, that matters that are filed on a Friday get less
16 press coverage. And who knows whether that conventional
17 wisdom still is or is not accurate. But I've heard that.

18 Q And were you aware that generally in the SEC, in
19 the enforcement division, that traditionally they didn't file
20 cases on Friday?

21 A I didn't know one way or another, but it wouldn't
22 surprise me, because I know of that conventional wisdom out
23 there in the ether.

24 Q Okay. All right. So let me show you the next
25 document. It's a 1/22/2010 e-mail from you to

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

1 (b)(6),(b)(7)(C) and Cheryl Scarboro at 6:59 p.m. we're going to
2 mark as Exhibit 10.

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

5 THE WITNESS: Okay.

6 BY MR. KOTZ:

7 Q All right. And so do you remember this process in
8 January, where, I guess, you were involved in reviewing the
9 complaint?

10 A I don't. But it's interesting, because when I read
11 this e-mail, the last sentence says we should coordinate the
12 delivery of the Wells notices to occur just prior to the
13 filing of the complaint, which suggests to me that my mindset
14 was at least entertaining the possibility of filing an action
15 with respect to some and deferring bringing claims against
16 others, which sort of surprises me, because I don't remember
17 that. But clearly that's what this -- that's what this
18 suggests.

19 Q But do you remember in the January timeframe, that
20 before it was pulled the second time, you were poised to file
21 this?

22 A I don't remember us ever being poised to file. In
23 fact, my best recollection is I never saw a complaint in this
24 timeframe. I may have, but I have no -- my earliest
25 recollection of beginning to comment on a complaint is months

1 later.

2 MR. KOTZ: All right. Let me show you the next
3 document.

4 THE WITNESS: You're going to now show me that I'm
5 wrong.

6 MR. KOTZ: No, no. This goes back to the other
7 issue. This is an e-mail from you to Robert Khuzami,
8 1/25/2010, 8:24 a.m., what I'm going to mark as Exhibit 11.

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

11 BY MR. KOTZ:

12 Q And this is still conversation about when to file.

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

14 A Just give me one minute to read it. Sorry.

15 Q Sure.

16 A Okay. Sorry.

17 Q All right. So I guess you didn't seem to have too
18 many thoughts on this.

19 A So I didn't respond to this?

20 Q Well, I guess you just forwarded it to Rob Khuzami.

21 A Oh. I forwarded it to Rob. Oh.

22 Q (b)(6),(b)(7)(C) asked for your thoughts, and it looks
23 like you just forwarded it.

24 A No. I guess I just wanted Rob to -- what I suspect
25 is I wanted Rob to be aware of this dialogue that was taking

1 place between [REDACTED] and Steve Cohen.

2 Q Do you know if anything occurred as a result of
3 that?

4 A Again, I would put this e-mail exchange into the
5 category of chatter, and by that I mean, you know, just
6 people talking. And I don't remember much substance behind
7 this back and forth.

8 MR. KOTZ: All right. Well, let me show you -- let
9 me actually show you the next two, so you have them both in
10 front of you. Marked Exhibit 12, an e-mail from you to Steve
11 Cohen, 1/26/2010, 1:24 p.m. And then marked as Exhibit 13 an
12 e-mail from Steve Cohen to Myron Marlin, 1/26/2010, 1:27 p.m.
13 So I want to make sure you got -- you don't think we're
14 trying to like fool you or anything, so you have them both.

15 (Exhibits Nos. 12 and 13 were marked
16 for identification.)

17 THE WITNESS: Okay.

18 BY MR. KOTZ:

19 Q So does this bring anything back? It looks like
20 you were at least involved in this discussion about when to
21 file.

22 A I have no memory of that. And what I take away
23 from this -- and again, this is, you know, somewhat
24 speculative, but in the sentence that says, "Lorin is
25 hesitant to file Thursday, because he is not sure the

1 complaint is ready," from Cohen to Marlin, you know, I
2 continue to think that I may not have even seen a draft
3 complaint by this time period, and I probably -- you know, I
4 don't doubt that I said to somebody, the complaints not
5 ready, because I knew in my mind we weren't going to file any
6 complaint until I was comfortable with the contents of the
7 complaint.

8 Q Okay. So this is 1/26. And then the 28th was the
9 date set for the calendar. So it does seem at least some
10 folks believed that, you know, there was going to be a
11 filing. I mean this seems to get pretty far gone when two
12 days before the Commission's going to supposedly vote they're
13 already talking complaint target dates. So does this seem to
14 indicate to you that, you know, folks at least thought they
15 were pretty far along in the process here?

16 A You know, I don't -- I don't recall, you know -- I
17 don't remember in my mind being convinced that we were going
18 to do anything imminently, because I don't recall having seen
19 the complaint and reviewed the complaint at this point.

20 MR. KOTZ: Okay.

21 BY [REDACTED]:

22 Q So on Exhibit 13 -- I know you're not on this
23 e-mail, but Steve Cohen writes to Myron Marlin, "I flagged
24 the issue -- similarly with you -- that we discussed, and he
25 will discuss with Rob." Any idea what that's about?

1 A I don't know.

2 BY MR. KOTZ:

3 Q But do you remember Steve Cohen and Myron Marlin
4 being involved in decisions on when to file?

5 A Not at this point, and not with respect to the
6 Goldman matter.

7 MR. KOTZ: All right. Let me show you the next
8 document. It's an e-mail exchange between you and Stephen
9 Cohen, 1/24/2010, 11:16 a.m. We're going to mark it as
10 Exhibit 14.

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

13 THE WITNESS: Okay.

14 BY MR. KOTZ:

15 Q Do you remember what the issue GC had with Abacus?

16 A No.

17 Q Do you remember --

18 BY [REDACTED]:

19 Q Do you know if GC ever expressed whether they were
20 going to support the enforcement's recommendation for what
21 would happened scheduled for that Thursday, January 28th?

22 A No. But I don't remember that we were in pretty
23 good sync with GC, because I was talking to Rich Levine about
24 some of my views, and some of the evidence, and some of the
25 law. And I remember that Rich and I -- I don't remember the

1 details, but I remember some sense of Rich and I being in
2 sync and in general agreement with however we were proposing
3 to proceed at this point. But that's as specific as I
4 remember. So I don't recall -- maybe I'm wrong again, but I
5 don't recall any issues that GC had with the recommendation.

6 BY MR. KOTZ:

7 Q And do you remember the Chairman focusing on this
8 case? He says, "Mary mentioned today this is the case she's
9 most focused on. No surprise."

10 A I mean I see that that says that. I don't recall
11 the Chairman expressing any view, one way or the other, to me
12 at this time.

13 MR. KOTZ: All right. I'm going to show you the
14 next document. We're going to mark this Exhibit 15, an
15 e-mail exchange between [REDACTED] and Cheryl Scarboro,
16 1/25/2010, 2:37 p.m.

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

19 BY MR. KOTZ:

20 Q Do you remember meeting with Commissioner Paredes?

21 A I do.

22 Q Okay. What happened at that meeting?

23 A We met in Commissioner Paredes's office. I was
24 there. Some members of the investigative team were there. I
25 know [REDACTED] was there. I'm pretty sure [REDACTED] and [REDACTED]

1 (b)(6),(b)(7)(C) were there. I don't recall whether Cheryl was there.
2 Commissioner Paredes asked some questions about the matter.
3 We provided answers to those questions. I remember one of
4 things that he asked for, which I thought was a reasonable
5 request, was a chart that showed the alleged
6 misrepresentations and the evidence that demonstrated that
7 those statements were false and misleading. And we had a
8 good dialogue about the matter.

9 Q Did you get the sense that Commissioner Paredes was
10 skeptical about the case?

11 A Commissioner Paredes, you know, usually asks good
12 questions. And he was asking good questions. He was probing
13 and sort of testing our theories and our evidence, and we
14 were providing him with, you know, responses to his
15 questions.

16 Q Did you have any second thoughts about any of your
17 theories or evidence, based on what Commissioner Paredes
18 asked?

19 A I didn't -- I don't remember having second thoughts
20 about our theories or our evidence. I do remember -- and I
21 don't know whether it attribute this to the meeting with
22 Commissioner Paredes or just happening simultaneously with
23 the meeting, you know, around the same time period as the
24 meeting with Commissioner Paredes. I remember a discussion
25 among the group as to whether or not we should try to lock in

1 IKB and ACA on the issue of whether they would have gone
2 forward with the investment had they known that a short --
3 the Paulson hedge fund -- was involved in the portfolio
4 selection.

5 My best recollection is that we didn't have
6 testimony from IKB, but we had simply interviewed IKB
7 witnesses in Germany, and we had statements from IKB
8 witnesses that they would not have gone forward with the
9 investment had they known that a short was involved in the
10 portfolio selection. But we didn't have testimony. And I
11 remember at some point -- in fact, it may have been in the
12 December or January time period -- raising for consideration
13 by the group the wisdom of locking in IKB and ACA to those
14 positions through, among other things, the possible --
15 possibly getting a written declaration from them.

16 MR. KOTZ: Okay. Let me show you the next
17 document. We'll mark this Exhibit 16, an e-mail between
18 Cheryl Scarboro and [REDACTED] 1/27/2010, 12:25 p.m.

19 (Exhibit No. 16 was marked for
20 identification.)

21 BY MR. KOTZ:

22 Q And so here were are Wednesday, January 27th, when
23 [REDACTED] sends an e-mail to Cheryl Scarboro and Ken Lench
24 saying, you "are available right now through 12:00 noon to
25 discuss whether or not to pull the recommendation from

1 tomorrow's calendar, which he is inclined to do. Asks that
2 we drop by ASAP to discuss." Do you remember the decision to
3 pull the recommendation from the calendar the second time in
4 January?

5 A Here's what I remember. I remember these
6 discussions and communications about the timing of the
7 recommendation and the timing of the meeting, and everything
8 moving forward. But I remember in my own mind thinking, one,
9 that I had the ability to suggest that we not proceed and
10 that we develop further the investigative record, including
11 obtaining these written declarations from IKB and ACA. And
12 two, I remember that I was still thinking about the wisdom of
13 doing that rather than proceeding in the timeframe that was
14 being pursued at that time.

15 Q Now, do you remember also an issue -- this has come
16 up with some of the testimony -- about whether at this point
17 to Wells (b)(6),(b)(7)(C) And that, you know, again --

18 A You know, there is -- it's -- I am getting vague
19 recollections as I look at some of these e-mails and as you
20 ask me these questions. And I do have this vague
21 recollection of, you know, a possible alternative on the menu
22 of alternatives being proceeding with the case against
23 Goldman and Toure and Wells-ing (b)(6),(b)(7)(C) simultaneously, as a
24 possible alternative.

25 Q Okay. So after --

1 A Not my preferred alternative, as I recall. But I
2 remember it being a possible alternative.

3 Q Okay. So it was taken off the December calendar,
4 and then (b)(6),(b)(7)(C) testimony was taken. And then it seems as
5 though we've got from other folks that there was then a
6 debate about whether to Wells (b)(6),(b)(7)(C) or not at that point, or
7 whether to bring the case and Wells (b)(6),(b)(7)(C) or wait and Wells
8 (b)(6),(b)(7)(C) and bring the case together. Do you recall from the
9 testimony whether you formed an opinion as to whether (b)(6),(b)(7)(C)
10 should be Wells-ed?

11 A I remember forming an opinion that (b)(6),(b)(7)(C) should be
12 Wells-ed. I don't recall whether that was based on the
13 testimony, the document, the, you know, other -- you know,
14 the testimony of other individuals. I can't link the
15 evidentiary record to my judgment that (b)(6),(b)(7)(C) should be
16 Wells-ed. I just can't link precisely what it was in the
17 evidentiary record to my judgment that (b)(6),(b)(7)(C) should be
18 Wells-ed. But I do remember forming a judgment that (b)(6),(b)(7)(C)
19 should be Wells-ed.

20 Q And do you remember during the January timeframe,
21 again, there was an internal disagreement among the team as
22 to whether to Wells (b)(6),(b)(7)(C)

23 A I remember that there was discussion among the team
24 about whether or not to send a Wells notice to (b)(6),(b)(7)(C) And I
25 remember that different members of the team at different

1 times had different views on that issue.

2 Q And so were you the one who made the decision to
3 Wells [REDACTED]

4 A I really remember most of the decision-making
5 around that issue and these other issues as consensus
6 decisions.

7 Q Okay. But I mean, for example [REDACTED] and [REDACTED]
8 [REDACTED] have testified they had very different views on that.

9 A But, you know what David? It's interesting. My
10 memory -- and maybe I'm remembering it wrong. My memory is
11 that when we ultimately made the decision to Wells [REDACTED] that
12 everybody agreed that that was the right approach.

13 BY [REDACTED]:

14 Q And apart from the issue whether to Wells [REDACTED]
15 again, correct me if I'm getting this wrong -- there was also
16 a decision to, rather than multi-track, in the sense of
17 filing the complaint and then wait to see whether or not to
18 file against [REDACTED] there was a decision to wait on the entire
19 complaint until the process for Wells-ing [REDACTED] reached an
20 ultimate decision. Is that correct?

21 A In my mind, [REDACTED] what I was most focused on in
22 deferring the recommendation on the company and anything else
23 was the wisdom of obtaining written declarations from IKB and
24 ACA. Maybe I have it wrong, but in my mind that was the most
25 important factor for me.

1 BY MR. KOTZ:

2 Q Now, was it unusual in your experience for a case
3 to be withdrawn twice from the calendar within such a short
4 period of time?

5 A You know, as I say, it's not that unusual for
6 matters to be withdrawn from the calendar. Whether a matter
7 was withdrawn twice -- I mean that's probably less common
8 than a matter being withdrawn once. But, you know, it
9 wouldn't surprise me if that was the case with other matters
10 that we've considered since I've been here.

11 Q Do you think that a factor in the decision to
12 withdraw the matter in January was what Commissioner Paredes
13 said in that meeting? Or do you think it was mostly internal
14 discussions within enforcement?

15 A That's a hard one, because, you know, I think that
16 Commissioner Paredes's questions and reactions may have had
17 an impact on me, you know, because I -- I don't even remember
18 specifically what they were, but I remember being concerned
19 with the fact that we didn't have IKB and ACA locked in. And
20 I suspect that Commissioner Paredes's questions on those
21 topics made me even more concerned that we didn't have IKB
22 and ACA locked in.

23 Q So what was your understanding as to the next steps
24 in the investigation after it was pulled in January?
25 Obviously making efforts to --

1 A Yeah. I think that -- I think that (b)(6),(b)(7)(C) and others
2 were going to go to Germany and meet again with
3 representatives of IKB and see whether or not they could get
4 a written declaration, and that (b)(6),(b)(7)(C) and others were going to
5 communicate with counsel for ACA, and see whether a written
6 declaration could be obtained from ACA. And what I can't
7 remember -- although maybe you'll help me with some documents
8 or e-mails -- is where we were on (b)(6),(b)(7)(C) during this time
9 period.

10 Q Okay.

11 A And when I say where we were on (b)(6),(b)(7)(C) I mean where
12 we were on possibly charging (b)(6),(b)(7)(C) not whether or not to
13 Wells him. I think that he had delivered a Wells notice to
14 (b)(6),(b)(7)(C) around this time period, but I'm --

15 (b)(6),(b)(7)(C): In late January, right after it got
16 pulled.

17 MR. KOTZ: So very shortly after it got pulled (b)(6),(b)(7)(C)
18 was Wells-ed. And it has been represented to us by some
19 folks that essentially it was pulled the first time to take
20 (b)(6),(b)(7)(C) testimony, and it was pulled the second time to Wells
21 (b)(6),(b)(7)(C) Now, this IKB issue has come up as well, but just to
22 give you the background that we have.

23 But let me show you this document. I'm going to
24 mark this Exhibit 17, an e-mail exchange between (b)(6),(b)(7)(C)
25 and (b)(6),(b)(7)(C) 3/5/2010, 10:41 a.m. This was about a

1 month or so later.

2 THE WITNESS: Okay.

3 (Exhibit No. 17 was marked for
4 identification.)

5 THE WITNESS: Okay.

6 BY MR. KOTZ:

7 Q So what does this -- does this bring anything back,
8 in terms of what you were working on vis a vis (b)(6),(b)(7)(C) during
9 this timeframe?

10 A Yeah. It looks like in the March time period we
11 were doing legal research and applying that legal research to
12 the evidence, with respect to (b)(6),(b)(7)(C) involvement in the
13 transaction, for the purpose of making an assessment of
14 whether or not to bring claims against (b)(6),(b)(7)(C)

15 Q Okay. And you were involved in that assessment?

16 A Yes.

17 Q Okay. And what you ultimately decided was not to
18 charge (b)(6),(b)(7)(C)

19 A A decision was made by the enforcement division not
20 to recommend claims against (b)(6),(b)(7)(C)

21 Q Right. I meant you, you know, globally. And was
22 that your opinion as well?

23 A There was very extended discussion among members of
24 the enforcement division on that issue, and a number of
25 memos, collections of evidence, meetings. And I thought it

1 was a close call. I think at the end of the day my own view
2 was that the evidence could have supported claims against
3 (b)(6),(b)(7)(C) but I think the consensus view of the group was that
4 the better course was not to pursue claims against (b)(6),(b)(7)(C) and
5 to focus the claims on Goldman and Toure.

6 Q Okay. Did you personally have a view on this
7 issue?

8 A You know, my personal view was that the evidence
9 could have supported claims against (b)(6),(b)(7)(C) but I thought that
10 a reasonable decision could be made to pursue the way -- to
11 pursue the action the way we did. And ultimately I was fine
12 with that consensus view.

13 Q Do you recall any conversations about potentially
14 charging any other individuals?

15 A Yes. We talked about other individuals as well,
16 but I don't think any other individual was what I'll call as
17 close to the zone as (b)(6),(b)(7)(C)

18 MR. KOTZ: All right. Let me show you the next
19 document. We're going to mark it as Exhibit 18, an e-mail
20 from (b)(6),(b)(7)(C) to you and Ken Lench, 3/22/2010, 7:38 p.m.

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

23 THE WITNESS: Okay.

24 BY MR. KOTZ:

25 Q What do you remember about this issue with the

1 Permanent Subcommittee on Investigations, and communications
2 with IKB's counsel?

3 A Not much, other than what I see here. And from my
4 e-mail to (b)(6),(b)(7)(C) of March 22nd it looks like I didn't know that
5 it was the Permanent Subcommittee on investigations, but just
6 that I was reacting to these e-mails about a Hill staffer
7 asking questions.

8 Q So (b)(6),(b)(7)(C) says, my inclination is not to reach
9 out to the Hill staffer. He says, "Unless you have a
10 different view," again, he says, "my inclination continues to
11 be not to reach out to the Hill staffer, at least until we
12 file our complaint. Then you ask who the staffer was; they
13 respond. Do you know what your view was on whether they
14 should be reaching out to the Hill staffer?

15 A You know, I don't remember having a view one way or
16 the other.

17 Q Do you know whether anybody did reach out to the
18 Hill staffer?

19 A I don't know.

20 Q Do you remember any communications prior to filing
21 the complaint with the Senate Permanent Subcommittee on
22 Investigations?

23 A No.

24 MR. KOTZ: Okay. All right. Let me show you the
25 next document. We're going to mark this Exhibit 19, an

1 e-mail exchange between (b)(6),(b)(7)(C) and you, 4/7/2010,
2 2:04 p.m.

3 (Exhibit No. 19 was marked for
4 identification.)

5 THE WITNESS: Okay.

6 BY MR. KOTZ:

7 Q All right. So do you remember this, about the fact
8 that (b)(6),(b)(7)(C) was on the Permanent Subcommittee?

9 There was discussion about what she could or couldn't say?

10 A I know that (b)(6),(b)(7)(C) was working with the Permanent
11 Subcommittee on Investigations. (b)(6),(b)(7)(C) previously had been
12 in the enforcement division. I knew her when she was in the
13 enforcement division. I remember -- I have some memory of
14 receiving the e-mail from April 7th, from (b)(6),(b)(7)(C) and I
15 remember that my mindset was, we're only going to be
16 providing information through whatever the ordinary protocol
17 is. We're not going to get into the business of providing
18 materials outside ordinary protocol.

19 Q Do you remember having any concern that (b)(6),(b)(7)(C)
20 might share information about the Abacus investigation with
21 the PSI?

22 A You know, I only remember what's reflected in this
23 e-mail exchange, with respect to my own level of concern.
24 That's my best recollection.

25 Q Do you think it would have been improper for

1 information to be shared with the Permanent Subcommittee on
2 Investigations? I mean they were looking at Goldman relating
3 to the Abacus investigation.

4 A I didn't know what the right protocol was. What I
5 wanted -- I remember what I wanted to know was what's the
6 right way to respond to this type of request. And I wanted
7 to make sure we didn't deviate from that protocol.

8 Q Putting aside the protocol for a second, in your
9 view, do you think it would have been improper to share
10 information with the PSI about the Goldman investigation? I
11 mean it's Congress. You're not telling the news media.

12 A I suspected that there were certain protocols and
13 precedents to draw upon, and I really didn't have a personal
14 view, outside of making sure we were acting properly and in
15 accordance with those protocols and precedents.

16 Q So if the protocol was Congress requests it, you
17 have to get approvals from the Commission, but you could
18 share that kind of information, that wouldn't have been a
19 concern?

20 A As long as we were proceeding in accordance with
21 what the governing rules and protocols were, I would be
22 comfortable sharing information upon request of Congress.

23 Q Did you think there would be any potential impact
24 on the investigation if you shared information?

25 A I don't recall that entering into my mind as a

1 concern.

2 Q Okay. Do you recall any concern at all that
3 potentially PSI was holding a hearing around the same time,
4 and that might effect the investigation?

5 A Look, I saw those e-mails that you showed me
6 earlier. I do recall generally the topic of the PSI's work
7 and our work focusing on similar matters and what the
8 relationship might be, as to timing of those matters. But
9 that's -- it wasn't really my focus.

10 Q Do you think, just as a general matter, if a
11 committee or subcommittee in Congress had a hearing that it
12 might effect an ongoing investigation?

13 A You know, it depends on the circumstances. It
14 could.

15 Q Okay. In this case, could it have, do you think?

16 A I remember in the April time period, after we filed
17 our complaint, being concerned that if the Permanent
18 Subcommittee on Investigations called certain witnesses that
19 we would be relying on -- in our case that that could have a
20 negative impact on our case. And I remember communicating
21 those concerns to a representative of the Permanent
22 Subcommittee on Investigations.

23 Q Did that relate to man named (b)(6),(b)(7)(C) in
24 enforcement or something --

25 A No. No, no, no, no. It was Fabrice Toure. I

1 learned that PSI -- this is after the complaint was filed. I
2 learned that PSI was contemplating calling Toure as a
3 witness. And I was concerned that providing Toure with a
4 public platform to communicate whatever views he might
5 communicate on the matter, without being subject to
6 appropriate cross examination by counsel with access and
7 knowledge of the relevant facts, could negatively impact our
8 case. And I asked (b)(6),(b)(7)(C) of the Permanent Subcommittee --
9 I guess a staffer on the Permanent Subcommittee on
10 Investigation, to consider not calling Toure as a witness.

11 Q What happened?

12 A They called Toure as a witness.

13 Q And did it present a problem?

14 A We'll see. I had -- I appeared in court yesterday
15 at the initial conference in the Toure case in the southern
16 district of New York.

17 Q So are you litigating this case personally?

18 A I'm leading the litigation team. Yes.

19 Q Is that unusual at all for somebody at your level
20 to be leading a litigation team?

21 A I don't know.

22 Q Have you done any other -- have you done --

23 A Have I led any other -- well, you know, I get -- I
24 get very involved in some of the litigated matters. I like
25 that stuff David. But I haven't -- I think that's the only

1 matter in which I filed a notice of appearance and appeared
2 in court.

3 MR. KOTZ: All right. Let me show you the next
4 document. We're going to mark it Exhibit 20, dated
5 4/13/2010, 11:03 p.m. from (b)(6),(b)(7)(C) to (b)(6),(b)(7)(C).

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

8 MR. KOTZ: Well, I'm going to show you a few
9 documents here, just so you have all the perspective before
10 you answer the questions. Because we're getting into now the
11 issues related to the timing of the actual filing of the
12 case.

13 THE WITNESS: Okay.

14 MR. KOTZ: All right. So the next document I'm
15 going to show you is Exhibit 21, an e-mail from (b)(6),(b)(7)(C) to
16 Ken Lench and (b)(6),(b)(7)(C) 4/14/2010, 11:06 p.m. And,
17 you know, I'll give them all to you, and then you can take
18 your time to read them. And then Exhibit 22 is an e-mail
19 from (b)(6),(b)(7)(C) to Ken Lench 4/14/2010, 10:11 p.m.

20 (Exhibit Nos. 21 and 22 were marked
21 for identification.)

22 THE WITNESS: Okay.

23 BY MR. KOTZ:

24 Q Okay. And so this is a matter that -- not
25 withstanding the fact that we've taken a lot of testimony in

1 this case, we still have not gotten clarification on this
2 issue. So I was hoping that you could provide that.

3 A I'll try.

4 Q All right. So April 14th was a Wednesday; the
5 complaint was being finalized; the Commission had approved it
6 on Wednesday. And if you could see, there's an e-mail
7 exchange between [REDACTED] and [REDACTED] on 4/13,
8 saying, "Let's discuss filing mechanics tomorrow," indicating
9 that, at least at that timeframe, [REDACTED] thought perhaps
10 that action would be filed on Wednesday, the 14th.

11 And then [REDACTED] sends, "Please find attached
12 a new draft complaint incorporating Lorin's most recent
13 comment and [REDACTED] and my edits 'nit' edits." And you can see
14 that e-mail appears both on 21 and 22. And in one of them
15 Ken Lench sends an e-mail back to [REDACTED] with a copy
16 to [REDACTED] saying, [REDACTED] whose idea was it file Friday.
17 Thanks, Ken." [REDACTED] responds, "Front Office. Just
18 don't know their thinking."

19 And then in another exchange Ken Lench sends it
20 directly to [REDACTED] and says, "How did we lend on Friday."
21 And [REDACTED] says, "No idea." I mean when [REDACTED] is
22 referring to the front office, I assume he's referring to you
23 and/or Rob, do you think?

24 A I don't know. You'd have to ask [REDACTED]

25 Q But I mean it wouldn't be the Chairman's Office.

1 **Right?**

2 A I suspect that what he means is front office of the
3 enforcement division, but I'm not -- I'm not sure.

4 Q And who was generally in the front office? Would
5 that be considered you and Rob, or other people as well?

6 A You know,, I don't know. Different people use
7 front office to refer to different groups.

8 Q But it would likely include --

9 A I think it would include Rob and me.

10 Q Okay. So is it first correct that it was the front
11 office that made the decision to file it on Friday?

12 A Here's what I remember.

13 Q Okay. Great.

14 A I remember that I was very actively involved in
15 drafting and revising the complaint during this time period.
16 And I remember that I was making very substantial edits to
17 the document, to try to strengthen it and clarify the
18 document. And that was my focus. And again, my -- I didn't
19 have any mindset, that I recall in this time period, about
20 one day versus another, in terms of filing. What was in my
21 mind was this complaint had to be clear, persuasive, and
22 professional. And I was going to do everything that I could
23 to make sure that the best work product got out of the
24 enforcement division. So I was working pretty hard during
25 this time period to, you know, put together the best

1 complaint we could.

2 Q And do you remember there was another action,
3 Quadrangle, with the New York AG's office that was also being
4 finalized at the same time, and that there was kind of a
5 schedule for that case to be filed on Thursday?

6 A I remember the Quadrangle case. I don't remember
7 being involved in discussions about the timing or, you know,
8 filing logistics for that matter. I do remember being
9 involved in the substance of that matter.

10 Q So do you know who made the decision to file the
11 Abacus case on Friday?

12 A I don't remember specifically a decision to file on
13 a particular day. There must have been, but I was very -- I
14 was very focused on the complaint, and working on the
15 complaint, and in my mind we weren't going to file the
16 compliant until it was ready. And I remember still working
17 on the complaint on the night before we filed. So it wasn't
18 ready, from my perspective, until Friday morning.

19 Q So do you know if (b)(6),(b)(7)(C) is correct when he
20 says here on 4/14/2010 11:06 p.m. -- he's asked the question,
21 "Whose idea was it to file Friday?" And he says, "Front
22 Office." Do you know if that's true?

23 A It could be. I remember that there were
24 discussions about the timing of the filing. But to be
25 completely honest, my focus was more on working on the

1 complaint then the specific timing for the filing.

2 Q Who participated in the discussions that you
3 remember regarding the filing, the timing of the filing?

4 A You know, I have vague recollections of
5 conversations with (b)(6),(b)(7)(C) with Rob. And I remember that my
6 attitude was mainly, let's just focus on getting everything
7 ready.

8 Q What about Myron Marlin? Do you remember any
9 conversations that he was involved in about the timing of the
10 filing of the Goldman case?

11 A I do. My memory is that at some point Myron
12 circulated a sort of schedule of events for the filing day.
13 I don't recall whether that was -- I don't recall when that
14 occurred, whether it occurred on Wednesday, Thursday. But I
15 do remember that we received a sort of what I'll call a
16 schedule of events from Myron.

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

18 Q If I can try and -- it's possible that neither of
19 these scenarios are consistent with your -- there's two
20 possible ways in which this could have played out. Let me
21 know if either of them make sense to you, from what you
22 recall.

23 One would be that, you know, everyone's trying to
24 work hard to bring it up to the Commission, get the complaint
25 ready; there's lots of heavy work on the complaint. And then

1 the plan or the goal was to get it out on Thursday, and that
2 you find out, you know, from someone else that there's been a
3 decision we're going to put it out Friday, to which that
4 affords you more time. And so of course because there's an
5 extra day, and there's always more work that could be done to
6 perfect it, you use that time to continue working on it.

7 Another possible scenario is that there's continued
8 work to try to get the complaint ready. There's a goal to
9 get it out on Thursday. And you, or possibly someone else in
10 the enforcement groups decides, look, this complaint's just
11 not quite ready; let's push it off until Friday, because we
12 could really use that extra day just to get it all right. Do
13 either of those scenarios sound like what happened?

14 A I'm going to give you a very unsatisfactory answer,
15 which is both of those sounds like logical possibilities to
16 me. I can't really recall which -- whether it was the first
17 scenario, the second scenario, or something else. But I
18 can't really recall what the something else might be either.

19 BY MR. KOTZ:

20 Q Do you remember any discussion about that it was
21 not advisable to announce two cases on the same day? So, for
22 example, the Quadrangle case was already scheduled for
23 Thursday, based on communications with the New York AG's
24 office. It couldn't potentially be moved. The New York AG's
25 office might not be very happy if the Goldman case was also

1 **announced on the same day.**

2 A It wouldn't surprise me if one of the
3 considerations as to when we would file would be that you
4 might not want both the Quadrangle case and the Goldman case
5 to be filed on the same day. But I can't really remember
6 specifically any conversation along those lines.

7 Q **Okay. Why would that be a consideration?**

8 A Well, you know, I mean sometimes you want the
9 public to have an opportunity to digest information,
10 especially in complex matters that the enforcement division
11 is involved in. I can imagine, you know, the AG being, you
12 know, unhappy if the Quadrangle case and the Goldman case
13 were announced the same day. But, you know, again, I'm sort
14 of speculating. Because I don't really remember one way or
15 the other having any of those conversations.

16 Q **Do you remember any conversations about the fact**
17 **that it was going to be filed on a Friday, which, at least we**
18 **had discussed earlier, traditionally was not the day that the**
19 **SEC files enforcement cases?**

20 A Sorry. What's the question David?

21 Q **Do you remember any conversations about whether it**
22 **was advisable to file the Goldman case on Friday, since, as**
23 **we had discussed earlier, traditionally enforcement didn't**
24 **file cases on Friday because of the perceived lack of media**
25 **attention? Do you remember any conversations at that point,**

1 because ironically --

2 A Yeah. Yeah. I think what I said earlier was I
3 really didn't know what enforcement's practice was, but I
4 knew about this conventional wisdom.

5 Q Right. Right.

6 A But I don't remember having any conversations
7 about, you know, a Friday filing and, you know, what that
8 meant or didn't mean with respect to this matter.

9 Q Were you surprised at how much media attention the
10 Goldman case got when it was filed?

11 A I was somewhat surprised. I mean I knew it was an
12 important case, but I -- you know, the what I'll call
13 saturation coverage, especially in the hours after it was
14 filed, did somewhat surprise me.

15 Q I think it kind of belies this conventional wisdom
16 that you don't file a case on Friday at this point.

17 A I can see that argument being made.

18 MR. KOTZ: Okay. All right. Let me show you the
19 next document. We're going to mark this Exhibit 23, an
20 e-mail exchange between Myron Marlin, Stephen Cohen, [REDACTED]
21 [REDACTED] and Didem Nisanci, 4/14/2010, 6:08 p.m.

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

24 THE WITNESS: Okay.

25 BY MR. KOTZ:

1 Q Do you remember this concern that [REDACTED] presented
2 right before the filing, that a reporter knew about the
3 recommendation being on the calendar?

4 A I don't remember it. I mean I have no reason to
5 doubt that I received this e-mail, but I don't remember it.

6 Q You don't remember any action being taken as a
7 result of concern about this information being out there?

8 A No.

9 MR. KOTZ: Okay. All right. Let's move forward to
10 the actual filing. Okay. Let me show you the next document.
11 We're going to mark this Exhibit 24, an e-mail exchange
12 between [REDACTED] and [REDACTED] 4/15/2010 3:29 p.m.

13 (Exhibit No. 24 was marked for
14 identification.)

15 THE WITNESS: Okay.

16 BY MR. KOTZ:

17 Q Do you remember first that [REDACTED] was up in
18 New York, and he was going to file the case?

19 A I do. [REDACTED] was on trial in a case in the southern
20 district of New York. He was on a detail with the U.S.
21 Attorney's Office there.

22 Q Now, in this e-mail exchange --

23 A Well, I take that back. He may not have been on a
24 detail. He may have just been working with them on a case
25 that we had done, coordinated an investigation on.

1 Q So (b)(6),(b)(7)(C) sends an e-mail to (b)(6),(b)(7)(C)
2 Thursday, April 15, 2010, 2:05 p.m. "We'll e-mail you the
3 filing materials late today. We need you to file at 8:30
4 a.m. tomorrow morning. That request is coming from the Front
5 Office." Do you know what that refers to?

6 A I really have no idea.

7 MR. KOTZ: All right. Let me show you the next
8 document. We're going to mark this Exhibit 25, an additional
9 e-mail exchange between (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C)
10 4/15/2010, 6:33 p.m. So this is, you know, several hours
11 later.

12 (Exhibit No. 25 was marked for
13 identification.

14 THE WITNESS: Yeah. I doubt that it came from me,
15 because I -- I don't think the clerk's office is open at 8:30
16 in the morning in the southern district. I think the clerk's
17 office opens at 9:00.

18 MR. KOTZ: You'll see the further discussion about
19 this.

20 THE WITNESS: Okay.

21 BY MR. KOTZ:

22 Q All right. So in this e-mail exchange between (b)(6),(b)(7)(C)
23 (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) there's talk about the filing. And
24 (b)(6),(b)(7)(C) says to (b)(6),(b)(7)(C) "But you need to shoot to
25 file this bad boy at 9:30 a.m. sharp! I know this sounds

1 crazy, but it's true." Then he says, "9:30 or 8:30? 9:30 I
2 will do, but it might make me late to court." And then (b)(6),(b)
3 (b)(6),(b)(7) says, "Sorry, dude. 9:30." Do you know why it had to
4 be filed at 9:30 a.m. sharp, even though it sounds crazy?

5 A Yeah. I don't know why it sounds crazy.

6 Q I guess he was just -- the indication that it had
7 to be at that specific time.

8 A You know, I can't really comment on the back and
9 forth here. What I do remember is that there was this what
10 I've called -- what did I call it? Schedule of events or
11 something like that?

12 Q Right.

13 A That had been circulated at some point that had
14 different times listed. And what I'm thinking, although I
15 don't remember it independently, is that maybe 9:30 was the
16 time for the filing on the schedule of events.

17 Q But that wasn't your decision, to your
18 recollection?

19 A Well my -- it was my decision that the complaint
20 was ready. I remember --

21 Q In terms of --

22 A Well, let me just finish.

23 Q Sure.

24 A This could be important.

25 Q Sure, sure, sure.

1 A If it's not important -- I remember there was a
2 time on Thursday night when I was satisfied that the
3 complaint was ready. And maybe I'm deluding myself, but I
4 thought I had the authority to decide when things could go
5 forward, and that if I didn't think things were ready to go
6 forward we wouldn't proceed. And I remember on Thursday
7 night there coming a time when I got comfortable that the
8 complaint was file-ready. So I did know that we were ready
9 to go Friday morning. But the specific time at which we'd
10 file on Friday morning -- I didn't view -- you know, I
11 wouldn't -- I don't think I was the -- you know, what wasn't
12 what I viewed as my focus for the matter.

13 Q What time on Thursday did you finally determine
14 that it was ready? I mean was it like the middle of the
15 night? I need exact time.

16 A No. No, no, no, no. It was -- I would say it was,
17 you know, not really late. It was probably -- no. It wasn't
18 late. It was probably I'm guessing 9:00 in the evening,
19 8:30, 9:00 in the evening, 9:30.

20 Q And so what specifically happened? Were you in the
21 document, making changes?

22 A That's a good question. I don't think so. I think
23 the way it was working is that (b)(6),(b)(7)(C) was actually
24 making the changes in the document. I come from the old
25 school. I was marking up the document by hand, and (b)(6),(b)(7)(C) was

1 coming in my office, and I was handing him my comments, and
2 then he was incorporating them. And then I was looking at
3 the revised version, based on whatever (b)(6),(b)(7)(C) had done.

4 Q So when you say that you remember that you thought
5 it was ready, that was based on you seeing the revised
6 version from (b)(6),(b)(7)(C) incorporating your comments?

7 A Incorporating what I viewed as my last round of
8 comments. Yes.

9 Q And so how long did that take place? How long did
10 that kind of back and forth on that day, Thursday, with you
11 editing or commenting on --

12 A A bunch of the day. And also I think Wednesday as
13 well. I mean there was a lot of shuttle diplomacy going on.
14 It wasn't really diplomacy, but there was a lot of shuttling
15 going on. (b)(6),(b)(7)(C) was coming to my office. You know, I was
16 marking it up. I was calling (b)(6),(b)(7)(C) and saying, come on by for
17 a markup. And I remember that happening at least probably
18 three times on Wednesday and three times on Thursday, I
19 think.

20 Q And was Rob Khuzami involved in this at all?

21 A Rob was involved because I was keeping him up to
22 date on progress. I think Rod was traveling for part of this
23 period, but Rob was definitely involved in commenting on the
24 complaint, and I was giving him updates on status.

25 Q You said that you understood that it was your

1 authority to decide when the complaint was ready. Where did
2 you get that understanding from? Was that from Rob? Or was
3 that just generally --

4 A I guess it was really -- I guess it was really
5 Rob's decision, but I felt like I had been delegated a lot of
6 responsibility with respect to this matter, and my mindset
7 was that Rob had -- Rob was relying on me to use good
8 judgment on when things were ready.

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

10 Q And so accepting the premise for the moment that at
11 one point it was scheduled to file the Goldman action on
12 Thursday, and ultimately it was filed on Friday, and that,
13 you know, to at least some degree you had authority as to
14 when the complaint went out, you know, was it you who, you
15 know -- be it explicitly or just as a result of how your
16 edits played out, was it you who put on the brakes
17 essentially and resulted it in being filed on Friday instead
18 of Thursday, because of work on the complaint?

19 A You see, the problem with that is I don't remember
20 that there was some expectation to file on Friday -- pardon
21 me -- to file on Thursday and it got moved on Friday. And
22 for some reason that doesn't even feel right to me. But I
23 just don't have no -- I have no recollection one way or
24 another. In my mind, we had -- you know, we had flexibility,
25 and we would -- flexibility in terms of we weren't going to

1 file until it was ready. And I knew I had a lot of control
2 over determining when the complaint was ready.

3 MR. KOTZ: All right. Let me show you the next
4 document. We're going to mark this Exhibit 26, an e-mail
5 from you to Reid Muoio, Myron Marlin, Ken Lench, 4/15/2010
6 7:42 p.m.

7 (Exhibit No. 26 was marked for
8 identification.)

9 MR. KOTZ: If you want to take a break at any
10 point --

11 THE WITNESS: No. I'm okay.

12 MR. KOTZ: I think we're moving through pretty
13 well.

14 THE WITNESS: Okay.

15 BY MR. KOTZ:

16 Q Do you remember participating in a conference call
17 Thursday evening prior to the filing?

18 A No.

19 Q Do you remember what you meant by, "This does not
20 work for a variety of reasons. I can discuss." This looks
21 like --

22 A I think that there were -- somebody was putting
23 together talking points and a press release. I wasn't really
24 involved in the preliminary drafting of either of those
25 documents. And I don't remember what it was, but I clearly

1 didn't like the talking points that had been prepared, so I
2 suppose this was my method of communicating that I wanted to
3 have some input into revising those materials.

4 Q Did you revise those talking points?

5 A You know, I don't remember. I'm sure I commented
6 on them. I must have commented on them, which means I must
7 have reviewed them and offered suggested revisions. But
8 that's the extent of my recollection.

9 Q Okay.

10 A And clearly my -- what I -- what my principle goal
11 was to make sure that the talking points and the press
12 release accurately and fairly describe the complaint that was
13 being filed that morning.

14 Q And did you feel like the first version had not?

15 A I don't remember. I must have felt that some
16 emphasis was off or that it just didn't capture it in the way
17 that I wanted it to be captured.

18 Q And in this timeframe you were still working on
19 revising the complaint? So there's a 6:00 call it looks like
20 a lot of people participated in.

21 A You know,, I'm not sure that call ever happened.
22 You might want to check on that. I actually --

23 Q There was a call at some point, according to a
24 variety of people. I don't know --

25 A Look, my recollection may not be the best

1 recollection on this. I have some strange recollection that
2 there was a call scheduled that never took place, but this
3 may not be the one. Maybe it happened; maybe it didn't. You
4 probably have ways that you can figure that out. But,
5 anyway, I interrupted your question.

6 Q But do you recall that --

7 A So I don't remember participating in a call at
8 6:00. But that doesn't mean that one didn't occur.

9 Q You know, that evening you were --

10 A Was I still working on the complaint? Yeah. I
11 must have still been working on the complaint.

12 Q And do you remember that while you were still
13 working on the complaint you had to deal with this other
14 issue of the press release, which maybe you weren't as
15 excited about dealing with, and you had this complaint that
16 you were trying to finalize for a filing tomorrow?

17 A You know, I don't specifically recall that, but
18 that wouldn't surprise me if that's what I was thinking.

19 MR. KOTZ: Okay. All right. Let me show you the
20 next document. We're going to mark this Exhibit 27. This is
21 that schedule from Myron Marlin to Mary Schapiro, with a copy
22 to a variety of people, 4/16/2010, 1:10 a.m.

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

25 BY MR. KOTZ:

1 Q You're not listed here. But it seems like you
2 remembered some kind of --

3 A Oh, I must have gotten this. When is this from?
4 Is this from --

5 Q This is Myron to the Chairman with a copy to
6 people, mostly it looks like in the Chairman's Office.

7 A And what time do we think this is?

8 Q This is at 1:10 in the morning.

9 A And on the --

10 Q So this is Friday morning.

11 A That's Friday morning. I got to tell you, I'm
12 pretty sure I got something like this Thursday night.

13 Q Okay.

14 A I'm pretty sure I did.

15 Q Okay. Now, do you remember any conversations about
16 the fact that the Office of Inspector General report on
17 Stanford was being released on that day?

18 A You know, I knew that that was -- I knew that that
19 was in the mix, because I remember that whatever this
20 schedule of events that I'm calling it -- I remember on the
21 schedule of events were a few things. I remember the Goldman
22 matter was on the schedule of events. I remember Rob doing
23 things at Tulane was on the schedule of events. And Rob was
24 going to do, and did, a telephonic call on the Goldman matter
25 from New Orleans.

1 Q Right.

2 A And I remember that the Stanford report was on the
3 schedule of events as well.

4 Q Do you remember any particular reason why the
5 schedule was the way it was, Goldman first, then Tulane, then
6 Stanford?

7 A I don't remember having any involvement in that
8 issue.

9 Q You don't remember any discussion about how the
10 press might react to the Goldman case or the Stanford case or
11 one's effect on the other?

12 A I don't remember any discussion along those lines.

13 Q All right.

14 A You know, can I state with certainty that no such
15 discussion occurred? No. But I don't remember any
16 discussion along those lines.

17 MR. KOTZ: All right. Let's go to the next
18 document. Mark this Exhibit 28, an e-mail from John Nester
19 to you, several other folks, 4/16/2010, 9:56 a.m.

20 (Exhibit No. 28 was marked for
21 identification.)

22 THE WITNESS: Okay.

23 BY MR. KOTZ:

24 Q So it seems, at least from previous correspondence,
25 that there was some effort to specify a particular time when

1 this matter was filed. But then do you recall that then
2 there was this hiccup, and it wasn't filed first thing in the
3 morning?

4 A Do you have that schedule of events that I got on
5 Thursday night?

6 Q I think it's similar to this one.

7 A Yeah. I just don't remember. I just don't --
8 yeah. You know, I don't remember the precise time that we
9 were targeting for the filing of the complaint. But I
10 remember that there was a time that we were aiming for, for
11 filing the complaint. And I remember that there was, what I
12 described in this e-mail as, "a hiccup" in the filing.

13 Don't remember precisely what happened, but it had
14 to do -- something like I think (b)(6),(b)(7)(C) was going to
15 sign the complaint, but (b)(6),(b)(7)(C) turned out not to be admitted
16 in the southern district, and he couldn't sign -- you're not
17 supposed to sign somebody else's name on a complaint, so he
18 couldn't sign (b)(6),(b)(7)(C) name to the complaint, who is admitted
19 in the southern district. So we had to find somebody in New
20 York quickly to sign the complaint so that it could be filed.

21 Q And do you remember any conversations about how
22 this going to effect the kind of choreographed schedule that
23 had been put together?

24 A No. What I remember is scrambling to find somebody
25 in New York who would be available to sign the complaint.

1 And I made a number of calls to our New York office to try to
2 make that happen.

3 Q And you did eventually find somebody?

4 A Yes.

5 Q Do you remember who that was?

6 A I think Andy Kalamari signed the complaint.

7 MR. KOTZ: Okay. All right. Let me show you the
8 next document. We're going to mark it as Exhibit 29, an
9 e-mail from Matthew Goldstein to you, 4/16/2010 1:25 p.m.

10 (Exhibit No. 29 was marked for
11 identification.)

12 THE WITNESS: All right.

13 BY MR. KOTZ:

14 Q Do you remember talking to Mr. Goldstein?

15 A Yeah. I remember John Nester from Office of Public
16 Affairs asking me to meet with Matthew Goldstein. I said,
17 fine. And he came and met with me in my office for a half an
18 hour or so at some point in early/mid April.

19 Q Before the case was filed?

20 A I think so.

21 Q And what did you talk about?

22 A Probably talked about the reorganization in the
23 enforcement division, and the specialized units, and
24 streamlining of the division, and what it was like to be the
25 deputy director, and some of our priorities focusing on the

1 specialized units. And it was what I would call a meet and
2 greet.

3 Q Okay. In that meeting you didn't talk about the
4 Abacus case?

5 A We did not talk about the Abacus case.

6 Q And so it looks like he's following up after the
7 filing of the Goldman case, because I guess you had talked to
8 him previously. And he said he has a really quick question.
9 Do you remember if you called him at this point?

10 A Yeah. I think what I'm looking at, his e-mail to
11 me, he says, "So I sort of thought something big was
12 happening, just not that quickly." I'm sure what I said to
13 him when we met was we're working very hard on a number of
14 matters; the specialized units are gearing up; we've got the
15 asset management unit working hard to focus on a variety of
16 issues, and the structured new products unit is looking at
17 issues across various products and market participants,
18 etcetera.

19 I was probably enthusiastic about what we were
20 working on, and this is his -- I guess his reaction to my
21 enthusiasm and communicating that there was a lot of energy
22 and activity coming from the enforcement division. Do I
23 remember responding to this e-mail? No.

24 Q Do you think you gave Mr. Goldstein any indication
25 that there was one particular case coming that might have

1 **been referring to the Goldman Abacus case?**

2 A I'm confident that I did not.

3 MR. KOTZ: Okay. All right. Let me show you the
4 next document. Mark this Exhibit 30, an e-mail from Robert
5 Khuzami to you and John Nester, 4/17/2010, 12:12 p.m.

6 (Exhibit No. 30 was marked for
7 identification.)

8 THE WITNESS: Okay.

9 BY MR. KOTZ:

10 **Q All right. Do you understand that traditionally --**
11 **and you know, most likely before you came to the Commission**
12 **-- that when the enforcement division was about to bring a**
13 **case against a particular entity the enforcement division**
14 **would put a call into that entity, after the Commission had**
15 **approved the recommendation to go forward with the case, to**
16 **sort of say, you know, it's serious now; the Commission has**
17 **approved it; you've got 48 hours or some time period to**
18 **basically resolve this? Were you aware of that general**
19 **approach?**

20 A What I'm aware of is that there is -- there are a
21 variety of views as to the presence or lack of such what you
22 call a tradition, and it really depends on who you ask.

23 **Q Okay.**

24 A And that there is no one approach that has been
25 used over the years, at least as communicated to me by people

1 I've spoken with. My own view is there is -- you have to be
2 careful about that for obvious reasons, including that if
3 practitioners assumed that there was always going to be an
4 opportunity after Commission approval to come in and discuss
5 and negotiate the terms of a possible resolution, there would
6 be a disincentive by counsel to negotiate and reach
7 settlements, resolutions, in advance of Commission
8 authorization. So I think that there's a delicate balance
9 that needs to be taken into account.

10 Q So do you think that that should be the policy of
11 the enforcement division or not?

12 A I think it really needs to be evaluated on a
13 case-by-case basis.

14 Q Okay. Was there a decision made in the Goldman
15 case to not give that type of heads up to Goldman?

16 A I don't recall any type of decision along those
17 lines. What I do recall is that in meetings with counsel for
18 Goldman and in communications with counsel for Goldman at
19 Sullivan and Cromwell, there was quite a strident and
20 uncompromising position taken by counsel for Goldman, with
21 respect to Goldman's view of the facts and the prospect of a
22 negotiated resolution was never really floated or tested by
23 counsel for Goldman.

24 Q And which meetings are you referring to?

25 A What's in my mind is at least one telephone call

1 with Rich Clapper, and a meeting that Rich Clapper attended
2 in the March timeframe. Rich Clapper is one of the lawyers
3 at Sullivan and Cromwell who represents Goldman.

4 Q So the meeting that you're referring to, that Rich
5 Clapper attended in the March timeframe, was that the (b)(6),(b)(7)(C)
6 Wells meeting? Because that took place, I think, on March
7 4th.

8 A It may have been.

9 Q And when was this telephone call that you had with
10 Rich Clapper that you just referred to? Was it subsequent to
11 the (b)(6),(b)(7)(C) Wells meeting?

12 A I don't remember.

13 Q But I mean isn't it conceivable that, you know, in
14 the context of a Wells meeting or in the context of
15 discussions that counsel for an entity would put forward a
16 very strenuous position, hoping that they would convince the
17 SEC not to bring the case at all? But that doesn't mean that
18 they wouldn't be willing to resolve it, once they knew that
19 the SEC was definitely going to bring it, which they would
20 know by letting them know that the Commission had approved
21 going forward.

22 A I've seen skilled counsel do both, that is to
23 vigorously argue the position of their client on the merits,
24 but indicate nevertheless a receptivity to conversations
25 about a resolution if the staff is not persuaded of the

1 arguments being made. I never got any of that from Goldman's
2 counsel.

3 Q Do you think generally, all things being equal,
4 it's advisable for the SEC to resolve cases via settlement
5 rather than bring actions, because of resources or other
6 issues?

7 A I can't speak generally on that. I mean there
8 are -- certainly there is a value to resolving certain
9 matters or many matters without the need to invest resources
10 in litigation. But that issue really has to be evaluated on
11 a case-by-case basis.

12 Q Are there situations where it's better to litigate,
13 even if you could reach a resolution?

14 A That question's very hard to answer in the
15 abstract. It's very hard to answer in the abstract.

16 Q I mean is there some sort of deterrent effect on a
17 company if you actually file an action, or on other
18 companies, that maybe you don't get if you settle? I mean is
19 there sort of cost of settling every single case?

20 A That's a very -- I mean that's a very complex
21 question that -- it's very hard to -- it's very hard to give
22 a one-size-fits-all answer to that question.

23 Q What about in this particular case, in the Goldman
24 case? Analyze that issue, about whether it would better to
25 settle or to litigate, in the context of this particular

1 case.

2 A You know, I really don't recall thinking seriously
3 about the calculus of litigation versus settlement around the
4 time of filing, because it seemed apparent to me that
5 Goldman, at least as communicated by its counsel, was not
6 prepared to have serious discussions about resolution.

7 Q Was there any contemplation of going to Goldman
8 immediately after the Commission approved the recommendation
9 to go forward with the case and say to them, the Commission
10 has approved this; you have X number of hours to come back
11 with something?

12 A I don't remember any conversations along those
13 lines.

14 Q And do you remember any conversations about (b)(6),(b)(7)(C)
15 (b)(6),(b)(7)(C) contacting Goldman at or shortly after the actual case
16 was filed?

17 A I do. I remember telling (b)(6),(b)(7)(C) that it was
18 important to communicate with Goldman's counsel and give them
19 a heads up about the filing before it occurred, and that that
20 should be done, you know, a short time before the filing took
21 place.

22 Q So your instructions to (b)(6),(b)(7)(C) were to call Goldman
23 before the case was filed or at the same time that the case
24 was filed? Because --

25 A I think my best memory is that I told him to call

1 counsel for Goldman shortly before the case was filed.

2 Q And so if you learn that, in fact, the phone call
3 was made after the case was filed, would that concern you, in
4 terms of the instructions you gave to (b)(6),(b)(7)
(C)

5 A It wouldn't -- I wouldn't concern me, only because
6 I meant by my instructions to call shortly before the case
7 was filed. So if it occurred five or ten minutes before the
8 case was filed or five or ten minutes after the case was
9 filed, I don't think it would, you know, be a critical
10 distinction. But my instructions and my preference -- well,
11 let me say it another way. By best memory of my instructions
12 was to call shortly prior to the filing, and I recall that
13 being my preference.

14 Q But wouldn't it make it a difference if it was
15 before or after, such as in that interim time period Goldman
16 could have found out from another source, like the press. So
17 I mean one scenario, they find out from the SEC first. The
18 other scenario, they find out from the press first. Isn't
19 that a big distinction?

20 A You know, to me I think it's a good practice and
21 professional practice to give a heads up to your adversary in
22 these circumstances prior to filing. So it's less in my mind
23 about whether they learn it from the press or from us than
24 just the more professional thing to do is to provide, you
25 know, a short advance heads up.

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

2 Q It may seem obvious, but just to make it explicit,
3 why even do that?

4 A I just think it's the more professional way to
5 conduct yourself.

6 BY MR. KOTZ:

7 Q As a matter of courtesy?

8 A Yes.

9 Q All right. Now, this what has been reported back
10 to us. I want to give you an opportunity to comment on it.
11 That (b)(6),(b)(7)(C) -- he left a message, then eventually he did,
12 maybe a day or two even later, spoke to someone at Sullivan
13 and Cromwell. And the question was asked to (b)(6),(b)(7)(C) how
14 come we weren't given a more advanced notice, so we could
15 have an opportunity to resolve it, as at least Sullivan and
16 Cromwell folks believed was the practice.

17 And evidentially (b)(6),(b)(7)(C) response was, those
18 were my instructions, and essentially saying this wasn't my
19 call, so, you know, don't give me a hard time about it,
20 because it wasn't my call; this is what I was instructed to
21 do. Do you have any response to that? I mean do you believe
22 that (b)(6),(b)(7)(C) was instructed to call Goldman Sachs maybe a
23 few minutes before but instructed not to give them the more
24 -- the longer advanced notice in this case?

25 A The only instruction that I remember giving to (b)(6),(b)(7)(C)

1 was to provide Goldman's counsel with notice shortly before
2 the filing.

3 Q Now, are you aware of SEC regulations or policies
4 concerning the notification of defendants prior to the filing
5 of an SEC action?

6 A Generally, yes.

7 (Exhibit No. 31 was marked for
8 identification.)

9 MR. KOTZ:

10 Q Okay. This is SEC Administrative Regulations,
11 Exhibit 31, dated July 31, 2005. Are you familiar with this
12 document?

13 A This is a 12-page document. Is there anything that
14 you want me to focus on in the document?

15 Q Yeah. Sure. I just wanted to first ask you if
16 you're just generally familiar with the document. It's a
17 press document. It's not a enforcement regulation. That's
18 why I'm asking.

19 A I mean I am familiar with portions of the substance
20 of this document, as a I flip through the pages. I don't
21 know whether in this form I've seen the document. But
22 elements of this appear to be elements of our enforcement
23 manual, and elements of it -- and I just looked at it very
24 briefly -- also appear to be similar to policies that I've
25 seen regarding communications with the press in the ordinary

1 course.

2 Q All right. Let me turn your attention to page 6 of
3 12, bottom of the page, 15C, notification of defendants. And
4 what it says in this document is, "Every effort should be
5 made to avoid the possibility that defendants in an SEC
6 enforcement action first learn of the action when they read
7 about it in the newspapers or when they are called by a
8 reporter for comment about the SEC's complaint. Division,
9 regional or district office primarily responsible for the
10 filing of the particular complaint shall take all necessary
11 steps to see that the defendants and/or their counsel are
12 given timely advance concerning the action." Were you aware
13 of this provision?

14 A Well, this is part of what, you know, the courtesy
15 referred to earlier and, you know, the professional practice
16 of notifying your adversary in advance of filing an action.
17 So I assumed that that was the appropriate course, based on
18 years of practice. And, you know, whether I was specifically
19 aware that paragraph 15C of this document set forth this
20 policy -- no. I don't recall being aware of that from this
21 particular document. But certainly I knew that that was good
22 practice, and that was my practice.

23 Q Right. But beyond just knowing that it's good
24 practice and your practice, were you aware, generally, that
25 there was a written policy about it? Not specifically 15C of

1 this particular regulation, but were you aware that there was
2 a policy that stated in writing this approach?

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

4 Q Well, if you don't know then you probably weren't
5 aware of it.

6 A Well, you might draw that inference. But I -- you
7 know, I may have known about it, and I may not remember
8 having seen it, knowing about it, but I don't know one way or
9 the other.

10 Q Okay. Is there anything in the enforcement manual
11 about this issue of notifying defendants?

12 A I don't know. The enforcement manual's a pretty
13 long document.

14 Q Right. So is it fair to say that your preferred
15 approach is to provide some notification to a defendant prior
16 to the filing of the complaint, but not necessarily a
17 notification in enough time for them to have an opportunity
18 to resolve in every case?

19 A That's not the way that I would put it.

20 Q Okay.

21 A I would say that it always has been my practice,
22 unless there are other countervailing reasons, to provide
23 your adversary with prior notification of the filing of a
24 complaint.

25 Q All right. Let's move aside from your practice for

1 a minute. I mean you're the deputy director of enforcement.

2 A Yes.

3 Q And so you make decisions for the rest of the
4 enforcement team.

5 A Yes.

6 Q Do you think that it should be the policy of the
7 enforcement division that in every case where they file an
8 action against a defendant that the defendant be notified
9 immediately prior to the action being filed?

10 A I certainly don't think it should be the rule for
11 every case. There are emergency actions that get brought,
12 where you have to worry about dissipation of assets, and you
13 certainly do not want to give notice to defendants of the
14 filing of an action. But putting those aside, and putting
15 other similar categories that may not be coming to mind
16 aside, I think it is good policy and should be the policy of
17 the enforcement division, absent other countervailing
18 reasons, to provide notice in advance of the filing of an
19 action.

20 Q And what is your view from a policy perspective as
21 to the other issue? In other words, do you believe that it
22 should be the policy of the enforcement division to notify a
23 defendant after the Commission approves a recommendation to
24 go forward to give them advance notice?

25 A I guess my view is there -- you know, let me put it

1 another way. It really is case-by-case determination. I
2 know that there are cases in which I have counseled lawyers
3 in the enforcement division after a Commission authorization
4 of a complaint to explore with defense counsel the
5 possibility of resolution prior to filing. And what drives
6 that advice depends on a range of factors, all of which I
7 probably can't exhaustively list as I sit here.

8 Q Sure.

9 A But included in them are litigation risk, resource
10 issues and constraints, division priorities, and other
11 issues.

12 Q You said before that -- and, you know, let me know
13 if I'm characterizing this incorrectly, but I believe you
14 said before that one of the downsides to kind of providing
15 this kind of routine heads up after the Commission approves
16 the action to go forward is that defense counsel will assume
17 it's coming and may not necessarily make efforts to resolve
18 the matter before, knowing that they always have this
19 last-ditch effort. Do you think that this might have
20 occurred in the Goldman case?

21 A Well, I think you are mischaracterizing what I
22 said.

23 Q Okay.

24 A Because I think it is a good idea to give a routine
25 heads up in advance of the filing of a complaint, for all the

1 reasons that I've described, subject to the exceptions that
2 I've described. What I said earlier is that a sort of
3 invitation to settle post Commission authorization and pre
4 filing could have -- could create incentives that are
5 disadvantageous to the division.

6 Because if practitioners believe that there would
7 be an invitation to settle every time after the Commission
8 authorized an action, it would be -- there would be a
9 disincentive to having serious settlement discussions in
10 advance of Commission authorization. And it's useful to the
11 division to be able to have serious settlement discussions in
12 advance of Commission authorization. For among other
13 reasons, that allows you to present proposed settled actions
14 to the Commission.

15 Q So do you think that this invitation to settle
16 might have been something that Goldman was, in this
17 particular case, kind of counting on?

18 A I don't know.

19 Q Because shortly after the case was filed, isn't it
20 the case that Goldman did come forward with a settlement
21 offer? Isn't that right?

22 A My recollection is that Goldman -- counsel for
23 Goldman raised the prospect of settlement discussions within
24 a week of the case being filed. Counsel for Goldman had
25 never raised before, as far as I know, the prospect of

1 settlement discussions.

2 Q But do you think if that invitation to settle had
3 been given that Goldman might have raised that -- those
4 prospects prior to the case being filed?

5 A I don't know. Certainly the substance and tenor of
6 the communications from Goldman's counsel in advance of the
7 filing were not consistent with a receptivity to having
8 productive settlement conversations.

9 Q Okay. But do you think that might have been
10 because they didn't believe that the SEC was going to file?

11 A I don't believe that.

12 Q Okay.

13 A Because from participating personally in
14 communications with counsel for Goldman, our seriousness,
15 with respect to the conduct of Goldman in connection with
16 this matter, could not have been more clearly communicated to
17 counsel for Goldman.

18 Q Now, one of the meetings that you referenced as a
19 time when you had a communication with Rich Clapper, counsel
20 of Sullivan and Cromwell for Goldman, was March, which may
21 have referred to the Wells meeting with respect to (b)(6),(b)(7)(C)
22 Were there communications in that meeting regarding the case
23 against Goldman, or was it related to the case against (b)(6),(b)(7)
24 which eventually wasn't brought? (C)

25 A Well, it's hard to really separate the two. But

1 I'm sure that there were conversations about our views with
2 respect to the case against Goldman.

3 Q Okay. So let me just deposit this for you and get
4 you to respond. So potentially an argument could be made
5 that the meeting was a Wells meeting about (b)(6),(b)(7)
(C) There were
6 strenuous arguments made against bringing a case against
7 (b)(6),(b)(7)
(C) On some level, perhaps they were accepted, because the
8 case against (b)(6),(b)
(7)(C) was not brought. And that might not have
9 been a forum where Goldman would get information about the
10 case against itself or be a situation where you could kind of
11 infer Goldman's strident position.

12 A I think that's an artificial distinction. I am
13 very confident that staff's view, with respect to potential
14 claims against Goldman, was absolutely and clearly
15 communicated to counsel for Goldman at that meeting with
16 Clapper. In fact, I know that because (b)(6),(b)
(7)(C) had his own
17 lawyer in that meeting as well, (b)(6),(b)(7)(C) And I just
18 remember during that conversation directing views toward
19 Clapper about Goldman's conduct and its potential liability.

20 I also remember at one point (b)(6),(b)(7)(C) leaving the
21 room and us having a conversation directly with Clapper
22 alone, without (b)(6),(b)
(7)(C) present, about the seriousness with which
23 we viewed Goldman's conduct and our concerns about whether or
24 not we were receiving documents from Goldman on a thorough
25 and timely basis, and getting commitments from Clapper that,

1 to the extent we didn't have documents we thought should
2 have, and we did we should have had documents by then, that
3 he would arrange to have them delivered promptly.

4 So the distinction that, you know, calling this a
5 Wells meeting for [REDACTED] is a little bit of an artificial
6 distinction, because counsel for Goldman was there, was
7 communicating in a dialogue about Goldman's conduct, and was
8 present for discussions with staff in which individual
9 counsel for [REDACTED] was not present.

10 Q So do you believe, generally, that Goldman and
11 their lawyers had an opportunity to present settlement in the
12 Abacus case, a full opportunity, but chose not to?

13 A I think that -- you know, my best impression,
14 looking back on it, is that, you know, Goldman made a
15 strategic decision not to raise settlement.

16 MR. KOTZ: I want to skip ahead a little bit. I
17 want to go to this one, Exhibit 32, 4/18/2010 e-mail from
18 Stephen Cohen to Myron Marlin, 3:48 p.m.

19 (Exhibit No. 32 was marked for
20 identification.)

21 THE WITNESS: Okay.

22 BY MR. KOTZ:

23 Q Did you ever hear that any of the Commissioners or
24 any of the Commissioners' staff expressed a concern that they
25 felt Goldman was not given an opportunity to settle?

1 A Say that again David. I'm trying to -- I'm still
2 trying to make sense of this e-mail.

3 Q There's an e-mail at the bottom of the page.

4 A No. You can ask the question again. I just
5 wasn't --

6 Q Sure.

7 A I should have been focusing on your question rather
8 than focusing on the e-mail.

9 Q That's all right. Do you recall any Commissioner
10 or the Chairman or any staff of the Commissioner or the
11 Chairman's office who ever conveyed that they were concerned
12 because they believed that Goldman was not given an
13 opportunity to settle?

14 A No.

15 Q So other than hearing from reports in the press,
16 you didn't hear it from anyone else in the SEC?

17 A Not that I recall, other than people in the SEC
18 sort of describing what was in the media.

19 MR. KOTZ: Okay. Gotcha. All right. Let me show
20 you the next document.

21 THE WITNESS: Off the record -- oh, there is no off
22 the record. I used to say that I was, you know, [REDACTED]
23 [REDACTED] at depositions. I also kept the exhibits neatly,
24 even for my -- when I was on your side of the table, for the
25 person asking questions.

1 MR. KOTZ: So I'm going to show you the next
2 document, which is from Myron Marlin to John Nester,
3 4/16/2010, 3:55 p.m., Exhibit 33.

4 (Exhibit No. 33 was marked for
5 identification.)

6 MR. KOTZ: And then let me show you the next
7 document too, just you have both of them in front of you.

8 THE WITNESS: All right.

9 MR. KOTZ: This we're going to mark this as Exhibit
10 34, from [REDACTED] to you, 4/16/2010, 4:57 p.m.

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

13 THE WITNESS: Okay.

14 BY MR. KOTZ:

15 Q Do you remember concerns or questions expressed by
16 Jim Duffy?

17 A I have some recollection of this e-mail exchange.

18 Q Okay.

19 A That's about it.

20 Q What do you remember about what Jim Duffy said?

21 A I don't think I ever spoke to Jim Duffy. I think
22 that this e-mail exchange reflects the extent of the
23 communications that I was involved in, in my recollection.

24 Q Do you know why the SEC did not give the New York
25 Stock Exchange a heads up before they filed the Goldman case?

1 A You know, I think the answer is I don't know why or
2 why not.

3 Q Do you think it's a good idea?

4 A It sounds like something that ought to be
5 considered, and that looking back on it, you know, maybe
6 should have been given more consideration here, particularly
7 in light of the press reaction and the market reaction, which
8 certainly was more at a level different than we anticipated,
9 certainly than that I anticipated.

10 Q So was there a decision made not to give the New
11 York Stock Exchange a heads up, or maybe it wasn't even
12 thought about?

13 A I don't think that there was any decision made to
14 give them a heads up or not to give them a heads up, as I
15 recall. I don't remember the issue being addressed one way
16 or the other with my involvement.

17 Q Are you aware that when it came to the settlement
18 of the Goldman case the New York Stock Exchange was given a
19 heads up? Or do you know if that was the case?

20 A Gee, I don't remember. But I do remember there
21 being some discussion about whether that should happen,
22 particularly in light of the concerns that had been raised
23 during the time of the announcement of the filing of the
24 action.

25 Q In your position, do you think that it is a good

1 idea to have a policy that where there is an enforcement
2 action brought that could potentially effect the market that
3 the New York Stock Exchange be given a heads up?

4 A You know, that's an issue that I would want more
5 input from trading and markets on, and others who have
6 greater expertise in trading and markets before I sort of
7 expressed a view. I don't -- I would want input from others
8 with more experience in those matters than I have.

9 Q But do you think, in your position, it's a good
10 idea to have those discussions and figure out a policy for
11 the enforcement division about that matter?

12 A I mean theoretically it sounds fine. I think you
13 just have to be careful, because, you know, there are -- I
14 can imagine countervailing considerations, including
15 confidentiality concerns and other issues that I'm probably
16 not considering.

17 Q Going back to the most recent e-mail from [REDACTED]
18 [REDACTED] to you, he references a call from Jim Duffy. He tried
19 to get through to you, was very understanding of the fact
20 that your line was busy and your voice-mail was probably
21 overflowing; he wanted to talk to you and whoever else might
22 be appropriate, gives you his number; he was very clear that
23 he did expect a call back until early next week, but also
24 that he would like to hear something on Monday or Tuesday.
25 Evidently you didn't call him back.

1 A I think what I did was I passed this along to
2 somebody else, and my understanding is that whoever I passed
3 it to was going to follow this up. I don't recall who that
4 was.

5 Q Okay.

6 A I suspect -- I'm doing what I told witnesses never
7 to do in testimony, but I suspect it was either Rob or could
8 have been Steve Cohen or maybe somebody -- maybe I said to
9 [REDACTED] get somebody in trading and markets to focus on
10 this issue, because they're really the people who were going
11 to be in the most intelligent position to have a conversation
12 on that topic and then circle back with us. But my best
13 memory is I knew that this was somebody else's
14 responsibility.

15 Q Do you know if anybody did call Mr. Duffy back?

16 A Don't know.

17 Q Would you be surprised to hear that we understand
18 nobody did?

19 A That would surprise me. And that doesn't sound
20 right either, but I have to give that some more thought.
21 Because I remember hearing something about feedback from the
22 New York Stock Exchange. And I thought that it was that
23 feedback that led us later on to talk about what advance
24 notice they should be given of the settlement. But again, I'm
25 going from the ethers of my memory here.

1 Q Was there any consideration given to filing and/or
2 announcing the Goldman Sachs lawsuit after trading hours, so
3 that it wouldn't have an impact on Goldman's stock or the
4 market itself?

5 A I don't remember any such conversation about filing
6 it before the market opened, or after the market opened, or
7 while the market was open.

8 Q And are you aware that the decision was made with
9 respect to the settlement to file and announce the settlement
10 after the market closed?

11 A That sounds right.

12 Q Do you think that the effect on the market and/or
13 on Goldman Sachs' stock should have been considered when the
14 SEC made the decision to file the Goldman case during trading
15 hours?

16 A Well, you know, as I said, looking back on the
17 press reaction and the market reaction, I think that, you
18 know, had we known there what we know now about the level of
19 interest and reaction, additional consultation with trading
20 and markets and others with market expertise couldn't have
21 been a bad thing.

22 Q And are you aware that the third Friday of each
23 month has a significance for the expiration of options?

24 A I mean I know generally. I think triple witching
25 day or whatever they call it -- I mean I know generally that

1 concept. Yes.

2 Q And are you aware that the Goldman case was filed
3 on the third Friday of that particular month, April?

4 A I don't recall focusing on that issue one way or
5 the other at the time.

6 Q But do you think going forward that the SEC
7 enforcement division should focus on these kinds of issues
8 when they have an action that's filed that may have an impact
9 on the market?

10 A That's a very broad statement, you know, an action
11 that may have an impact on the market. Additional
12 consideration of these types of issues seems to me to always
13 be a good idea. It's very hard to predict from one matter to
14 another what is going to have an impact on the market, what
15 isn't, how much will the impact be. Those things are not
16 capable of precise determination or even determination. But,
17 you know, theoretically, the issue of should you consider the
18 market impact of enforcement activity -- it doesn't sound
19 like a bad thing to consider and probably is a good thing.

20 Q Do you think, looking back in the hindsight, if you
21 knew the actual impact that the filing of the SEC action
22 against Goldman had on the market and Goldman Sachs' stock
23 that you would have filed it after trading hours?

24 A Hard to say. You know, who knows whether the
25 impact on Goldman would have been the same or different had

1 we filed at a different time. I think that's very hard for
2 anybody to really say with authority. But certainly
3 additional consultations with people like trading and markets
4 is not a bad idea.

5 Q Okay. But what do you recall about the settlement
6 discussions that occurred post filing of the Goldman
7 complaint? And I don't need all the details, but just
8 generally how did it -- how was it initiated?

9 A I think that Rob got a call from Greg Palm, whose
10 the general counsel of Goldman, floating the issue. I
11 remember that Goldman eventually came forward with some
12 low-ball proposal, what I'll call a low-ball proposal. And
13 that triggered a lot of back and forth.

14 Q Okay. How involved were you in these settlement
15 discussions?

16 A I was involved.

17 MR. KOTZ: Do you recall at one point in time a
18 settlement in principle was reached? And let me skip ahead a
19 couple and show you an e-mail dated 6/28/2010 from you to Ken
20 Lench, 2:48 p.m., which we're going to mark as Exhibit 35.

21 (Exhibit No. 35 was marked for
22 identification.)

23 MR. KOTZ: So what I'm trying --

24 THE WITNESS: Can you give me just one second,
25 David? Just let me finish this.

1 MR. KOTZ: Sure, sure, sure.

2 THE WITNESS: Okay.

3 BY MR. KOTZ:

4 Q All right. So what we're focused on is not
5 necessarily the specifics of the settlement but the timing.
6 And so when did you seem to have an understanding that there
7 was sort of settlement in principle?

8 A Settlement in principle can mean different things
9 to different people. Frankly, I didn't know that there was
10 going to be a settlement until, you know, the day that -- the
11 day before it was signed, as I recall. There were, you know,
12 lots of moving pieces up until the end. And what this e-mail
13 shows to me, where I'm telling Ken to stay focused on getting
14 papers drafted and assuming things will remain on track --
15 when we were close to wrapping everything up, assuming we'd
16 get there, we may want to raise it with Goldman. So what I
17 see is as of May 28th there are --

18 Q June 28th.

19 A Pardon me. June 28th. You know, there are
20 discussions on potential terms, but still uncertainty as to
21 whether or not we're going to get there or not.

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

23 Q Again, as best as you can recall, at this point,
24 June 28th, was there an agreement as to what the charges
25 would be, which provisions of the Securities Law to charge

1 **them?**

2 A I remember Goldman taking a number of runs at that
3 issue many times subsequent to June 28th.

4 (b)(6),(b)(7)(C) : Okay.

5 BY MR. KOTZ:

6 Q **And was there sort of a date that you were looking**
7 **at to try to complete the negotiations for the settlement?**

8 A I had something in mind. What I had in mind was
9 their answer was due at a certain date.

10 Q **July 19th, perhaps?**

11 A July 19th. I remember in my mind it would be
12 convenient to resolve the thing before they answered. But
13 not, you know, absolutely required, but logical and
14 convenient.

15 Q **And what about Goldman Sachs? Did they ever**
16 **indicate that they were going to announce their quarterly**
17 **earnings on a certain day, and that might drive their part of**
18 **it?**

19 A I do remember somebody at Goldman -- there was a
20 meeting here where some Goldman executives came in with the
21 general counsel and the CFO, and I don't remember the CFO
22 mentioning that they had an earnings call maybe, an earnings
23 call, on like July 20th, the day after -- July 20th maybe or
24 July 19th, July 20th.

25 Q **Right. And so at some point in time did you set in**

1 motion the Commission approval process. So I mean it would
2 all be well and good to come to some understanding, but you
3 still had to get Commission approval. That has to be done in
4 advance. So do you remember at what point in time you felt
5 the negotiations had gone along far enough that you were
6 going to put something on the Commission calendar?

7 A I don't. And those issues I generally would have
8 delegated to Ken and (b)(6),(b)(7)(C)

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

10 Q How could you -- I guess how could the staff have
11 presented any sort of action memo to the Commission if the
12 day before the meeting there were no -- you weren't sure
13 whether there was going to even be one, much less --

14 A I guess I should have been clear. I probably would
15 have delegated to Ken and (b)(6),(b)(7)(C) the drafting of the action
16 memo and taking whatever steps are necessary to give folks
17 the heads up that we may be looking for a time on a calendar
18 at a certain date. But I probably -- I probably would have
19 told them to keep in mind that this is all a moving target as
20 well.

21 BY MR. KOTZ:

22 Q So when did you get the final approval from
23 Goldman? When did you understand the matter to be finally
24 resolved?

25 A You have to refresh me on dates, because I don't

1 remember the dates.

2 Q Okay. So keep in mind -- so Thursday was the day

3 --

4 A Thursday, July --

5 Q Thursday, July 15th.

6 A 15th was the day of the announcement?

7 Q Was the day both of the Commission approval and the

8 announcement. The Commission approval was like late

9 afternoon. The announcement was late in the day on Thursday.

10 A Okay.

11 Q And the earnings and the date that they had to file
12 was the following week, Tuesday.

13 A Okay.

14 MR. KOTZ: And I mean let's show you this document.

15 We'll mark this Exhibit 36. This is an e-mail between you

16 and Ken Lench, [REDACTED], and [REDACTED], 7/8/2010,

17 2:17 p.m.

18 (Exhibit No. 36 was marked for
19 identification.)

20 MR. KOTZ: You can certainly read the whole thing,
21 but in the below e-mail from Ken Lench there's some
22 discussion of timing.

23 THE WITNESS: Sure. Okay.

24 BY MR. KOTZ:

25 Q So this is a week before. This is July 8,

1 Thursday, a week before the Commission approval and
2 announcement. Do you think at this point in time -- it looks
3 like Ken Lench is referencing timing. "Agree on final papers
4 by Monday, board approval before Commission considers matter
5 next Thursday." Do you think around this time you were
6 pretty sure it was going through?

7 A It looks like what I thought was that, you know,
8 there was a reasonable prospect of this coming to conclusion
9 and that July 16th and July 19th were possible dates on which
10 we have papers ready to go to the court.

11 Q Okay. And then you understood that the settlement
12 had to be approved the Goldman board. Right?

13 A Yes.

14 Q Okay. And do you know when that occurred?

15 A I don't. I mean I probably could be shown
16 documents to refresh my recollection, but there's a -- you
17 know, we received a signed consent from Goldman Sachs on a
18 certain day. I don't remember which day it was. What I
19 would expect is the board approval occurred on that day or
20 maybe the day before.

21 Q Okay. So the Goldman board approval had to be done
22 before you would present it to the Commission or not
23 necessarily?

24 A I mean not -- I suppose theoretically not
25 necessarily, but my preference would have been for the

1 Goldman board to approve before we brought it to the
2 Commission. But I honestly don't remember whether that
3 occurred or didn't occur. But that would have been my
4 preference.

5 Q Do you understand that the Commission meeting on
6 the 15th was -- was that a regularly scheduled meetings, or
7 was that something called for the purpose of the Goldman
8 case?

9 A You think I should know that or remember that. I'm
10 embarrassed to say I don't remember.

11 Q Were you aware that a day or two before the Goldman
12 settlement -- do you want to take another minute?

13 A No. It's just remarkable to me that I can't
14 remember that. I guess just a lot of things have occurred.

15 BY [REDACTED]:

16 Q Was it an executive session, if you can recall?

17 A It had to be an executive session. I don't know if
18 that'll help. Sorry. Go ahead.

19 BY MR. KOTZ:

20 Q Do you recall that a day or before the Goldman
21 settlement was filed an announced there were news reports
22 that there were settlement discussions?

23 A Yeah. I vaguely remember that. I got to be honest
24 with you. I try not to focus on the news reports, except
25 when, you know, absolutely necessary. But I do have some

1 recollection of that.

2 Q Do you recall any concern that the Goldman
3 settlement might be leaked to the media?

4 A Yeah. I do remember that. I do remember that.

5 Q And was there an effort to try to have the matter
6 filed and announced as quickly as possible after the
7 Commission approval, in order to avoid a leak?

8 A That sounds right. That sounds right.

9 Q And what would the concern about the leak be?

10 A Well, I think what happened was when we announced
11 the filing there were a lot of media reports that were
12 disconcerting.

13 Q In what way disconcerting?

14 A Well, you know, I think that how Commissioners vote
15 on enforcement actions shouldn't be made public. I think
16 that's very damaging to the functioning of the Commission and
17 impedes the sort of open and candid communications that best
18 serve the Commission's interest. And it was disconcerting to
19 me to see press reports on how Commissioners had voted on the
20 action. And frankly it made me angry and surprised.

21 Q And are you aware that even after the settlement
22 there were press reports on how the Commissioners voted on
23 that?

24 A I seem to remember that as well, and I think I was
25 unhappy when I saw that too.

1 Q Do you have any idea who leaked that information?

2 A I don't. I don't.

3 Q Do you know -- go ahead.

4 A My own view is that it wasn't somebody from the
5 enforcement division.

6 Q Why do you say that?

7 A Because the enforcement division knew what was
8 happening over a very long period of time, with respect to
9 these settlement discussions and the Goldman investigation.
10 And I haven't seen any evidence of reports in the press
11 concerning what was happening within enforcement.

12 Q Do you know if anyone is looking into the question
13 of how this information was leaked?

14 A I assumed that that was part of what you were
15 doing, but I don't know.

16 Q But other than through our office, I mean has
17 anybody said, you know, we need to get to the bottom of this;
18 how come this information keeps leaking?

19 A Yes. I mean, yes, people have said that. We've
20 said it in the enforcement division, and we've given very
21 stern messages. Notwithstanding my belief that the leaks
22 are not coming from the enforcement division, we've given
23 very stern messages to our staff. We gave a very pointed
24 communication to senior management at the CEC conference we
25 had about leaks and the deleterious impact of leaks. We did

1 that on our own.

2 We also did it during presentations to the senior
3 staff from Commissioner Walter and Commissioner Paredes at
4 CEC. There was discussion about the damaging impact of
5 leaks. We had communications with our senior officers
6 concerning the importance of confidentiality and the reliance
7 of the enforcement division on confidentiality during the
8 process. So, yes, we've taken very assertive steps to make
9 sure that the message is clear that that type of activity is
10 not helpful and counterproductive.

11 And I know the Chairman has done the same thing in
12 closed Commission meetings. And I suspect that one of the
13 reasons we have more matters on executive session now than we
14 did before this is because of a concern about leaks. And
15 there is a preamble that the Chairman gives before closed
16 Commission meetings now, which I don't think she did before
17 these events, to make very clear -- and I always notice the
18 look on her face and her tone when she gives that caution and
19 that warning about our responsibilities with respect to the
20 confidentiality of events at closed Commission meetings.

21 Q But are you aware that there were certain of those
22 types of measures taken after the Goldman action was filed,
23 prior to the settlement, where there were restrictions on the
24 individuals who were aware of information, particularly from
25 enforcement? There were warnings given, but in the end the

1 **vote on the settlement leaked out anyway.**

2 A Yeah. I don't know how to respond to that, other
3 than to say that, you know, it's very, very unfortunate that
4 someone is not adhering to those admonitions.

5 MR. KOTZ: All right. Let me show the next
6 document, marked as Exhibit 37, an e-mail exchange between
7 you and Rachelle Younglai, 7/15/2010 4:10 p.m.

8 (Exhibit No. 37 was marked for
9 identification.)

10 THE WITNESS: Okay.

11 BY MR. KOTZ:

12 **Q So do you remember what this was about?**

13 A Rachelle Younglai is a reporter for Reuters who
14 calls me from time to time. And I assume -- let's see. Is
15 this after the public announcement or before the public
16 announcement? I don't know. It's her asking me call her. I
17 sort of put her off and say, "Will call ASAP."

18 **Q That's putting her off? "Will call ASAP."**

19 A Yeah. That's putting her off. That's a nice way.
20 That's a nice way to put a reporter off.

21 **Q Okay.**

22 A Because it can mean many different things, and I'm
23 pretty sure that I -- it wouldn't surprise me if I didn't
24 call her until the next day or two days later when it was
25 possible.

1 Q Okay.

2 A So that's my recollection of this exchange.

3 Q But you didn't confirm anything about the Goldman
4 case before the case was filed?

5 A I'm confident I did not.

6 Q Okay. All right. You're aware, I assume of the
7 financial regulatory reform legislation that made its way
8 through Congress and was recently passed into law?

9 A The so-called Dodd-Frank law?

10 Q Yes.

11 A Yes.

12 Q Okay. Were you involved at all in efforts relating
13 to the legislation?

14 A Not much. I mean I knew that -- I knew of the
15 enforcement-related provisions, or some of the
16 enforcement-relation provisions in the legislation, you know,
17 like nationwide service of process and aiding and abetting
18 liability under the 40 Act and the 33 Act. I knew a little
19 bit about the whistleblower provisions. That was -- you
20 know, I read some of the press accounts of the wrangling over
21 the legislation.

22 Q Did you ever have any conversations with members of
23 Congress or staff of members of Congress about financial
24 regulatory reform legislation?

25 A Not that I recall.

1 Q Has anyone at the SEC ever mentioned this financial
2 regulatory reform legislation in connection with the Goldman
3 Sachs investigation or in connection with the filing of an
4 action against Goldman Sachs?

5 A Not before the filing, but after the filing I
6 remember there were press reports suggesting that there was
7 some link between the Goldman case and financial regulatory
8 reform, and, you know, people responded to that. But there
9 was no such link.

10 Q Okay. Do you have any reason to believe that the
11 SEC's action against Goldman Sachs, or the timing of the
12 action, was in any way related to or specifically to advance
13 financial regulatory reform legislation?

14 A No. I have no reason to believe that's the case.

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

19 A No.

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

24 A No.

25 Q Are you aware of any information indicating that

1 anyone at the SEC shared any information concerning its
2 Goldman Sachs investigation with the Executive Office of the
3 President, the White House, or any of its employees, prior to
4 the complaint being filed?

5 A No.

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

9 A Say that one again? I'm sorry.

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

13 A No. But the footnote is, you know, I met with the
14 Permanent Subcommittee on Investigation, their staff, after
15 the filing, but had no communications with them pre filing.

16 Q Okay. So clearly the SEC didn't coordinate its
17 action with them?

18 A No.

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

23 A No.

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

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

4 A No.

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

11 A No.

12 Q Are you aware of any information indicating that
13 anyone at the SEC shared any information concerning its
14 Goldman Sachs investigation with the news media or any
15 journalist prior to the complaint being filed?

16 A No.

17 MR. KOTZ: All right. We're going to go off the
18 record. If you could just give me and [REDACTED] a few minutes to
19 see if we have anything else.

20 THE WITNESS: Sure.

21 (A brief recess was taken.)

22 BY MR. KOTZ:

23 Q All right. Back on the record. Okay. One area
24 that I want to get some clarification on, and that is with
25 respect to the settlement. And I think you may have

1 indicated that, at least it seems to you, that there were
2 still discussions down to the wire, with respect to whether
3 the settlement would go through. And I just want to kind of
4 lay out something for you and get you to comment. You know,
5 it would seem to us, and from the e-mails that, you know, in
6 order for there to be a Commission vote and discussion of an
7 issue, you know, at some point in time there would have to be
8 some clarification on what are the terms of that settlement,
9 so that the Commissioners can be briefed on it.

10 And so -- and it seems as though the executive
11 session was set some time before. And while there may have
12 been like minor wrangling, from the e-mail communication we
13 seem to indicate that the general terms were put into place
14 maybe a week before. Is that not your recollection?

15 A Here's my recollection. My recollection is that
16 Ken and [REDACTED] were working on an action memo, that at some
17 point I became heavily involved in reviewing and revising
18 that action memo. The Commission vote was the 15th you said?

19 Q Right.

20 A That was a Thursday?

21 Q Right.

22 A Thursday. You could probably figure out when we
23 sent that action memo around the Commissioners. I suspect it
24 may have been that Monday. I think it was that Monday.
25 That's my best memory.

1 Q Okay. So by --

2 A Let me just finish. And then what happened was on
3 Monday, Monday/Tuesday, I think I was involved in some
4 meetings with a couple of the Commissioners to give them a
5 briefing on the matter, and the action memo, and what we saw
6 shaping up. So I think that, yes, it had to be that on
7 Monday we were reasonably confident of what the terms would
8 be.

9 However, I know that after Monday Goldman was still
10 pushing on stuff. I don't remember what it was. And I think
11 they were trying to push back on some of issues that we
12 reviewed as requirements. And I don't think it ever came to
13 anything, because I don't think we moved. So what was
14 presented to the Commission and what was in the action memo I
15 don't think deviated from where we landed. But there was
16 push and pull in the interim.

17 Q But do you think by Monday you guys were clear in
18 your own heads that you weren't going to move on those
19 issues?

20 A I can speak for myself.

21 Q Yeah.

22 A I think I was reasonably confident that I wasn't
23 going to support any deviations from what was set forth in
24 the action memo.

25 Q Now, were you aware that that Thursday, that the

1 Commission voted and the settlement was filed and announced,
2 was also the day that the financial regulatory reform passed
3 the Senate?

4 A I do remember that happening close in time that
5 day.

6 Q Do you remember any discussion about whether to
7 file the settlement and announce it on Thursday? Because the
8 Commission met late in the day, so it was already getting
9 late in the day. Do you remember any discussions about
10 whether you should file it on Thursday or wait until the next
11 day?

12 A I generally remember that there were discussions
13 about that, but they had to do with concerns about leaks.
14 And I remember that the Goldman folks -- my sense was that
15 they were not going to oppose a public announcement closer in
16 time to Commission approval, because they were concerned
17 about leaks. And I remember on our side we were also
18 agreeable to the concept of filing -- I guess it's not
19 filing. Yeah, I guess it is filing -- as close in time to
20 Commission approval as reasonably possible, because of the
21 concerns about leaks.

22 And I do remember -- not that you asked this
23 question, but I remember hearing at some point on Thursday
24 about the passage of the legislation and just rolling my eyes
25 and saying, well, and this is happening today too. But there

1 was no -- there was absolutely no correlation, coordination
2 relationship between one and the other, in terms of trying to
3 make it happen.

4 Q And was there any discussion about maybe not to
5 file it on Thursday because of the perception that would be
6 caused?

7 A No. No. Not that I recall.

8 Q Okay. We have no further questions. The one thing
9 I would ask -- and this is very important -- in order to
10 protect the integrity our investigation, if you could not
11 discuss the content of your testimony with anyone we would
12 appreciate it.

13 A Sure.

14 MR. KOTZ: Okay. All right. We're off the record.

15 (Whereupon, at 12:44 p.m., the examination was
16 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 119 pages is a complete, true and accurate transcript of the testimony indicated, held on August 10, 2010, at 9:30 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:

8/17/10

Official Reporter:

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

Diversified Reporting Services, Inc.

PROOFREADER'S CERTIFICATE

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In the Matter of: OIG-534
Witness: Witness Number 35
File Number: OIG-534
Date: Tuesday, August 10, 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)

8/17/10

(Proofreader's Name)

(Date)

Chapter Break

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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

WITNESS: Number 36

PAGES: 1 through 33

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

DATE: Wednesday, August 11, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 11:32 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 DAVID KOTZ, ESQ., Inspector General

5

6 Office of the Inspector General

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12 On behalf of the Witness:

13

14

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WITNESS:

Mary Schapiro

EXAMINATION

6

EXHIBITS:

DESCRIPTION

IDENTIFIED

1 SEC Notice of Rights, 8/11/10

6

2 Confidentiality and Nondisclosure

Agreements, 8/11/10

6

3 E-mails, Schapiro/Cohen, 1/23/10

11

4 E-mails Schapiro/[REDACTED] 2/22/10

14

5 E-mails [REDACTED] Nisanci, Cohen,

Strada, 2/26/10

15

6 E-mail, Cohen to Khuzami, 3/8/10

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7 E-mails, Schapiro/Khuzami 4/12/10

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8 E-mails, Schapiro/Cohen, 4/13/10

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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 11:32 a.m. on August 11, 2010, at the United States Securities and Exchange Commission. I am going to swear you in.

THE WITNESS: Okay.

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

MARY SCHAPIRO

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

MR. KOTZ: Could you state and spell your full name for the record?

THE WITNESS: Mary Schapiro: M-a-r-y;
S-c-h-a-p-i-r-o.

MR. KOTZ: Okay. I'm David Kotz, and 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) And if your counsels would like to identify themselves for the record?

(b)(6),(b)(7)(C): Sure. (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C) from the Gibson Dunn law firm.

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

1 transcribe everything that is said. Please therefore provide
2 verbal answers to the questions, as a nod of the head or
3 another non-verbal response won't be picked up by the court
4 reporter.

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

13 THE WITNESS: Yes.

14 MR. KOTZ: Okay. Great. All right. So let's deal
15 with the formalities first. This is a Notice of Rights. You
16 can read this and if it's okay, sign it.

17 THE WITNESS: I signed it and read it.

18 MR. KOTZ: All right. That's fine.

19 [REDACTED]: David's going to say, no. It's in red
20 ink.

21 MR. KOTZ: No. It doesn't matter. Okay. So we're
22 going to mark this into evidence as Exhibit 1, and if you
23 could, just attest that this is your signature on Exhibit 1.

24 THE WITNESS: Yes.

25 (Exhibit No. 1 was marked for

1 identification.)

2 MR. KOTZ: Okay. And then if I could have your
3 counsel sign these non-public confidentiality disclosure
4 agreements because there potentially could always be
5 non-public information to discuss.

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

7 (Exhibit No. 2 was marked for
8 identification.)

9 MR. KOTZ: And in one case in the form there are
10 two boxes, but you don't really need to do two boxes. But
11 you should just put your name and the firm, who you're
12 representing, and just sign it.

13 (The attorneys signed the document.)

14 MR. KOTZ: Okay, terrific. We're going to put the
15 two Confidentiality Nondisclosure agreements combined as
16 Exhibit 2 for the record, and if each one of you could just
17 confirm that this is your signature on each one of the
18 documents?

19 (b)(6),(b)(7)(C): Yes, on Exhibit 2 it's my signature.

20 I'm (b)(6),(b)(7)(C).

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

22 MR. KOTZ: All right. We're going to start with a
23 little bit of background.

24 EXAMINATION

25 BY MR. KOTZ:

1 Q If you could, just briefly for the record describe
2 your education.

3 A My education?

4 Q Yes.

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

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

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8

9 Q Okay. And if you could briefly summarize your work
10 experience prior to joining the SEC?

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

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

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

In 1988 I was

22 nominated by President Reagan to a seat here at the
23 Securities and Exchange Commission. I joined the SEC. I had
24 a one-year term.

25 I was renominated by President Bush, the first

1 President Bush, for a full, five-year term, confirmed by the
2 Senate, and served my full five-year term and then was named
3 acting chairman of the SEC by President Clinton, which I did
4 from the time Richard Breedon departed until Arthur Levitt
5 arrived as chairman; stayed for one more year, so a total of
6 six years at the SEC as a commissioner. And then my term was
7 up and I was leaving, and (b)(6),(b)(7)(C)

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

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

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Q Right.

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

2 (b)(6),(b)(7)(C) and I left from there to come here a year and a
3 half ago, a few months ago.

4 Q And then generally what are your duties as chairman
5 of the SEC?

6 A Oh my gosh! Well, it's a job of extraordinary
7 breadth, so I view the responsibilities as many, really.
8 When I came here there were lots of senior positions to fill,
9 a new team to create. I wanted to change the direction of
10 the agency, as well.

11 Q And I don't need to get into that kind of, just
12 generally, you have oversight over all the functions of the
13 SEC.

14 A Well, at the end of the day I am responsible for
15 the operations of the SEC so I preside over the rulemaking
16 agenda, which has been very aggressive in the last year. I'm
17 engaged on legislative issues, particularly during regulatory
18 reform. I'm responsible for operations in terms of making
19 sure we have the resources to build the technology that we
20 need to hire the staff that we need to get them effectively
21 deployed to build training programs.

22 So it's really I spend lots of time in meetings
23 every day talking to industry investors and others who have
24 an interest in our policymaking agenda. I participate in the
25 enforcement cases as all commissioners do and testify before

1 congress --

2 Q Okay.

3 A -- on a very regular basis, give lots of speeches.
4 It's a very broad scope.

5 Q Okay. Sure. At what point in time did you become
6 aware of the existence of an investigation by the SEC into
7 the sale of collateralized debt obligations by Goldman Sachs
8 known as the Abacus investigation?

9 A You know, I don't know exactly when I became aware
10 of it. Certainly, last time last fall I knew that we were
11 working on a number of cases coming out of the financial
12 crisis and that this was one of them. Citigroup was one that
13 we brought recently.

14 We had Bank of America, Angelo Mozilla and
15 Countrywide, Beazer Homes, State Street Bank. So I knew this
16 was one of many; and, I've got to tell you, I think it was
17 probably sometime in the fall, but I don't know exactly.

18 Q And did you view the Goldman Abacus case as a
19 particular priority case for the SEC?

20 A No. I didn't. What I viewed as a priority was
21 cases coming out of the financial crisis. So while I have a
22 strong belief that we have to have a regulatory and
23 enforcement presence across the full range of the federal
24 securities laws, because that's what people expect of us and
25 we are the cop who can do insider trading and accounting, and

1 A I don't think so.

2 Q And in this timeframe, January 24th timeframe where
3 this e-mail is, were you aware that at that point in time
4 Goldman Sachs, the advocate's case, was put on the Commission
5 calendar a second time?

6 A I did know it was put on the calendar sometime in
7 January. I don't remember the exact dates.

8 Q Sure.

9 A And that there was some interest among
10 commissioners that we not do this case as a piecemeal case to
11 the extent the staff wasn't done looking at all the
12 individuals that it would be better to wrap. Because, you
13 know, sometimes we do cases we'll do the entity and then the
14 individuals later, or vice versa. If there was interest on
15 the part of the commissioners to group it together and get it
16 all done at one time.

17 Q And is that why, to your understanding, it was then
18 taken off the calendar?

19 A I believe so. I don't actually calendar cases or
20 get involved with when cases are put on the calendar, which
21 is not to say nobody ever asks me. I'm sure there are
22 instances where I've been asked, but that was my
23 understanding that there was not concern but a desire. And
24 Commissioner Casey raised it with me specifically, could we
25 wait and do this all as one.

1 Q Okay. And so in an e-mail exchange with Stephen
2 Cohen on Sunday, January 24th at 8:19, you say, "I'm very
3 anxious to get the GS case out." I assume you mean Goldman
4 Sachs?

5 A Yeah.

6 Q And you were referring to the Abacus case there?

7 A I assume so, yeah.

8 Q Okay. So even though you were anxious to get it
9 out, the decision was made to hold off?

10 A Yeah. If others aren't ready, or they think
11 there's a -- I'm anxious. Look. I'm anxious for us to have
12 a strong enforcement presence, generally, and I think this
13 one also mentions State Street in the prior communication.
14 I'm anxious for us to push our cases through.

15 One of the criticisms, as you know, the agency
16 historically has been it takes too long to get enforcement
17 cases done. That said, if the others needed more time, I was
18 fine with more time.

19 Q And it would belie any claim that you orchestrated
20 anything, if in fact you're saying you're anxious to get it
21 out, and then it doesn't go out for several months. Right?

22 A I mean I guess that's the conclusion you could
23 draw. It's certainly the conclusion I would draw. Just
24 generally, my view about these things is that I don't have to
25 try the case at the end of the day.

1 disclosure and mutual fund governance, and all those kinds of
2 cases. I did view as important that we bring cases coming
3 out of the financial crisis and there'd been, you know, more
4 than a dozen, and so I didn't view this as particularly more
5 important.

6 Q There was one of a dozen or so, or even more cases.

7 A More than a dozen, yeah, one of dozens.

8 Q So it was one of many cases that were important
9 because they came out of the financial crisis?

10 A Sure. I mean if you think back we were worrying
11 about issues like short sale manipulation coming out of the
12 financial crisis, about sales practices, the whole range of
13 activities.

14 MR. KOTZ: All right. Let me show you a document
15 if I could. We're going to mark this as Exhibit 3. This is
16 an e-mail exchange between you and Stephen Cohen, 1/24/2010,
17 10:21 a.m.

18 (Exhibit No. 3 was marked for
19 identification.)

20 MR. KOTZ: Okay. Take a minute to read it over.

21 THE WITNESS: Okay.

22 BY MR. KOTZ:

23 Q Before we get into the specifics of this se-mail,
24 were you aware that the advocacy matter was first put on the
25 closed Commission calendar in December and then withdrawn?

1 Q Right.

2 A The enforcement staff has to, so they need to make
3 the decisions that they're comfortable with that they can
4 defend in a court of law. And if they need more time to
5 investigate something, they should take more time. And so
6 these are decisions.

7 Q Right. And in terms of timing all other things
8 being equal you would have been fine with the case going out
9 in January when you didn't have to have a specific interest
10 in the case going out at a particular time.

11 A No. Absolutely not. When it's ready.

12 MR. KOTZ: All right. So let me show you the next
13 e-mail.

14 THE WITNESS: Should I give this back to you?

15 MR. KOTZ: Yeah. This is an e-mail we're going to
16 mark as Exhibit 4. It's an e-mail exchange between you and
17 [REDACTED], 2/22/2010, 4:39 p.m.

18 (Exhibit No. 4 was marked for
19 identification.)

20 MR. KOTZ: And then there's actually another
21 document that goes with it that I think I'm going to show you
22 at the same time just so you have both in front of you that
23 we're going to mark as Exhibit 5. And that's an e-mail
24 exchange between [REDACTED] Didem Nisanci, Stephen Cohen,
25 [REDACTED], 2/26/2010, 3:03 p.m.

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

3 MR. KOTZ: So when you're finished reading that,
4 let's take a look at this one.

5 (The witness examined the document.)

6 THE WITNESS: Okay.

7 BY MR. KOTZ:

8 Q Do you recall that there was a request for a
9 meeting with you with Lloyd Blankfein, CEO of Goldman Sachs?

10 A I do remember that.

11 Q And so what do you remember?

12 A I remember that we, as we do with all meeting
13 requests, ran it by ethics. And [REDACTED] in my office [REDACTED]
14 [REDACTED] in the office in addition to using the
15 ethics office generally. And the decision was that because
16 the pending case, which even though we hadn't gone ahead in
17 January was still pending, that it would be inappropriate to
18 meet with Goldman Sachs.

19 Q And did you meet with anyone from Goldman Sachs at
20 that time?

21 A No.

22 MR. KOTZ: Okay. All right. I'm going to show you
23 the next document, Monday, March 8, 2010, 6:38 p.m. The top
24 of it is from Stephen Cohen to Robert Khuzami, and we're
25 going to mark this Exhibit 6.

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

3 THE WITNESS: Okay.

4 BY MR. KOTZ:

5 Q All right. Do you recall getting a briefing on the
6 Goldman matter around this timeframe?

7 A I had briefings on the Goldman matter. I honestly
8 couldn't tell you if it was around this timeframe or what
9 date it was.

10 Q In any of the briefings that you had on the Goldman
11 matter, were there any instructions that you gave regarding
12 the timing when you wanted the case to be brought?

13 A I don't recall any, but I will tell you that I
14 think you've observed me enough to know, and maybe I
15 shouldn't say it that way. I have a sense of urgency about
16 all the things we do in this agency, that is fixing problems,
17 writing rules and bringing cases; so I may have said, you
18 know, let's move these things along. But in terms of
19 specific timing, absolutely not.

20 MR. KOTZ: Okay. Great. All right. Let's go to
21 the next document. We're going to mark this Exhibit 7; an
22 e-mail exchange between you and Robert Khuzami, 4/12/2010,
23 10:54 p.m.

24 (Exhibit No. 7 was marked for
25 identification.)

1 THE WITNESS: Okay.

2 BY MR. KOTZ:

3 Q All right. So just to orient yourself, this is on
4 Monday the 12th. The Goldman case was eventually filed that
5 Friday, the Friday of that week. And so in this e-mail
6 exchange between you and Robert Khuzami you asked can we
7 announce at the same time, I believe, referring to
8 Quadrangle.

9 A With what Cuomo announced at the same time was the
10 question, because we did the case jointly. It's nice to
11 announce jointly.

12 Q Okay. And then he says, "Yep." And then there's
13 another e-mail exchange where you say, "Let's Make sure we
14 don't announce Goldman same day." Why did you say that?

15 A This is a really important case for Cuomo. It was
16 an important case for us too. It was one of the biggest pay
17 to play cases. We had rulemaking pending on pay to play;
18 and, frankly, I didn't want to detract from the announcement
19 of a Quadrangle case with another case being announced at the
20 same time, so I was a little worried that the Attorney
21 General would be very upset if we announced multiple cases in
22 the same day.

23 MR. KOTZ: All right. And I'm going to have one
24 more question on this, but before I do that, I'm going to
25 give you another document, which we're going to mark as

1 Exhibit 8, which is an e-mail exchange between you and
2 Stephen Cohen, Wednesday, 4/13/2010, 12:28 a.m.

3 (Exhibit No. 8 was marked for
4 identification.)

5 MR. KOTZ: And it didn't print out, but that's the
6 time of it.

7 [REDACTED]: I'm sorry. So this is April 13th?

8 MR. KOTZ: Correct.

9 [REDACTED]: Okay.

10 THE WITNESS: Okay.

11 BY MR. KOTZ:

12 Q All right. And so in the previous e-mail, Exhibit
13 7, Robert Khuzami says to you Monday night, "This would be
14 Wednesday. Goldman likely Thursday." And then in the
15 Stephen Cohen e-mail he also says, "Then we'll do Goldman on
16 Thursday." Do you know why it changed from Thursday to
17 Friday?

18 A I really don't know why it changed from Thursday to
19 Friday. Thursday we did do Quadrangle. I do recall that
20 Cuomo kept changing the day for Quadrangle, which was one
21 reason we were going to go do the officer and then ended up
22 not going duty officer, because then he moved the date back a
23 day to Thursday. Well, actually, I don't remember if we
24 moved it. We did Quadrangle on Wednesday. We announced
25 Quadrangle on --

1 Q I think it was On Thursday?

2 A On Thursday.

3 (b)(6),(b)(7)(C): It was ultimately on Thursday.

4 THE WITNESS: Right. Because he kept moving the
5 date, so I think I believe one reason Goldman pushed to
6 Friday was in order to do Quadrangle on Thursday. Plus, on
7 Thursday -- no reason you would remember this, but we had a
8 big conference call with all the former SEC chairs --

9 MR. KOTZ: Right.

10 THE WITNESS: -- all but one, to be completely
11 accurate. Well, not all, because --

12 (Laughter.)

13 THE WITNESS: With a lot of former SEC chairs,
14 right. Many former SEC chairs and Senator Schumer to discuss
15 self-funding also on Thursday, so it was just getting to be a
16 very full schedule. But I don't know if there were other
17 reasons too. I just am not aware of it.

18 BY MR. KOTZ:

19 Q And did you make the decision about when to put
20 these particular matters out?

21 A Well, the Schumer press conference was when Senator
22 Schumer wanted to do it, and any of the former chairs were
23 available to do it. Quadrangle was largely driven by the
24 Attorney General's timetable, as we know. And in terms of
25 whether Goldman also went Thursday or Friday, no, although

1 that's not to say people might not have talked to me about
2 did I care; and, as between one day or the next, I didn't
3 have a --

4 Q Was there any concern about having it on a Friday?
5 There has been this conventional wisdom within the SEC that
6 the Enforcement Division doesn't announce prominent cases on
7 Friday for press reasons.

8 A I've heard that conventional wisdom. I don't know.
9 It sort of feels like it really is conventional, because with
10 the 24-hour news cycle, it almost doesn't matter anymore when
11 you announce something. It's going to, you know, maybe
12 Christmas eve makes a difference, but it seems like
13 everything gets picked up and covered anyway.

14 Q And the Goldman case did get covered, even though
15 it was issued on Friday?

16 A Did it ever?

17 Q Were you surprised at how much coverage there was
18 of that?

19 A Quite surprised. You know, my view was that we'd
20 done a lot of great cases already and, you know, I happen to
21 think the State Street case was an amazing case, that the
22 Mozilla case -- and I won't go through the whole list
23 again -- and I knew this would be an important case, but it
24 was a single transaction. And I was a little taken aback by,
25 I'd like to say by the intensity of media interest in it,

1 quite honestly. And the time for which the media maintained
2 their interest in it was also a surprise to me. I wasn't
3 prepared for that.

4 Q Okay. All right. I'm going to ask you now a
5 series of questions about specific allegations.

6 A Can I give these over?

7 Q Yes, please. You mentioned before that you were
8 involved in financial regulatory reform. Right?

9 A Yes.

10 Q Okay.

11 A I testified many times.

12 Q Has anyone at the SEC ever mentioned financial
13 regulatory reform legislation in connection with the Goldman
14 Sachs investigation or in connection with the filing of an
15 action against Goldman Sachs?

16 A Not to my knowledge.

17 Q Did anyone at any point say it would be helpful for
18 financial regulatory reform if the SEC would announce a big
19 case?

20 A No one's ever said that to me, for sure, and we've
21 been doing regulatory reform the whole time I've been here.

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

25 A No.

1 Q There has been some speculation that there was some
2 momentum given to financial regulatory reform because of the
3 Goldman case. Do you think that's true?

4 A I've read that. I have no idea what other people
5 think, but I don't think so. I think reg reform had pretty
6 good momentum on its own. At that point it had passed the
7 House. It was moving forward.

8 Q And is it fair to say even if it did have some
9 impact on momentum, given the effect you thought the Goldman
10 case would have, you would have no reason to think it would?

11 A I will tell you it never crossed my mind that
12 anyone would ever link our filing of this case to reg reform.
13 In a million years it wouldn't have crossed my mind and
14 didn't.

15 Q All right. Are you aware of any information
16 indicating that you or anyone in the SEC coordinated its
17 action against Goldman Sachs with the executive office of the
18 President, the White House, or any of its employees?

19 A I know certainly I didn't. I have no knowledge
20 that anybody else did.

21 Q Okay. Are you aware of any information indicating
22 that anyone at the SEC shared information concerning its
23 Goldman Sachs investigation with the executive office of the
24 President, the White House, or any of its employees prior to
25 the complaint being filed?

1 A No. I have no knowledge of anything like that.

2 Q Are you aware of any information indicating that
3 the SEC coordinated its action against Goldman Sachs with any
4 members of congress or any congressional employees?

5 A None that I know of.

6 Q Are you aware of any information indicating that
7 anyone at the SEC shared any information concerning its
8 Goldman Sachs investigation with any members of congress, any
9 congressional employees, prior to the complaint being filed?

10 A I don't know of any, but let me couch that in.
11 When we testified, when I testified, when others testified,
12 we do sometimes speak generically, unless we've gotten
13 specific commission permission, of categories of cases. So
14 while I have to go back and look at my testimony, I may well
15 have said we have. We're looking at CDO cases or we're
16 looking at all the major financial market participants during
17 the crisis, or we're looking at securitization problems. So,
18 generically --

19 Q Okay. But you wouldn't have specified Goldman or
20 the Abacus case with the particular matter?

21 A No, not that I can recall.

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

1 of their employees?

2 A No. Not that I know of.

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

9 A Not that I'm aware of.

10 Q Okay. All right. Let me ask you. Are you aware
11 of sort of a complaint that was made, I think through the
12 media, by representatives of Goldman Sachs that they felt
13 they were not given notice of the action against Goldman
14 Sachs prior to it going out?

15 A I read about it in the press that they felt that
16 they should have had more information.

17 Q Did you have any involvement in any decision on
18 whether to give notice or not to give notice?

19 A No.

20 Q Are you aware of concerns expressed by the New York
21 Stock Exchange?

22 A David, let me go back to that one.

23 Q Sure.

24 A Because I don't want to suggest that it's not
25 possible someone might have told me we're just going to file.

1 We're not going to give them the heads up. It's possible
2 somebody said that. I don't recall it.

3 Q Okay. Okay.

4 A But I wouldn't make that decision for the staff.

5 Q Okay. What about there was some concern expressed
6 by the New York Stock Exchange that they weren't given a
7 heads-up about the Goldman Sachs case before it was filed.
8 Were you aware of that?

9 A After the fact I was aware that they were concerned
10 that they would have wanted to know in order to do a news
11 pending trading halt.

12 Q And did you feel that that was appropriate?

13 A You know, it's a good question, and actually
14 something we need to think through, and I think much more
15 clear on going forward, you know, the need to keep things
16 confidential, but at the same time allow them to utilize
17 their mechanism through an orderly market. Normally, a
18 company calls the exchange and says we're going to have news
19 pending, please halt our stock. We're going to announce, you
20 know, that we missed our earnings or we're going to buy a lot
21 or we're going to announce a takeover, or something like
22 that. So I think it just didn't occur here to people that
23 this would be an issue. It certainly didn't occur to me.

24 (b)(6),(b)(7)(C): Who brought this issue to your
25 attention, if you can recall?

1 THE WITNESS: I honestly don't remember who brought
2 it my attention, but they were concerned about whether it was
3 somebody in trading and markets or whether it was somebody in
4 enforcement.

5 BY MR. KOTZ:

6 Q Well, somebody within the SEC? You didn't talk to
7 somebody at --

8 A Oh, no, it was somebody within the SEC, I believe.
9 Yeah.

10 Q Okay. What about the issue of the decision to
11 announce the Goldman case during trading hours?

12 A No. My sense is we announced a lot of cases during
13 trading hours, because that's when courts are also open and
14 it makes it a lot easier. Again, I certainly didn't think
15 about the timing or try to orchestrate the timing in that
16 sense.

17 Q Okay. Now, let's talk about the settlement for a
18 minute. At what point did you learn that a settlement had
19 been reached with Goldman Sachs? How long before the actual
20 filing of the case?

21 A The filing to the Commission?

22 Q Right.

23 A You know, I would love to be, but I just can't be
24 precise about that. I know that after the case was filed I
25 don't think I had a sense there wasn't much communication at

1 all between enforcement and Goldman. So I couldn't tell you
2 how many weeks before.

3 Q Do you remember at what point you knew that it was
4 a done deal? Was it a pretty short time between the time
5 that you understood it was a done deal and then it was placed
6 on the calendar?

7 A You know, there was certainly some back and forth,
8 and there's some e-mails in evidence that Goldman was coming
9 down to meet and talk, and people were going back and forth.
10 And I wasn't, to be quite clear, involved in any of the
11 discussions with Goldman, or, you know, orchestrating. But,
12 you know, I don't know. It could have been a few weeks. I
13 just don't know. I'm sorry.

14 Q Did you have any role in the decision on after the
15 Commission had approved the recommendation to go forward with
16 the settlement when the settlement would be filed and then
17 announced?

18 A I think Myron came to talk to me about it and maybe
19 (b)(6),(b)(7)(C) as well, about just how quickly should we do it. And,
20 you know, we've been accused of timing, bringing the case, so
21 there was a concern about will we be accused of timing
22 settling the case. But the view was that given leaks and all
23 that, you know, once the Commission approves it, let's just
24 get it done and file it.

25 The one thing I recall that governed a little bit

1 was that there was an answer due in court, I believe, early
2 the next week, maybe even Monday, and that Goldman also was
3 going to have an analyst call or something later in the week.
4 And if there was an agreement in principle as to the fine
5 amount, they would have to reserve it and announce it.

6 So I think those were contributing to the thought
7 process for others. Again, I didn't dictate when they did
8 it, particularly, but I think that was an accumulation of
9 things too throughout the time.

10 Q Were you aware that that same day that Thursday was
11 the day that the Senate voted on the financial regulatory
12 reform?

13 A Not until they did it. You know. There was no
14 predicting. As you will recall there was a lot of to and fro
15 about the last few holdout votes and whether they would --
16 you know, Scott Brown, in particular I think, and others --
17 would they vote for it. So there was, I mean, to be
18 perfectly honest, it would have been impossible to predict, I
19 think, until maybe that actual day and the cloture was done,
20 whether they would actually be able to pass the bill.

21 Q Was there any relationship at all between the
22 timing of the Goldman settlement and the fact that financial
23 regulatory reform was voted on and passed that day?

24 A None whatsoever. Negotiations had been going on
25 for a while. When it was done, it was done.

1 Q Okay. Now, you're aware that certain information
2 in both Commission meetings, first, to discuss the Goldman
3 action going forward and then discuss the Goldman settlement,
4 were leaked to the press?

5 A Yeah.

6 Q Do you have any knowledge of who might have leaked
7 that information?

8 A No. I don't.

9 Q Okay.

10 A It's very distressing.

11 Q Let me just go through a couple more matters and I
12 think we'll be done, just to get the specific language. Was
13 there any prearrangement coordination direction from or
14 advance notice provided by the Commission to the
15 administration or congressional democrats regarding the
16 filing of the SEC action against Goldman Sachs?

17 A The original file? I'm sorry. Could you read it
18 again?

19 Q Yes, sure. Was there any prearrangement,
20 coordination, direction from or advance notice provided by
21 the Commission to the administration or congressional
22 Democrats regarding the filing of the Goldman Sachs case?

23 A No. None that I'm aware of.

24 Q Okay. Are you aware of any communications by
25 Commission employees to the New York times or their news

1 outlets prior to the Commission's public announcement of the
2 law suit?

3 A I'm not aware of any.

4 Q Okay. Are you aware of whether your chief of
5 staff, Didem Nisanci, or senior advisor Kayla Gillen, engage
6 in any communications with any members of the White House,
7 the congress, or the Democratic or Senate or Congressional
8 Committees regarding the Goldman matter?

9 A None that I'm aware of.

10 Q Was there to your knowledge any attempt by anyone
11 outside of the Commission to influence the timing of the
12 announcement of the settlement in order to advance
13 legislation in congress?

14 A No. Again, none that I'm aware of; certainly none
15 to me.

16 Q And were there any communications that you're aware
17 of between Commission employees and the White House executive
18 office of the President, Democratic National Committee or
19 Democratic Senate Committee, Democratic Congressional
20 Committee or any member of congress about the announcement of
21 the settlement prior to the public announcement?

22 A No. Not that I'm aware of. You know, afterwards
23 we often do briefings, but after a public announcement.

24 Q Okay. Do you know of any evidence that the
25 Commission entered into the settlement with Goldman in order

1 to avoid further criticism in the press or that criticism in
2 the press played any role in the decision or timing of the
3 settlement?

4 A No. I mean we brought a case and we settled the
5 case on terms we thought were very good for the enforcement
6 program and for the public.

7 MR. KOTZ: Okay. Okay. That's all the questions I
8 have.

9 THE WITNESS: Thanks.

10 MR. KOTZ: Before we go off the record, I would
11 like to ask one thing. In order to preserve the integrity of
12 our investigation, if you not discuss the content of your
13 testimony with anyone. Obviously, you can discuss it with
14 your counsel, but with anyone else who might be a witness.
15 And with that, we are off the record.

16 (Whereupon, at 12:11 p.m., the examination was
17 concluded.)

18 * * * * *

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REPORTER'S CERTIFICATE

I, (b)(6),(b)(7)(C) reporter, hereby certify that the foregoing transcript of 31 pages is a complete, true and accurate transcript of the testimony indicated, held on August 11, 2010, at 11:32 a.m. in the matter of: OIG-534.

I further certify that this proceeding was recorded by me, and that the foregoing transcript has been prepared under my direction.

Date:

8/18/10

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 36
File Number: OIG-534
Date: Wednesday, August 11, 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)

8/18/10

(Proofreader's Name)

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Chapter Break

ORIGINAL

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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

WITNESS: Number 37

PAGES: 1 through 147

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

DATE: Wednesday, August 11, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 1:01 p.m.

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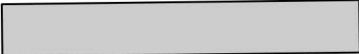
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C O N T E N T S

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MR. KOTZ: All right. We are on the record at 1:01 p.m. on August 11, 2010 at the United States Securities and Exchange Commission. I'm going to swear you in.

Would you please raise your right hand?
Whereupon,

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

THE WITNESS: I do.

MR. KOTZ: Could you state and spell your full name for the record?

THE WITNESS: Stephen, S-t-e-p-h-e-n, L or Lee, L-e-e, Cohen, C-o-h-e-n.

MR. KOTZ: Mr. Cohen, 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, [REDACTED] And if your counsels could just identify themselves and spell their names for the record, that would be great.

[REDACTED]: Sure. [REDACTED]. Last name is [REDACTED] From Steptoe & Johnson, LLP here in Washington.

[REDACTED]: [REDACTED]
MR. KOTZ: Also from Steptoe & Johnson?

1 [REDACTED]: Also from Steptoe.

2 [REDACTED]: [REDACTED] is [REDACTED]

3 MR. KOTZ: All right. This is an investigation by
4 the Office of the Inspector General, Case No. OIG-534. I'm
5 going to ask you certain questions and you'll be providing
6 answers under oath.

7 The court reporter will record and later transcribe
8 everything that is said. Please therefore provide verbal
9 answers to the questions, as a nod of the head or another
10 nonverbal response won't be picked up by the court reporter.

11 Also, so the record will be clear, please let me
12 finish my question before you provide your response.

13 In addition, it is important that you understand
14 the questions and give accurate answers. If there's anything
15 you don't understand or anything you do not know or are not
16 sure about, please let me know. Otherwise, I will assume
17 that you heard and understood the question.

18 Do you understand those instructions?

19 THE WITNESS: I do.

20 MR. KOTZ: Great. I'll read the perjury warning.

21 As you can see, your responses and statements given
22 today are provided after you've sworn an oath and will be
23 taken down verbatim by the court reporter. This is an
24 official U.S. government law enforcement investigation. The
25 claims asserted in this case are serious ones. It is very

1 important you tell me everything you know about the matter at
2 hand, and are completely forthcoming and truthful with me.

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

8 Do you understand those instructions?

9 THE WITNESS: Yes.

10 MR. KOTZ: Great. All right. Why don't we just
11 put in -- for the record, we'll put in, combined as
12 Exhibit 1, the confidentiality and nondisclosure agreements
13 for the two attorneys.

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

16 MR. KOTZ: And if you two could just attest to the
17 fact that these are your signatures on the first and second
18 pages of Exhibit 1.

19 [REDACTED]: Let the record show I'm looking at
20 Exhibit 1, and that is my signature at the bottom.

21 [REDACTED]: I'm also looking at Exhibit 1, and
22 that's my signature on the bottom.

23 MR. KOTZ: All right. Thank you.

24 EXAMINATION

25 BY MR. KOTZ:

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

4 A [REDACTED]

5 [REDACTED]
6 [REDACTED]

7 Q [REDACTED]

8 [REDACTED]

9 A [REDACTED]

10 Q [REDACTED]

11 A [REDACTED]

12 Q [REDACTED]

13 [REDACTED]

14 A [REDACTED]

15 [REDACTED]

16 Q [REDACTED]

17 A [REDACTED]

18 [REDACTED]

19 Q [REDACTED]

20 A [REDACTED]

21 Q [REDACTED]

22 A [REDACTED]

23 [REDACTED]
24 [REDACTED]

25 Q [REDACTED]

1 A [REDACTED]

2 Q [REDACTED]

3 A [REDACTED]

4 Q [REDACTED]

5 A [REDACTED]

6 [REDACTED]
7 [REDACTED]

8 Q [REDACTED]
9 A [REDACTED]

10 [REDACTED]
11 [REDACTED]

12 Q [REDACTED]

13 A [REDACTED] to come to the SEC, where I
14 joined the trial unit as an assistant chief litigation
15 counsel.

16 Q And that was in the Division of Enforcement?

17 A Correct.

18 Q How long did you serve in that position?

19 A Until late January 2009, when I joined the staff of
20 Chairman Schapiro.

21 Q What were your duties in the enforcement unit?

22 A I represented the Commission in federal court
23 litigation, affirmative litigation on behalf of the
24 Commission against persons who the Commission believed
25 violated the federal securities laws. I was the lead counsel

1 on all of my matters. And I also represented the Division of
2 Enforcement in administrative proceedings before the
3 Commission.

4 Q And what is your current title within the
5 Chairman's office?

6 A Senior advisor to the Chairman.

7 Q And what are your duties as senior advisor to the
8 Chairman?

9 A My principal responsibility is to advise the
10 chairman and help her with the administration of the Division
11 of Enforcement. I also advise her on and assist her with
12 matters related to the Office of Compliance Inspections and
13 Examinations, and a wide variety of projects that I do on her
14 behalf.

15 I provide her advice and assist her in preparation
16 for congressional testimony, speeches, correspondence, and I
17 think I mentioned I oversee a handful of projects as well.

18 Q And who is your supervisor?

19 A That's a good question. I guess I would say I
20 typically report directly to the Chairman. But I think
21 administratively and on administrative-related matters, I
22 report to Kayla Gillan and Didem Nisanci.

23 Q Okay. So who does like your approvals and time?

24 A Like my time? Kayla or Didem.

25 Q All right. Did there come a time when you became

1 aware of the existence of an investigation by the SEC into
2 the sale of collateralized debt obligations by Goldman Sachs
3 known as the ABACUS investigation?

4 A Yes.

5 Q When do you think you first learned about that?

6 A I don't know precisely, but my --

7 Q Do you think it was before you went to the
8 Chairman's office?

9 A No.

10 Q So it would have been after you came to the
11 Chairman's office?

12 A Yes.

13 Q And do you have any sense of how long after or how
14 long -- because the investigation, I guess, opened in August
15 2008.

16 A I was -- I do not believe I was aware of the
17 investigation then. My best recollection is that I became
18 aware of it some time in the middle of 2009. I couldn't say
19 a month specifically, but that's the earliest recollection I
20 have of being aware of it. It could have been as early as
21 the spring of 2009.

22 Q All right. Let me show you an e-mail, and so this
23 will maybe refresh your recollection as to a certain point
24 when you became aware of the investigation.

25 MR. KOTZ: We're going to mark this as Exhibit 2.

1 It's an e-mail exchange between you and [REDACTED] Thursday,
2 September 17, 2009, 9:58 a.m.

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

5 BY MR. KOTZ:

6 Q Take whatever time you need to read it over.

7 [REDACTED]: Including other e-mails prior to the
8 e-mail he just identified.

9 THE WITNESS: Right. (Examining.) Okay.

10 BY MR. KOTZ:

11 Q All right. So certainly in this time frame, you
12 were aware of the Goldman ABACUS case. Right?

13 A I was.

14 Q So in this e-mail string in Exhibit 2, there's an
15 e-mail from you to [REDACTED] Thursday, September 17, 2009,
16 9:52 a.m., in the middle of the page. And you say, "I have
17 heard about the case. Will any individuals be Wells'd? The
18 Chairman actually asked about that investigation specifically
19 yesterday."

20 Do you remember the conversation you had with the
21 Chairman about the Goldman investigation?

22 A Not specifically.

23 Q Was it an investigation that the Chairman was
24 particularly interested in?

25 A I don't know -- I'm uncomfortable saying

1 "particularly interested."

2 Q Okay. Sure.

3 A Let me -- let me say it like this. There are --
4 the Chairman gets regular updates and keeps tabs generally on
5 cases that are -- or investigations that are important in the
6 Enforcement Division through conversations with Director Rob
7 Khuzami or, through me, with conversations I have with Rob
8 Khuzami.

9 I think it's fair to say that Goldman was among the
10 investigations that the Chairman had been apprised of by Rob
11 Khuzami. My recollection at this time frame was that there
12 was this article -- it refreshes my recollection that there
13 was one or more articles at the time around investigations or
14 potential investigations into the financial crisis and
15 mortgage-backed securities specifically.

16 So when I said I didn't specifically recall a
17 conversation, I have a general recollection of having
18 conversations with the Chairman around what investigations we
19 have in this space, meaning related to mortgage-backed
20 securities and the financial crisis, of which Goldman would
21 be one.

22 Q And so did the Chairman express that she wanted,
23 you know, as the facts and law allow, to have investigations
24 that relate to matters coming out of the financial crisis?

25 A I wouldn't --

1 Q Was that a priority for the Commission or --

2 A I wouldn't say she was asking for investigations to
3 be initiated coming out of the financial crisis, but rather,
4 she was interested in being apprised of investigations that
5 were arising out of the financial crisis so that she
6 understood where the Commission was in this area.

7 Q And were investigations that came out of the
8 financial crisis for her more of a priority than kind of the
9 average, run of the mill investigation? I mean, there's lots
10 of investigations, obviously, the SEC does. And was that
11 among the higher priorities for the Commission?

12 A I would -- I would say it was -- I want to be
13 careful; I don't want to speak for the Commission, and
14 there's the whole obviously I only --

15 Q Okay. Sure.

16 A -- can speak regarding my conversations with the
17 Chairman specifically.

18 Q Right.

19 A But it was certainly one of the priorities. I
20 think it would be unfair to say it was a priority because she
21 was -- she cared about a lot of areas of investigation and
22 investigations.

23 Q Right.

24 A But certainly that was among the cases that she
25 would inquire about.

1 Q And in the top e-mail on Exhibit 2, in an exchange
2 you had with [REDACTED] Thursday, September 17, 2009,
3 9:58 a.m., you say, "Chairman will be glad to hear we're
4 going after an individual."

5 Do you know what you meant by that?

6 A Sure. As a general matter, there are conversations
7 when cases against companies or firms are initiated,
8 particularly when they're significant such that they might
9 receive a lot of attention by the public. Whether we bring a
10 case against just the company or whether we bring a case
11 against an individual, I think there's a -- my observation in
12 working here is that there's a general preference, certainly
13 with the Chairman and among the Commissioners, that, when
14 appropriate, that individuals be held responsible as well as
15 a company if there are sufficient facts to show a violation
16 of the securities laws.

17 So a natural question I was anticipating from the
18 Chairman if we talked about this would be, are we going after
19 any individuals in addition to the company? It's a routine
20 question she would ask.

21 Q All right. Great. Let's move on to the next
22 exhibit. The next one we're going to mark as Exhibit 3, and
23 this is an e-mail exchange between you and [REDACTED]
24 10/8/2009, 10:20 a.m. A short one.

25 (Exhibit No. 3 was marked for

1 identification.)

2 THE WITNESS: Okay.

3 BY MR. KOTZ:

4 Q It looks like [REDACTED] is attaching a copy of the
5 Goldman ABACUS complaint. Is that right?

6 A Yes. It's not attached, but that's what this says.

7 Q And he says, "This will cheer you up."

8 Do you know why it would cheer you up?

9 A I don't. But out of fairness, my guess -- well, I
10 don't know if you want me to guess.

11 Q Sure. I mean, an educated guess.

12 A We had -- yes. I mean, we had talked about ABACUS
13 around -- I recall talking with [REDACTED] back in what I now
14 recall to be the September time frame about the ABACUS case
15 in particular.

16 I know [REDACTED] from the time when I was in the
17 Division of Enforcement. Having inquired about it and
18 probably mentioned to him that the Chairman had asked about
19 the investigation, having a draft complaint, [REDACTED] assumed
20 that if I'm interested in the case, getting to the point of
21 drafting a complaint would be something that would be
22 interesting to me. So I think he was being humorous.

23 Q And would it be fair to say that you just generally
24 wanted to see cases move. And so if there was a development
25 in a case, that would be a good thing?

1 A That is definitely fair to say. I wouldn't say
2 it's -- yes. That's fair to say.

3 Q All right. Let's move on to the next one. All
4 right. We're going to mark the next document as Exhibit 4.
5 It's an e-mail exchange between several people. At the top
6 of the page is an e-mail exchange between you and Myron
7 Marlin, 11/4/2009, 6:32 p.m.

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

10 THE WITNESS: Okay.

11 BY MR. KOTZ:

12 Q All right. What is Myron Marlin's role? You are
13 exchanging information or e-mailing him back and forth. What
14 is his role in kind of the overall scheme in terms of -- you
15 know, you have some involvement with enforcement cases from
16 the Chairman's office. So what would you say Myron's role
17 is?

18 A Myron is the director of communications. So
19 Myron's role is to think both strategically and specifically
20 about how the agency communicates all manner of
21 communications that we have, whether it's related to cases or
22 rulemaking or the Chairman's speeches, et cetera.

23 Q Why would you be telling him, "We have a very
24 significant case brewing on this, as you know"?

25 A Myron is part of the Chairman's staff. His job as

1 the director of communications, at least as I understand it,
2 is to be aware of generally what's going on in the agency and
3 what's coming down the pike. So it would be normal for Myron
4 to know what's coming down the pike, so to speak, so that he
5 can prepare appropriately whatever communications will be
6 appropriate when we bring a case.

7 Q And in this Exhibit 4, in this e-mail exchange
8 where you say, "We have a very significant case brewing,"
9 you're referring to the Goldman ABACUS case?

10 A Correct.

11 Q Let me show you the next document, which is a
12 continuation of that same e-mail string, which we're going to
13 mark as Exhibit 5.

14 A Can I just make one comment about this?

15 Q Please. Please.

16 A It would be my expectation, and I would be
17 reasonably confident, that this conversation was -- there may
18 not be more -- the conversation would not have in any way
19 implied responding to the McClatchy reporter about the case.
20 Myron would not have assumed me to mean that he should
21 communicate that information to the reporter.

22 Q Oh, okay. Okay.

23 A I'm 100 percent sure of that.

24 Q Okay. I didn't --

25 A And in fact, in our communications we had a great

1 danger on this. I just didn't want to leave you with a
2 misimpression that that communication was intended to be
3 communicated outside the building.

4 Q Okay. It was just that it's related because they
5 were talking about Goldman, so you were referencing Goldman?

6 A Correct. I remember when these articles came out,
7 and I remember people discussing the fact that there was some
8 public discussion, public articles about Goldman CDOs. And
9 that generated conversation by us because we had a nonpublic
10 investigation, and therefore reporters were asking us
11 questions.

12 Q Right.

13 A And since the reporters call the Office of Public
14 Affairs, which Myron loosely -- I don't know if he
15 directly -- I don't know what his dotted line or direct line
16 responsibility is. But from the Chairman's office
17 perspective, he oversees the Public Affairs operation.

18 Q Right.

19 A So the questions will come up to him about what
20 reporters are asking. And so he's often trying to understand
21 what is going on factually so folks can understand the
22 context.

23 Q All right. So the next document is Exhibit 5, and
24 this is a continuation of that e-mail exchange. It's
25 11/4/2009, 8:12 p.m., from you to Myron Marlin, is at the top

1 of the exchange.

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

4 BY MR. KOTZ:

5 Q And so in response to you saying, "We have a very
6 significant case brewing on this, as you know," Myron says,
7 "Let's talk later on this."

8 Do you recall anything about conversations with
9 Myron Marlin at this point in time about the Goldman case?

10 A I don't remember any specific conversation at this
11 time. I do remember generally having conversations with
12 Myron about the McClatchy articles.

13 Q What were those conversations?

14 A Just that there was these series of articles --
15 again, I don't remember the specifics of our conversation.
16 But what I generally remember is that we had conversations --
17 I read the articles, he read the articles, and he was trying
18 to understand what was out there in the public space and what
19 our investigation was just so he could understand, I think,
20 the context.

21 Q Was there any concern that the articles might
22 impact the investigation since there was now information out
23 there in the press that related to a matter that the SEC was
24 investigating in a nonpublic way?

25 A Sure. And in fact, that would have been part of

1 our conversations. We're always concerned about -- the
2 Enforcement Division tries as hard as it can to operate
3 nonpublicly. So generally, nobody's happy when articles like
4 this come out that talk about a case that we're not yet
5 prepared to bring. And so we would prefer that these matters
6 remain as nonpublic as possible until we bring our case.

7 Q Was there any concern about specific information
8 about the investigation being in these articles, or was it
9 more of the general topic?

10 A It was general. I don't recall, after these
11 articles, anyone believing that this was based on specific
12 information about our investigation. Our sense was this was
13 investigative reporting, and that these people had talked to
14 a number of people at maybe Goldman, I don't know, banks and
15 in the industry, et cetera, and developed some -- I think --
16 my recollection is that these are pretty extensive articles
17 about the space.

18 And I don't believe that they were just about
19 ABACUS. I think they were about CDOs more generally.

20 Q Right. All right. Let me move on to -- we're
21 going to mark as Exhibit 6 an e-mail exchange you had with

22 [REDACTED] 12/6/2009, 3:26 p.m. is the first e-mail.

23 (Exhibit No. 6 was marked for
24 identification.)

25 THE WITNESS: Okay.

1 BY MR. KOTZ:

2 Q Do you recall [REDACTED] coming to you in the
3 December 2009 time frame to talk about the ABACUS case?

4 A I do.

5 Q And what do you recall about those conversations?

6 A I remember him sending me an e-mail. I'm trying to
7 remember if we also spoke or if we just conducted it by
8 e-mail. But I remember him raising his concerns with me that
9 he didn't believe that the case was going far enough. In
10 other words, he didn't have any concerns that the case was
11 sufficient as to Goldman and Tourre, but that from his
12 perspective he would have liked to see the Division go after
13 more people, and potentially people outside of just Goldman.

14 Q Right. And what did he want from you? What did
15 he want you to do about it?

16 A I don't think he -- I don't believe he was looking
17 for me to take specific action. I think -- he's a former
18 colleague of mine from the trial unit.

19 Q Okay. Okay.

20 A He's been in the trial unit [REDACTED]
21 And I think he was -- I'm trying to remember the phrase he
22 used. I think he was finding -- he was acting, whether it's
23 in conscience or just trying to create additional awareness
24 of his views. I think he -- I suspect he wanted somebody
25 outside of his chain of command who might have consideration

1 to this case to know his views.

2 Maybe he thought that he knows me. We're friendly.
3 If there's more to the case than is presented to the
4 Commission, maybe I would mention it to the Chairman and
5 maybe -- I'm speculating what he thought. But you're asking
6 why he would reach out to me.

7 Q Right.

8 A I have no specific chain of command to [REDACTED] so I
9 don't think he was looking for a specific action, but more
10 that putting this on my radar might lead to others thinking
11 more broadly about what the case could be.

12 Q Right. Okay. And so do you recall that there was
13 sort of an internal disagreement between [REDACTED] and other
14 members of the team on some of the specifics of the ABACUS
15 case?

16 A I do.

17 Q And so do you recall that [REDACTED] felt that
18 there was the possibility of a claim against [REDACTED]
19 and he wanted to take steps to determine if that was the
20 case, while others were more skeptical that you could bring a
21 claim against [REDACTED]

22 A That's my recollection.

23 Q All right. And so let me show you the next
24 document.

25 A I just -- I don't want to leave you with any

1 misimpression that I have -- I have no decision-making
2 responsibility about the Division of Enforcement. So I was
3 being very careful in my response to make clear that he
4 couldn't expect any action from me.

5 Q Right.

6 A I just want to make sure there's no confusion about
7 that.

8 Q Right. But, I mean, hypothetically, if something
9 was brought to your attention and you thought that was some
10 kind of miscarriage done, something -- you know, that you
11 could potentially bring it to the Chairman's attention and
12 intercede, potentially.

13 A Yes. Yes.

14 Q So, I mean --

15 A Correct.

16 Q -- there would be a reason why he might want to
17 bring it to your attention. It doesn't mean you would
18 necessarily do anything, but there might be a reason why you
19 want to bring attention.

20 A Agreed.

21 Q All right. So let's go to the next document. This
22 is Exhibit 7, an e-mail exchange between you and [REDACTED]

23 [REDACTED] And this is dated 12/8/2009, 11:35 a.m. It's kind
24 of hard to read.

25 (Exhibit No. 7 was marked for

1 identification.)

2 THE WITNESS: Okay.

3 BY MR. KOTZ:

4 Q All right. So it's your recollection that
5 initially the ABACUS case was put on the Commission calendar
6 in December of 2009?

7 A Yes.

8 Q And then it was taken off the calendar?

9 A Yes.

10 Q What was your understanding as to why it was taken
11 off the calendar?

12 A My understanding is consistent with what's stated
13 in Exhibit 7. Of course, it was communicated to me directly
14 from either [REDACTED] or Rob Khuzami, which is that based on
15 internal deliberations within the Division of Enforcement,
16 the Division determined that they would take Fabrice
17 Tourre's -- I'm sorry, [REDACTED] testimony before
18 making a recommendation. And so they wished to put it off
19 until a later date.

20 Q And was that sort of [REDACTED] position that
21 they should take [REDACTED] testimony? Do you remember?

22 A [REDACTED] expressed to me that he believed that
23 investigative staff should take [REDACTED] testimony.

24 Q Do you know who made the decision to take it off
25 the calendar?

1 A Just so I understand the question, the decision
2 from the Division's perspective to remove it, or the actual
3 administrative taking it off of the calendar?

4 Q I guess the substantive decision. Who made the
5 substantive decision that the matter should be taken off the
6 calendar?

7 A I don't know.

8 Q It wasn't you or the Chairman's office?

9 A No. No. That's the difference I was trying to get
10 at. We would be -- administratively, we might have approval
11 over what goes on and what goes off. The decision -- this
12 request came from the Division of Enforcement. It would have
13 been whatever management decision -- however they arrived at
14 that.

15 Q And to your knowledge, that decision was made by
16 the Division of Enforcement, not because of any feedback from
17 the Commissioners or the Chairman's office?

18 A Correct.

19 Q Do you have any idea why, if it was an internal
20 enforcement decision, why they wouldn't have made it before
21 putting it on the calendar rather than put it on the calendar
22 and then take it off? See what I'm getting at?

23 A I do. I don't know why that decision was made
24 after it was already put on the calendar. But it's not
25 uncommon for matters to get put on the calendar and then for

1 them to get removed because of further deliberation in the
2 Division.

3 Q And maybe part of the reason is because you get it
4 on the calendar maybe a little bit early in advance so it's
5 set up, but then you're still discussing the case? Is that
6 possible?

7 A It's possible.

8 Q Okay. All right. Let me show you the next
9 document. We're going to mark it as Exhibit 8, an e-mail
10 exchange, again, between you and [REDACTED] the first
11 e-mail 12/9/2009, 11:27 a.m.

12 (Exhibit No. 8 was marked for
13 identification.)

14 THE WITNESS: Okay.

15 BY MR. KOTZ:

16 Q Do you remember [REDACTED] resigning from the
17 ABACUS case, or attempting to resign?

18 A I remember -- I don't -- I mean, I don't know
19 officially whether -- what that means, "Have you resigned?"
20 I remember the -- I believe in the earlier e-mail exchange he
21 told me he was going to ask to be removed.

22 Q Right. Right.

23 A And then I don't know -- I don't recall whether I
24 heard that he in fact at any point was not on the case.

25 Q Right.

1 A But I remember him telling me that he had decided
2 to stay on.

3 Q Okay. Did you have any involvement in him being
4 kept on the case?

5 A No.

6 Q And in [REDACTED] e-mail to you on Wednesday,
7 December 9, 2009, 10:44 a.m. at the bottom of the page, he
8 says, "Mark Adler deserves credit for causing this,"
9 referring to Goldman has been withdrawn from the
10 December 17th calendar in order to take [REDACTED] testimony.

11 Do you know why he thought Mark Adler deserved
12 credit for that?

13 A I don't know specifically. But I have a sense why.

14 Q Okay. What would the sense be?

15 A I mean, Mark is his supervisor. Having come out of
16 the trial unit, it would be my expectation that if [REDACTED] felt
17 like his views weren't being heard, not uncommon for trial
18 unit to bring folks in the trial unit management in who are
19 senior officers who are more senior to have potentially more
20 senior discussions, and that Mark would have backed [REDACTED] up,
21 so to speak, and pressed his views.

22 And it looks like [REDACTED] believes that Mark prevailed
23 upon others to take [REDACTED] testimony before going to the
24 Commission, which is my recollection.

25 Q Okay. One other question about, I'm sorry, the

1 previous e-mail. You say in Exhibit 7, in an e-mail --
2 actually, in an e-mail from [REDACTED] to you, where he
3 says, "Oh, this is" -- all caps -- "THAT case."

4 A Yes.

5 Q Do you know what that would refer to?

6 A Yes. [REDACTED] is somebody who I brought into the
7 Chairman's office to work on enforcement matters with me. I
8 worked closely with him in enforcement. He's a colleague but
9 also a friend, so I have, you know, a lot of communication
10 with him about almost all matters that I work on in the
11 Chairman's office.

12 I believe that after I talked to [REDACTED] I
13 shared that with [REDACTED] And so when [REDACTED] saw [REDACTED] e-mail on
14 December 8th about having it pulled to take the testimony,
15 his e-mail to me was referencing the fact that -- the [REDACTED]
16 [REDACTED] discussion that I had told him about.

17 Q So was it unusual for there to be some kind of
18 disagreement like this that was brought to your attention,
19 like what occurred in the ABACUS case with [REDACTED] He's
20 saying, "that is THAT case," like it's not a common
21 occurrence that somebody from the enforcement unit would come
22 and say, I have this issue, I'm not being heard, or whatever
23 it is.

24 A I think that's fair. It's not unusual for trial
25 lawyers to have disagreements at all with the investigative

1 staff.

2 Q Right.

3 A And it's not unusual, since I know a lot of these
4 people, for someone to tell me about it. But this was
5 somewhat unusual in that [REDACTED] was approaching me more to kind
6 of appeal that he didn't feel like his views had prevailed.
7 And I think it's fair to say that that's somewhat unusual.

8 Q Did you take a side, so to speak, or did you
9 venture into the debate or the discussion of [REDACTED]
10 approach in the case versus others in the investigative team?

11 A I did not.

12 Q You just kind of listened to [REDACTED]

13 A Correct. I mean, I would have conversations on a
14 variety of things with folks like Rob and Lorins. But no, I
15 wouldn't -- I would have tried hard not to because I'm not
16 sure it's my place to make that kind of decision. I think my
17 e-mails show that I was trying to be very careful in how I
18 communicated with [REDACTED] so as not to suggest that I was either
19 for or against his side.

20 Q So according to this document and a couple other
21 documents, the matter, the ABACUS matter, was taken off the
22 calendar to take testimony from [REDACTED] prior to
23 making a recommendation. That's [REDACTED] explanation in the
24 e-mail from [REDACTED] And then [REDACTED] says to you,
25 "As you may know, Goldman has been withdrawn from the

1 December 17th calendar in order to take [redacted] testimony."

2 What we're curious about is that we saw some
3 e-mails which showed that there were actually efforts made to
4 take [redacted] testimony prior to placing it on the calendar,
5 but that there were difficulties with dates, and so they
6 weren't able to get a date for [redacted]

7 Do you recall that?

8 A I do. I think [redacted] e-mail actually references
9 that, and I have a vague recollection that [redacted] mentioned
10 that to me. I think that's what [redacted] means in relaying that
11 [redacted] said, "We had subpoenaed his testimony back in early
12 November, but were getting stonewalled."

13 I recall [redacted] telling me something to that effect,
14 and that at or around the time in this time in early
15 December. Somehow I think [redacted] or his counsel and the
16 Division managed to agree on testimony or a date.

17 Q So prior to putting it on the December calendar,
18 there were attempts made to take [redacted] testimony. They
19 were stonewalled, and then they decided that it wasn't
20 necessary?

21 A That's what [redacted] communicated to me.

22 Q And did you ever get an explanation of why [redacted]
23 and/or others believed it wasn't necessary to take [redacted]
24 testimony? You know, it's not a matter of charging him.
25 It's just taking his testimony. Why wouldn't you take his

1 testimony? Or did you not get into that much detail?

2 A I recall a conversation with [REDACTED] in which we
3 talked about taking [REDACTED] testimony or not taking [REDACTED]
4 testimony somewhere in the November/December time frame, and
5 him -- perhaps when it got taken off the calendar because it
6 wouldn't have been unusual for me to ask what you did: Why
7 didn't you just do it before you sent the recommendation up?

8 And [REDACTED] then told -- I had not communicated to
9 [REDACTED] that I had talked to [REDACTED] So he told me, as if I
10 was hearing it for the first time, that there was some
11 dissension among staff -- I think he referenced [REDACTED]
12 specifically -- about taking [REDACTED] testimony.

13 He told me that in his view, based on the documents
14 he reviewed and the testimony they had to date, it wasn't
15 going to get them anywhere. It didn't really -- his sense
16 was it wasn't terribly important. But he also believed they
17 could take it in litigation, so they weren't really giving
18 anything up.

19 So if they wanted more information about what [REDACTED]
20 would say, they would simply subpoena his testimony in
21 litigation.

22 Q Okay. Did you believe that it was the correct
23 decision to take the ABACUS case off the calendar in December
24 to take [REDACTED] testimony, or did you not kind of weigh in?
25 Were you not able to form an opinion because you weren't

1 delved enough into the facts?

2 A I don't think I had an opinion substantively about
3 whether it was appropriate. The request from the Division of
4 Enforcement to take it off the calendar, from an
5 administrative perspective, was appropriate.

6 Q All right. Let's go on to the next document.
7 We're going to mark it as Exhibit 9. The top is actually an
8 e-mail from Myron Marlin to Myron Marlin, 1/4/2010,
9 12:08 p.m. But below that are some e-mails that you're
10 involved in.

11 [REDACTED]: That's one no one else will listen
12 to.

13 (Exhibit No. 9 was marked for
14 identification.)

15 THE WITNESS: I only know one Myron Marlin.

16 (Laughter.)

17 THE WITNESS: (Examining.) Are you going to ask me
18 about specifics in the articles?

19 BY MR. KOTZ:

20 Q No. Not particularly. Just generally, do you
21 remember that there was an article that came out the day
22 before Christmas 2009 about CDOs?

23 A I do.

24 Q And you say in this e-mail to Mary Schapiro, Myron
25 Marlin, and Didem Nisanci on Thursday, December 24th at 9:37,

1 "This is our Goldman CDO case in excruciating detail."

2 A Yes.

3 Q And so was it some of the same concern you
4 expressed before about facts just being out there in the
5 public that relate to something that the SEC's working on in
6 a private, nonpublic way?

7 A Yes. Let me be clear. I was not suggesting to any
8 of the recipients of this e-mail that the information in this
9 article came out of the SEC. I was only telling them that
10 the facts that are on the e-mail, some of which were --
11 actually, much of which was contained, if I recall correctly,
12 in the McClatchy articles, but this was deeper as to, if I
13 remember correctly, these particular CDOs because this
14 included information specifically about [REDACTED] and other --
15 the people that the Enforcement Division was looking at.

16 One of my jobs is to monitor enforcement-related
17 things. This is a normal communication I would have with the
18 Chairman, Myron, and Didem about, quite frankly, anything
19 enforcement-related.

20 I send them e-mails like this routinely because
21 when I don't, the Chairman will send me an e-mail saying, "Do
22 we have a case on this? Do we have a case on that?" Because
23 she's always interested to know, if it's in the securities
24 space, whether or not it's something that we're looking at.

25 I learned after several months to try to get ahead

1 of that and be a good employee. So I usually want to inform
2 them, when I have information they might want to know about,
3 that an article is related to a case that we're
4 investigating.

5 Q Was there a concern that perhaps some of the
6 information in the article came from Goldman? I mean --

7 A I'm pausing only because I don't know that we -- I
8 don't know that "concern" is the word that we used. I think
9 we -- but I do think we assumed that some of this information
10 came from Goldman and other places. But I don't think we
11 knew.

12 Q Was there any information in this article that was
13 information that shouldn't have gone out? I mean, not
14 necessarily that the SEC leaked it, but that it was
15 information in the context of the ABACUS investigation that
16 shouldn't have been released, and maybe there was a concern
17 that Goldman or others had released it?

18 A Not exactly because we confront this -- it's not
19 uncommon for us to read articles that are consistent with
20 enforcement investigations, which causes us concern. I
21 don't -- the frustration in these situations is that none of
22 the people -- presuming, as we did, that this information
23 came from outside the SEC, Goldman has every right -- the
24 fact of our investigation wouldn't preclude anybody working
25 at Goldman from talking to the public, or at any of the

1 counter parties to the CDO deals, et cetera.

2 So we wouldn't have thought about it in terms of
3 whether someone improperly shared the information with the
4 press. It's more of a frustration.

5 Q Gotcha. Okay. Good. All right. Why don't we
6 move to the next one, Exhibit 10, an e-mail exchange between
7 you and [REDACTED] 1/4/2010, 10:19 p.m.

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

10 THE WITNESS: Okay.

11 BY MR. KOTZ:

12 Q All right. Before we get into the specifics of the
13 e-mail, this is kind of our understanding of what occurred,
14 and I want to see if it comports with your recollection.

15 The ABACUS matter was first put on the calendar,
16 then taken off the calendar in December to take [REDACTED]
17 testimony, with the idea essentially being that was the act
18 that would be done, taking [REDACTED] testimony, and that as
19 soon as [REDACTED] testimony was taken, it'll be placed back on
20 the calendar.

21 Is that your recollection?

22 A Yes. Assuming no information came to light in
23 [REDACTED] testimony that caused them to change their
24 recommendation.

25 Q Right. Right. And so that's why it seems as

1 though -- [REDACTED] says, "We'll be re-sending this recommendation
2 up to the Commission on Friday, January 8th, a relatively
3 short time after it was taken off the calendar in December,"
4 because he --

5 MR. KOTZ: When was the date of [REDACTED] testimony?
6 I think it was early January.

7 [REDACTED]: Yes. It was certainly early January.

8 BY MR. KOTZ:

9 Q Yes. I believe [REDACTED] testimony was early
10 January. And so essentially, the significant investigative
11 step that was intended to be done after it was taken off the
12 calendar in December was to take [REDACTED] testimony. And
13 after [REDACTED] testimony was taken, assuming that didn't bring
14 up other issues, it would go back on the calendar.

15 Is that your recollection?

16 A Right. That is my recollection.

17 Q And so [REDACTED] in the e-mail on page 2 of 3 of
18 Exhibit 10, the e-mail he sends to [REDACTED] Elizabeth
19 Murphy, [REDACTED] with a copy to Cheryl Scarboro and
20 himself, on Monday, January 4, 2010 at 4:15 p.m., says,
21 "We'll be sending the recommendation up to the Commission on
22 Friday, January 8th," et cetera, et cetera. And then he
23 says, "This is a high profile enforcement case that recently
24 became time-sensitive."

25 Do you know why it recently became time-sensitive?

1 A (Examining.) My recollection is that we received
2 information that -- "we" being people in the Commission
3 generally -- that the Senate Permanent Subcommittee on
4 Investigations was considering doing a hearing in late
5 January. We learned about this some time around this period
6 of time.

7 And we were concerned that more public
8 information -- this would be, presumably, a public hearing,
9 and that our witnesses, there would be more public airing of
10 matters related to our investigation which, as we talked
11 about earlier, is often a concern of ours.

12 And so the hope that, all things being equal, if
13 all the ducks are in a row, to try to bring our case before
14 there was a public hearing with the witnesses related to this
15 case.

16 Q All right. In that vein, I'm going to show you the
17 next document. I'm going to skip one. We're going to go to
18 the Robert Khuzami e-mail to [REDACTED] you, [REDACTED]
19 Lorin Reisner, 1/5/2010, 7:52 p.m.

20 A We're done with this?

21 Q Yes. We're going to mark this Exhibit 11.

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

24 BY MR. KOTZ:

25 Q Take your time to read it. If you go to the second

1 page, there's an e-mail from Robert Khuzami to Mary Schapiro,
2 Didem Nisanci, [REDACTED] and you, Monday,
3 January 4, 2010, 1:45 p.m., where he references what you just
4 said.

5 A (Examining.) Okay.

6 Q All right. And so was this what you were referring
7 to, that Robert Khuzami had heard that Senator Levin and the
8 Senate Permanent Subcommittee on Investigations was preparing
9 a hearing in late January or February?

10 A Yes, although -- yes. That's right.

11 Q And in this e-mail that Robert Khuzami sends out to
12 you and others, he says, "As we would certainly want to file
13 our Goldman case, which addresses some of these same issues,
14 before the hearing, which will put us on the offensive on
15 this issue."

16 Do you know what he meant by "put us on the
17 offensive"?

18 A I don't know what he meant by the use of the word
19 "offensive." But the concern I was alluding to before is
20 that with a public airing -- part of the concern is that with
21 the a public airing of the same facts and witnesses, there
22 will be a lot of questions about these facts, a lot of
23 discussion about them in the public forum.

24 And I guess the additional thing he's alluding to
25 that I don't think I mentioned is there will be a lot of

1 questions about where's the SEC on this. That's what I
2 presume he means by "on the offensive."

3 Q I see.

4 A I don't know if that's more offensive or defensive,
5 but --

6 Q So it would be helpful for the SEC if the news
7 about someone looking into Goldman came out first with the
8 SEC looking at it, so there wouldn't be questions of why the
9 SEC isn't looking at it when in fact they were, it just
10 wasn't public yet?

11 A It's -- that's a part of -- it's that plus it's
12 always the Commission's preference for the facts about an
13 investigation to come from us because we put -- we do it in a
14 particular way to try and communicate certain information
15 about that investigation, you know, in a way that we view as
16 responsibly.

17 We like the information to come out in an organized
18 fashion from us as opposed to a hearing where kind of
19 anything can go, anything can happen, and we don't really
20 have, necessarily, control over the facts as they get
21 released.

22 Q And just -- when you say "in an organized fashion
23 from us," would you mean in the form of a complaint, or in
24 what --

25 A A complaint in a press release where we're putting

1 out a full set of facts about what we found in an organized
2 investigation, as opposed to what might come out in an ad hoc
3 way in one four-hour hearing with a small set of witnesses,
4 where the public won't be getting a full sense of the facts.

5 Q Okay. The next document we're going to mark is
6 Exhibit 12, e-mail at the top from you to Lorin Reisner and
7 Robert Khuzami, 1/5/2010, 7:07 p.m.

8 (Exhibit No. 12 was marked for
9 identification.)

10 BY MR. KOTZ:

11 Q And so do you recall generally, before we get to
12 the specifics, that Robert Khuzami had thought that there
13 might be a hearing in late January/February, and then
14 information came out that there wasn't going to be a hearing?
15 And I think that may be what Lorin Reisner is referring to in
16 this e-mail exchange in Exhibit 12.

17 A Mind if I take a look?

18 Q Sure. Please.

19 A (Examining.) Okay.

20 Q All right. Let me show you a couple other
21 documents just so that you have the full picture of e-mails
22 before I ask the questions.

23 MR. KOTZ: So Exhibit 13 is an e-mail exchange from
24 [redacted] to [redacted] you, Didem Nisanci, [redacted]
25 [redacted] beginning with one on 1/15/2010 at 12:52 p.m.

1 (Exhibit No. 13 was marked for
2 identification.)

3 MR. KOTZ: And then Exhibit 14 is an e-mail at the
4 top from you to [REDACTED] 1/15/2010, 11:30 a.m.

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

7 THE WITNESS: Okay.

8 BY MR. KOTZ:

9 Q All right. Does this refresh your recollection
10 that [REDACTED] learned that Goldman had provided copies to
11 the Senate. Folks found out that that was the PSI, but that
12 the information that the legislative affairs folks got was
13 that PSI was not doing a hearing on this matter, as Rob had
14 thought might happen?

15 A My recollection is slightly different.

16 Q Okay.

17 A The two things I would add or change is, one, I
18 don't think that the -- what we understood was that they
19 weren't going to do a hearing, but they were going to do a
20 hearing later because of the volume of documents.

21 And I have a general recollection that PSI at some
22 point might have reached out to leg affairs to ask if we
23 could provide them copies of anything we have, documents or
24 transcripts. And I think we determined that we didn't have
25 anything; it was nonpublic information that wasn't

1 appropriate to share.

2 And we might have suggested -- it wouldn't be
3 unusual for us to suggest to a committee that they could of
4 course subpoena it from the Commission if they want to. But
5 I think, generally, PSI, in my experience, limited to the
6 last year and a half, they try to be respectful of nonpublic
7 investigations; went first to Goldman, where they could get
8 documents.

9 Q Okay.

10 A And so we had heard that. And [REDACTED] was hearing
11 directly from Goldman's lawyers that they were going to be
12 producing these documents. So [REDACTED] who I'm pretty sure
13 worked at [REDACTED]

14 Q Right.

15 A -- knew that if Goldman's giving all the documents
16 now, they're not going to be able to get to a hearing. And
17 the intel we received was they would not be able to do it
18 then, but they would be doing it later.

19 Q Okay. Gotcha.

20 A Who knows when. That we didn't know.

21 Q And when Lorin Reisner said in Exhibit 12, in
22 an e-mail to Robert Khuzami and you, Monday, January 4, 2010,
23 10:55 p.m., "I think that January 28 is the better
24 alternative unless there's a vital need to target
25 January 14th, and the latest intelligence is that there

1 may be no need to expedite," was he referring to this
2 intelligence that the PSI was not doing the hearing as early
3 as folks initially thought?

4 A I don't know, but that would be my assumption.

5 Q But there was some discussion, to your
6 recollection, about PSI's request for the SEC to give PSI
7 information regarding the Goldman case; but the SEC did not
8 give them any nonpublic information?

9 A My recollection is only about a single
10 conversation, I think. I don't know who it was between. It
11 was a soft -- I would refer to it as a soft ask. It was
12 like, "Is there something you can give?" And they didn't
13 push back when they were told no.

14 But just so I'm being extra careful in case it
15 turns out I'm being wrong here, I'm 90 percent sure of that.
16 If I'm thinking of a different interaction, that's possible.
17 But that's my recollection.

18 Q But you don't recall any effort to get Commission
19 approval to release nonpublic information to PSI?

20 A Correct.

21 Q All right. Let me show you the next document.
22 We'll mark it as Exhibit 15. At the top is an e-mail from
23 [REDACTED] to you, 1/15/2010, 11:25 a.m.

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

1 THE WITNESS: Okay.

2 BY MR. KOTZ:

3 Q And when you said in the e-mail Friday, January 15,
4 2010, 11:24 a.m. to [REDACTED] "We really need to bring this
5 case on the 28th," was that before you learned that the PSI
6 was not going to conduct a hearing? Or was there another
7 reason why you were saying that?

8 A More likely another reason.

9 Q Do you remember what that reason might have been?

10 A I'm not sure without looking at documents, and I'm
11 not even sure whether I would find them. My recollection is
12 that there were attempts -- my recollection or belief is that
13 looking forward, there may have been very few meetings where
14 we'd have a full Commission.

15 And so knowing that they were interested in
16 bringing the case quickly, notwithstanding the PSI hearing, I
17 was sort of trying to tip off [REDACTED] that if you don't bring it
18 the 28th, you may not be able to bring it till who knows
19 when. I don't remember the lineup, but --

20 Q So you think it was a matter of scheduling?

21 A A matter of scheduling. Correct.

22 Q All right. Let me show you the next document we're
23 going to mark as Exhibit 16. At the top of the page is an
24 e-mail from you to [REDACTED] 1/15/2010, 12:54 p.m.

25 (Exhibit No. 16 was marked for

1 identification.)

2 THE WITNESS: (Examining.) Well, this is all the
3 same day. So it's possible, depending on the timing of that
4 e-mail, that I still didn't -- I don't know. It's possible
5 that it was related to the PSI. If I didn't yet know that,
6 if this is all the same day, it's one of the two reasons that
7 I mentioned.

8 BY MR. KOTZ:

9 Q Right. Okay. And in this e-mail on 1/15/2010,
10 11:54 a.m., from you to [REDACTED] does this refresh your
11 recollection any more about the issue of nonpublic
12 investigation? You say in here, "PSI is probably the most
13 conscientious committee about safeguarding nonpublic
14 information."

15 So maybe there was a little bit less of a concern
16 with PSI about nonpublic information. But does this refresh
17 your recollection at all about whether anything was shared
18 with PSI?

19 A I don't think that changes my view about whether
20 anything was shared. And I think this goes more to not
21 whether they would share our information, but knowing that
22 they got documents and information from Goldman, I think what
23 I was communicating to [REDACTED] is some committees that aren't
24 doing investigations, necessarily, but are looking for
25 documents for whatever their particular interests are for

1 their committee might quickly post information on their
2 website as they get it or process it.

3 And what I was trying to communicate from my
4 discussions with [REDACTED] and [REDACTED] who have much more experience
5 than I do, is that that's not PSI's MO. They're more likely
6 to do an investigation. They may post information publicly
7 when they do a hearing, but they typically wouldn't do that
8 till the end of an investigation.

9 Q Okay. But there were still reasons to be careful
10 about sharing information with anybody, even if they were
11 conscientious about it?

12 A Sure. I was not trying to suggest otherwise.

13 Q And then, just to clarify in terms of the timing,
14 if you're interested, the e-mail you sent where you say, "We
15 really need to bring this case on the 28th," that was
16 actually at 11:24 a.m.

17 That was before [REDACTED] came in with "the soft
18 touch intel we're getting from PSI is that they're not doing
19 a hearing on this any time soon," and before you said, "Feel
20 free to share with enforcement folks that the very soft
21 intelligence our folks are getting is that the PSI does not
22 intend to do a hearing."

23 So it does look like potentially, when you wrote,
24 "We really need to bring this case on the 28th," and
25 immediately below is [REDACTED] e-mail about Goldman

1 providing copies to the Senate, that that was before you knew
2 that the PSI was not doing a hearing at that time.

3 A Okay. I don't --

4 Q So you think, given that, "We really need to bring
5 this case on the 28th" may actually have related to PSI?

6 A I think it is. It's possible or likely that. If
7 it's before I learned that there wasn't going to be a
8 hearing, then it's possible or likely that I was
9 communicating to [REDACTED] that the 28th needed to be the date.

10 Q All right. Let's move on to the next document.

11 A I just want to -- those -- the two reasons I gave
12 aren't mutually exclusive, by the way.

13 Q Sure. Sure.

14 A So I may -- given my role in the calendaring
15 process, it may be that given the press to bring the case,
16 people had concerns about bringing it before the hearing.
17 And the calendaring, I don't know. It may be that I knew,
18 for example, that February 7th there wouldn't be a full
19 calendar.

20 So I was saying, if we're in a hurry, the 28th.
21 I'm always thinking about -- since I deal with the calendar
22 every day, so I'm always thinking about when things can be
23 calendared. So those things might have gone hand in glove.

24 Q Okay. All right. Let me show you the next
25 document we're going to mark as Exhibit 17, an e-mail from

1 you dated Sunday, January 24, 9:56 a.m. to Didem Nisanci,
2 Kayla Gillan, and Myron Marlin.

3 (Exhibit No. 17 was marked for
4 identification.)

5 THE WITNESS: Okay.

6 BY MR. KOTZ:

7 Q Do you recall why you were apprising these three
8 individuals of the Goldman CDO case?

9 A Yes.

10 Q Okay. Why?

11 A I can't remember specifically. But within the
12 prior week or two, Didem and -- I had a meeting, or [REDACTED] and
13 I had a meeting with Didem and Kayla where they had expressed
14 some interest or frustration that they weren't -- they didn't
15 know -- they had more visibility into some of the stuff going
16 on in the rulemaking side, and they didn't like that they
17 were reading about enforcement cases in the newspaper.

18 And they were -- and they had asked, can you let us
19 know when big enforcement cases are coming, too, so we can
20 work it into what we know is going on and sort of the overall
21 management of the agency.

22 So on the heels of that, I wanted to let them know
23 that the Goldman case was on the calendar that week.

24 Q And you say in this e-mail in Exhibit 17, "There's
25 a meeting tomorrow morning to discuss GC's concerns about

1 **this case."**

2 **Do you remember what GC's concerns about the case**
3 **were?**

4 A Vaguely, two things I remember about this. One --
5 I should put a little bit of context around this. GC meets
6 every week about the Commission calendar about Monday or --
7 you know, it could be Friday, could be Monday, and they go
8 through all of the cases.

9 So this would have been the opportunity that David
10 Becker goes through every case and discusses what his
11 thoughts or concerns are with the GC staff and some other
12 people who might go to the meeting and might be a
13 representative from Enforcement or one of the other
14 divisions.

15 So this was part of the -- I just wanted to make
16 sure you understood this is a normal process. This wasn't
17 special to Goldman.

18 **Q Right.**

19 A And then, secondly, I do have a recollection that
20 the General Counsel's Office was looking closely about the
21 respondeat superior issue of liability for Goldman. I don't
22 know recall that they were -- either way whether they were
23 troubled by it, "concerns" meaning that they believed it
24 wasn't a good theory.

25 But I remember their having a discussion at some

1 point with someone in the General Counsel's Office just about
2 that theory.

3 Q But at any point, do you recall the General
4 Counsel's Office raising any objection to going forward?

5 A No.

6 Q So it was just kind of general discussions?

7 A Yes. It's the normal -- this is the normal work
8 flow related to enforcement cases.

9 Q All right. Let's move on to the next e-mail.
10 We'll mark as Exhibit 18. At the top of the page is an
11 e-mail from Cheryl Scarboro to [REDACTED] 1/22/2010,
12 6:09 p.m.

13 (Exhibit No. 18 was marked for
14 identification.)

15 THE WITNESS: (Examining.) Just for my own
16 clarification, I'm not any of this e-mail?

17 BY MR. KOTZ:

18 Q Correct. I'm going to show you this --

19 A Great. I just want to make sure I'm not missing
20 something.

21 Q -- and then I'm going to show you a few others. I
22 want to make sure that you have kind of the complete record
23 before we ask you any questions.

24 A Great.

25 Q Then I'm going to show you now Exhibit 19, in which

1 you respond to some of this discussion. And that, at the top
2 of the page, an e-mail from you to [REDACTED] 1/25/2010,
3 7:51 a.m.

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

6 THE WITNESS: Okay.

7 MR. KOTZ: All right. And then let me show you the
8 next one, which is Exhibit 20, which is another line of
9 responses to the same e-mail. At the top of the page, it's
10 an e-mail from [REDACTED] to you, 1/25/2010, 11:53 a.m.

11 (Exhibit No. 20 was marked for
12 identification.)

13 THE WITNESS: Okay.

14 BY MR. KOTZ:

15 Q All right. So do you recall this discussion about
16 whether it made sense to avoid filing this enforcement
17 Goldman case in this time frame on Friday versus the idea
18 that perhaps the conventional wisdom about avoiding Friday is
19 no longer relevant?

20 A Yes. It's an age-old debate in the building that
21 we talked about all the time in this and many other cases.

22 Q Which is what?

23 A Which is some people -- I think the old
24 conventional view is that Friday is a dead news day because
25 if you do something on Friday, then it's really the weekend

1 newspapers, and that the weekday newspapers and news is
2 somehow more important.

3 And there are others who believe that in the
4 24-hour news cycle and the advent of people getting more of
5 their news from the internet, and the fact that Sunday papers
6 are also well-read by the public, that there's nothing wrong
7 with Friday.

8 And so I think that debate has gone on since I
9 started working in the Chairman's office among the public
10 affairs people and others.

11 Q Okay. Just out of curiosity, the Goldman case was
12 filed on Friday and did get considerable news. Did that
13 resolve the age-old debate or is it still ongoing even after
14 that?

15 A I imagine that people might be able to point to it
16 as precedent for the Friday view. But I have still heard
17 people argue that we shouldn't file things on Friday. So
18 people seem dug in.

19 Q And so at this point, you said, in Exhibit 19,
20 "I'll poll folks and let you know our thoughts."

21 Do you remember what the kind of consensus was at
22 the end of the day about this issue?

23 A I don't recall that we resolved -- I don't recall
24 that we resolved that issue in January before it got pulled
25 from the calendar.

1 Q All right. Let me show you two more documents, the
2 next two.

3 Exhibit 21 is an e-mail from you to Myron Marlin,
4 1/26/2010, 1:27 p.m.

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

7 MR. KOTZ: And Exhibit 22 is an e-mail exchange,
8 with the top from Lorin Reisner to you, 1/26/2010, 1:24 p.m.

9 (Exhibit No. 22 was marked for
10 identification.)

11 THE WITNESS: This was the day after. So this is
12 Tuesday.

13 MR. KOTZ: Right.

14 THE WITNESS: 22 is before 21? Is that right?

15 MR. KOTZ: Right. Yes.

16 THE WITNESS: Okay.

17 BY MR. KOTZ:

18 Q All right. And so I guess what I'm trying to
19 get at generally from all these e-mails is, is it your
20 recollection that in the January time frame, there was the
21 sense that the Goldman case was really about to be filed, and
22 there were actual discussions about what day it was going to
23 be filed.

24 And it had gone to a point where it was put on the
25 calendar, and assuming that the Commission approved it, there

1 were, you know, real discussions about the actual filing of
2 it. Is that your recollection?

3 A That is -- that is correct. That is my
4 recollection.

5 Q Because eventually, of course, it would be pulled
6 off the calendar. But at least at this point in time, which
7 was two days before the Commission was scheduled to look at
8 it, the thought was it was going to be filed almost
9 imminently?

10 A We had every reason to believe that if the
11 Commission approved it, we were going to file it that week.

12 Q Gotcha. Yes. And do you recall what the issue
13 that Lorin had? "I've flagged the issue we discussed. He
14 will discuss with Rob. I'll raise again at the end of the
15 day. Let me know how strongly you feel." Is that the issue
16 that eventually led to it being pulled, or was that something
17 else?

18 A No. I believe this -- no. It wouldn't have been
19 that because this is an e-mail with Myron Marlin. I wouldn't
20 have discussed a substantive issue like that with Myron.
21 This would have been public relations-related. It would have
22 been around a concern that -- just what the right day to
23 bring it was from a public relations perspective.

24 My suspicion is that the issue was a belief by
25 Myron that if we waited till Monday, it would be hard to --

1 Goldman or -- the story would get out, and we wouldn't have
2 control of the story, like I was discussing earlier, with our
3 press release and a complaint. The press would get hold of
4 it.

5 Q So on the one hand, there was the discussion about
6 whether you want to issue it on Friday. But on the other
7 hand, if you wait too long, then the story will already get
8 out. Right?

9 A Correct.

10 Q All right. Let me --

11 A But Lorin's view -- I mean, if the complaint's not
12 ready, we wouldn't file it until the complaint is ready.

13 Q Right. All right. Let me show you the next
14 document. It's a little bit earlier, but a different
15 subject. So I wanted to just ask you about it now.

16 We're going to mark as Exhibit 23 an e-mail from
17 Mary Schapiro to you, at the top of the page, 1/24/2010,
18 10:21 a.m.

19 (Exhibit No. 23 was marked for
20 identification.)

21 THE WITNESS: Okay.

22 BY MR. KOTZ:

23 Q All right. So I want to draw your attention to
24 Mary Schapiro's e-mail to you, Sunday, January 24th, where
25 she says, "I'm very anxious to get the GS case out. Do we

1 name individual? No settlement." Right.

2 And then I want to show you another document which
3 we're going to mark as Exhibit 24 which is an e-mail exchange
4 that starts with an e-mail from you to Lorin Reisner,
5 1/24/2010, 11:16 a.m.

6 (Exhibit No. 24 was marked for
7 identification.)

8 THE WITNESS: Okay.

9 BY MR. KOTZ:

10 Q And in that e-mail, in the e-mail exchange in
11 Exhibit 24, you state in the e-mail to Lorin Reisner on
12 1/24/2010, 11:16 a.m., "Mary mentioned today that it is the
13 case she is most focused on. No surprise," referring to
14 ABACUS.

15 What do you recall about the Chairman's particular
16 interest in moving this case forward?

17 A Well, I just want to be -- I don't know what
18 particularly she had in her mind about what she was focused
19 on.

20 Q Sure.

21 A But from my conversations, at least in January, my
22 recollection is that she was very disappointed after the
23 December New York Times articles. We had a handful of
24 conversations between that -- there was the McClatchy
25 articles, then there was the New York Times.

1 She probably -- I may have apprised her that it was
2 going to be calendared in December and moved to January. And
3 then -- so she was -- at this point, and I'm asking, when are
4 we bringing it? Because now the whole story about the ABACUS
5 CDO was public, and she was anxious for us to bring a case,
6 if we had one, so that our actions were part of the public
7 discourse on it.

8 Q All right. Then let me show you the next document,
9 which is Exhibit 25, an e-mail at the top from [REDACTED]
10 to you, with a copy to [REDACTED] 1/27/2010, 1:12 p.m.

11 (Exhibit No. 25 was marked for
12 identification.)

13 BY MR. KOTZ:

14 Q And this one has an e-mail from you to [REDACTED]
15 [REDACTED] Wednesday, January 27, 2010, 12:04 p.m. "Please
16 pull the ABACUS from the calendar at the request of the
17 Enforcement Division. It will be rescheduled shortly."

18 A Uh-huh.

19 Q So the case is moving forward. There's discussions
20 of finalizing the complaint, talking about the different days
21 that the case is going to be filed, assuming the Commission
22 approved it.

23 The Chairman says that she's anxious to get the
24 case out and that it's the case she's most focused on. But
25 it's pulled. How come?

1 A The Chairman is one of five Commissioners. My
2 recollection is that there was a lot of discussion on Tuesday
3 and witness, January 26th and 27th, between and among
4 Commissioners, Commissioners' counsel, enforcement staff, and
5 as is often the case, among Commission counsel, about the
6 ABACUS case.

7 I think each office had some questions, issues, or
8 concerns that they were grappling with. And I think there
9 developed a consensus by Wednesday morning, the 27th, that
10 the Commission would benefit in putting this off until a
11 later time.

12 I think the specific concern -- there were legal
13 questions that some Commissioners had, which is normal
14 discussion and debate. I think, to my recollection, what
15 pushed it to -- pushed us to agree to take it off the
16 calendar was a view that there was a lot of questions about
17 Eagle and whether there were going to be any other
18 individuals.

19 I think there was -- there might have been another
20 individual that --

21 Q Paulson?

22 A Sorry?

23 Q Paulson?

24 A No. I'm not thinking so much about Paulson. I
25 could be wrong, but I thought there was another person.

1 There might be another person, either at Goldman or maybe
2 at -- not Paulson himself, but at the Paulson firm. There
3 was someone else that was at least in the mix that they were
4 thinking about.

5 I think that might have been reflected in the memo,
6 or it might have been disclosed to the counsel in the
7 meetings. And a number of Commissioners believed, given that
8 this was going to be a case receiving a lot of public
9 scrutiny, we should go forward with our full or best foot,
10 that if we're not sure if we're going to -- I think there was
11 some discussion about whether to Wells [REDACTED]

12 Q Right.

13 A And I think the conclusion -- ultimately perhaps
14 unanimous; if not, a majority view -- was we should really
15 wait until we have the full case that we may bring. It's not
16 unusual for us to bring a case, to continue to investigate,
17 and to bring more people into an action later.

18 So their concern wasn't that it's not appropriate.
19 It was more that in this particular case, folks felt like the
20 case would benefit from bringing additional parties if they
21 were available.

22 I remember at least two Commissioners -- I don't
23 remember which ones -- thinking, well, that particularly
24 because this was a respondeat superior theory of liability
25 for Goldman, that the case against Goldman would be stronger

1 if we had individuals higher up the chain from Tourre, which
2 was a pretty compelling argument.

3 And in my discussions with the Chairman and among
4 other Commissioners' offices, there seemed to be a consensus
5 it would benefit by putting this off.

6 Q Okay. I mean, the Chairman testified that she had
7 a conversation with Commissioner Casey where Commissioner
8 Casey expressed the view that we shouldn't bring it
9 piecemeal, we should bring it all together.

10 Is that consistent with your recollection?

11 A The Chairman shared that conversation with me.

12 Q Yes.

13 A It's consistent. I had those conversations with
14 counsel to Commissioner Casey, I actually think counsel to
15 Commissioner Paredes, counsel to Commissioner Walter, and
16 maybe even Commissioner Aguilar, I believe that that issue
17 came up with all of the Commissioners' offices.

18 Q So in a sense, the decision was made -- although it
19 was pulled at the request of the Enforcement Division, it was
20 made in the January time frame to remove the ABACUS case from
21 the calendar because of some feedback from the Commissioners
22 from and their counsels.

23 A That's correct.

24 Q And essentially, the idea was, let's determine
25 everything we can, investigate thoroughly all aspects of the

1 case, determine if there are any other individuals who may be
2 charged, and once all those determinations are made, then
3 bring it.

4 Is that fair?

5 A Correct. Yes. I don't think it was that -- if we
6 brought it on the on the 28th, I don't think the decision was
7 the Commission -- a majority of the Commission might not
8 approve it. I think there was a consensus that it would be
9 better, on balance, to wait and have the whole thing and
10 consider it then. That was the consensus, if not unanimous,
11 view.

12 Q Okay. And there was another matter that was raised
13 by Lorin Reisner, an issue he was looking at, to reach out to
14 certain entities to get more information in Germany.

15 Do you remember that issue as well? That was sort
16 of -- seemed to be an enforcement-based issue at that time.

17 A It was. But my recollection of conversations with
18 Lorin and perhaps [REDACTED] was that it was also discussed at some
19 level with the Commissioners. I don't think it was the
20 driving factor. But for enforcement, it made it even easier
21 to pull it because I think Lorin and Rob, in particular,
22 thought they would feel more comfortable.

23 IKB was the principal victim, if you will, investor
24 in the ABACUS deal. They lost \$150 million. And they were
25 in Germany. And there was evidence in the record that

1 related to -- they had told the Enforcement staff a variety
2 of things about the transaction.

3 But I think Lorin and Rob would have preferred more
4 solid evidence that would give them comfort in litigation.
5 They could go to Germany and take a deposition. So Lorin was
6 looking for like a declaration or something from a particular
7 witness at IKB. It would give him more comfort going into
8 this whole thing.

9 So I think they sort of thought -- well, I don't
10 know if it was a rationale or whatever -- but, by the way, it
11 wouldn't hurt if we had more time to go to Germany and shore
12 up this witness while we're at it. And I think that gave
13 everybody comfort that this was a good decision all around.

14 Q But you don't know that was the driving force? You
15 think the driving force was, generally, feedback from the
16 Commissioners?

17 A Yes.

18 Q All right. Let's go to the next one. We're going
19 to mark the next one as Exhibit 26, an e-mail exchange, with
20 the top e-mail from [REDACTED] to [REDACTED] with a
21 copy to [REDACTED] and you, 2/22/2010 at
22 2:50 p.m.

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

25 THE WITNESS: Okay.

1 BY MR. KOTZ:

2 Q Do you remember this issue, where the PSI was
3 seeking to have [REDACTED] testify at a hearing?

4 A I do.

5 Q What do you recall about that?

6 A My recollection was that --

7 Q This is, I guess, initially they wanted just to
8 talk to him.

9 A Yes. I don't remember it being an issue of him
10 testifying initially, but that they wanted him to consult, I
11 guess, with them on a somewhat ongoing basis because [REDACTED] is
12 an extraordinarily smart person who's extremely knowledgeable
13 in this space. He's widely know.

14 Q Right.

15 A So I think they thought they might be able to learn
16 from [REDACTED] or be able to bounce some things off of him to
17 make sure they were on the right path, kind of like a
18 compass, if you will, substantive compass.

19 Q Right.

20 A And I recall having conversations with [REDACTED] and [REDACTED]
21 and others about that and whether -- because we had an
22 ongoing investigation and it raised questions about whether
23 that would be appropriate or not.

24 Q And what was the determination made about whether
25 [REDACTED] should act in this role that PSI was seeking?

1 A I'm not sure I know the final outcome. The last I
2 recall hearing was that there was reluctance because of a
3 concern that we might want to talk to him here. But I don't
4 actually know how it was resolved.

5 Q But [REDACTED] wasn't working on the Goldman
6 investigation for the SEC. Right?

7 A Correct.

8 Q So there was no coordination or effort to have [REDACTED]
9 [REDACTED] coordinate matters between the SEC vis--vis the
10 Goldman investigation and the PSI?

11 A Absolutely not. On the contrary, the only reason
12 this was being entertained at all, and we had specific
13 discussions about this, was because [REDACTED] didn't know anything
14 about our investigation. If he had knowledge of our
15 investigation, I'm quite sure we wouldn't have even been
16 having that debate.

17 Q And you don't even know if [REDACTED] actually
18 was engaged in this role at the end?

19 A I don't know. But I do know that as of this
20 e-mail, that my recollection from conversations is that
21 Enforcement had not consulted with [REDACTED] at all about the
22 investigation.

23 Q The Goldman investigation?

24 A The Goldman investigation. Correct.

25 Q All right. Let's move to the next one. We're

1 going to mark as Exhibit 27 an e-mail exchange, with an
2 e-mail at the top from [REDACTED] to Mary Schapiro, copy
3 to you, [REDACTED] and Didem Nisanci, 2/22/2010,
4 4:39 p.m. And there's a second e-mail that goes with it, so
5 I'll just show them to you both at the same time.

6 (Exhibit No. 27 was marked for
7 identification.)

8 THE WITNESS: Okay.

9 MR. KOTZ: And then the next e-mail is Exhibit 28.
10 It starts with an e-mail from [REDACTED] to Didem Nisanci,
11 you, and [REDACTED] 2/26/2010, 3:03 p.m.

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

14 THE WITNESS: Okay.

15 BY MR. KOTZ:

16 Q Do you remember when Lloyd Blankfein, the CEO of
17 Goldman Sachs, asked to meet with Mary Schapiro?

18 A I do.

19 Q And what do you recollect about concerns that were
20 expressed about this meeting?

21 A Myself and others were very concerned about any
22 potential appearance issues of the Chairman meeting with CEO
23 of Goldman Sachs because not only did we have an ongoing
24 investigation, but one -- a matter in which we believed the
25 Commission might bring a case imminently.

1 And so this is a normal practice for us, the
2 Chairman vetting these kinds of appointments. We would not
3 want there to be the potential for an appearance of
4 impropriety of someone, a senior person from Goldman, for
5 example, meeting with her while there may be a -- she'll be
6 expected to make a decision on an enforcement investigation.

7 **Q And was there any concern that Mr. Blankfein might**
8 **lobby Mary Schapiro about the case, or express Goldman's**
9 **position in the investigation, try to convince her not to**
10 **approve the case?**

11 A No. Quite frankly, we believed there was --
12 usually there's an agenda proposed. I would be shocked if
13 Mr. Blankfein would have raised this matter. But to us, it
14 didn't matter. It's really an appearance of impropriety
15 issue.

16 **Q And, in the end, did Mary Schapiro meet with Lloyd**
17 **Blankfein in this time frame?**

18 A My recollection is that he did not -- she did not.

19 **Q Do you know if anyone else did meet with him sort**
20 **of instead of Mary Schapiro?**

21 A I don't think so. I don't think so.

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

23 **Q Do you know what reason the SEC gave to Blankfein**
24 **to push it off?**

25 A No, although sometimes when we push it off -- I

1 mean, this isn't unusual. Sometimes they get it. You know,
2 after a couple times, they realize, and sometimes they don't.
3 So I don't know what [REDACTED] ultimately ended up telling him.

4 BY MR. KOTZ:

5 Q Now, you indicated that there was a case against
6 Goldman Sachs to be brought imminently. And in January it
7 was about to be brought, and then the decision was made to
8 pull it back.

9 But then it wasn't brought until actually several
10 months later. And in January, the Chairman had expressed
11 being anxious to get the case out, and then in the end it was
12 pulled.

13 Were there any other occasions between the time
14 period that the matter was pulled the second time in January
15 and the case actually being brought where the Chairman
16 expressed kind of a concern, where are we on this? How come
17 it's not moving? What's going on?

18 A I'm sure between January and April when the case
19 was brought, we would have had discussions about the status
20 of the investigation. It's in her nature. She likes to know
21 as much as possible about what's going on and what's coming
22 down the pike. And Enforcement having already calendared
23 this once and pulled it, she would have asked me, you know,
24 when is it coming?

25 Q And do you know what the answer was given as what

1 was Enforcement doing? What was taking this time?

2 A Yes. Actually, I recall on at least one occasion
3 apprising her that I ran into [REDACTED] at one point, whenever it
4 was, February or March, about his trip.

5 He ended up going to Germany to meet with someone
6 from IKB and getting a declaration consistent with what they
7 intended to do in January, and also getting an update that
8 they -- I believe they had Wells'd [REDACTED]

9 Q Right.

10 A And so I would have apprised her just wherever that
11 was. [REDACTED] people came in for a Wells meeting, or, you
12 know, they're wrapping up their decision-making, wherever
13 they were.

14 Q Okay. I'm going to show you the next document I'm
15 going to mark as Exhibit 29. It starts with an e-mail from
16 Didem Nisanci to you and [REDACTED] 3/1/2010, 1:16 p.m.

17 (Exhibit No. 29 was marked for
18 identification.)

19 THE WITNESS: Okay.

20 BY MR. KOTZ:

21 Q In the e-mail toward the bottom of the page from
22 you to [REDACTED] Monday, March 1, there's a discussion of
23 a quorum issue, and it references scheduling of the ABACUS
24 CDO case.

25 I'm just wondering, what was that issue as it

1 relates to the ABACUS case?

2 A So just a little bit of -- this e-mail exchange --
3 I'll get to your specific question --

4 Q Sure.

5 A -- but is really about sort of some internal office
6 dynamics, as you probably gleaned.

7 Q Right.

8 A Because [REDACTED] Mary's [REDACTED]
9 Chairman's [REDACTED] was not always -- or I
10 believe she was not communicating with the secretary's office
11 for a calendar that's visible to all the Commissioners'
12 offices when the Chairman was going to be out.

13 And so we could see on the calendar when the other
14 Commissioners were going to be out, and sometimes it wasn't
15 always reported when the Chairman was going to be out.
16 Without that information, people would be under a
17 misimpression that all the Commissioners might be present for
18 a particular meeting, or two Commissioners, or whatever the
19 number might be.

20 Q Right.

21 A So I recall -- this might go back to what I was
22 saying earlier -- in the attempts to schedule the ABACUS
23 case, I'm not sure what particular date I was referring to
24 here. There was -- I believe there may have been one day
25 where we were thinking about scheduling. It might have been

1 January 21st, where there ended up not being a meeting,
2 where --

3 Q Oh, I see. This is going back to the January --

4 A I'm going back -- I think so, because it's March.
5 I don't -- I'm not aware of any attempts to schedule ABACUS
6 in February. So they hadn't finished all they were doing. I
7 believe I was -- there was a frustration because we were
8 looking at -- it wasn't until very late that the conclusion
9 was made to cancel the January 21st meeting because we didn't
10 have a quorum of Commissioners.

11 Q I see.

12 A So I was just -- I was frustrated, as you can tell.
13 I'm working through it, but that's what -- that's the only
14 reference to that.

15 Q All right. Let me show you the next document that
16 I'm going to mark as Exhibit 30. It starts with an e-mail
17 from you to Robert Khuzami, Monday, March 8, 2010, 6:38 p.m.

18 (Exhibit No. 30 was marked for
19 identification.)

20 THE WITNESS: Okay.

21 BY MR. KOTZ:

22 Q And so this references staff briefing Mary Schapiro
23 on the Goldman ABACUS matter. Right?

24 A Correct.

25 Q Do you recall how many briefings Mary Schapiro got

1 on the Goldman ABACUS matter?

2 A Directly from enforcement staff or from me?

3 Q Well, let's start with from Enforcement staff.

4 A Not many. One. Between one and three, I would
5 guess.

6 Q Did you participate in those meetings?

7 A Yes.

8 Q And then there were other times where you would
9 informally before the Chairman on the ABACUS case?

10 A Correct. There's a third possible category. The
11 Chairman has direct communication with Rob Khuzami on a
12 fairly regular basis, at which point it wouldn't be unusual
13 for her to ask about something like, how's Goldman going?
14 How's this going? How's that case going?

15 Q And how many times would you say you more informally
16 briefed the Chairman on the Goldman case?

17 A In what time frame?

18 Q Let's say between the time it was taken off the
19 calendar in January till when it was filed in April.

20 A Just a guess would be three to six.

21 Q Now, in any of the -- either meetings where you
22 briefed Mary Schapiro informally, or participated in more
23 formal briefings by Enforcement where the Goldman case was
24 discussed, was there any statement made by the Chairman or
25 indication that the case needed to be filed at a particular

1 time period? We need to file the case by X?

2 A No.

3 Q Did she generally express the view that she wanted
4 the case to be filed as soon as it could?

5 A Yes. And one of the things, again, to put a little
6 context, she's always saying that. So out of fairness, if you
7 ask people in Enforcement, it's not unique to the Goldman
8 case. She's generally saying, if you have -- you know, move
9 quicker. Move quicker. Move quicker. Why can't we bring
10 this more quickly? She's always frustrated that the
11 enforcement process isn't instantaneous. She thinks --

12 Q Sounds like me.

13 A So you probably appreciate that. Let me just -- to
14 make sure my prior answer is clear on how many times I
15 briefed the Chairman, that three to six number, I would cut
16 that off at the week before the April meeting.

17 Q Okay. Right.

18 A Because the week of a meeting, I may have bounced
19 into her office a number of times and talked to her about
20 things that are coming up.

21 Q Now, in the discussions that either you had with
22 Mary Schapiro about the Goldman case or you participated in
23 with Mary Schapiro about the Goldman case, did she ever
24 indicate, we really need to get some good press out about the
25 SEC by a certain date for other purposes?

1 A Absolutely not.

2 Q And did she ever indicate anything at all, in any
3 of the meetings in which she participated where Goldman's
4 investigation was raised, that there was a financial
5 regulatory reform bill out there, and that it would help
6 financial regulatory reform if the SEC got a big case like
7 Goldman out?

8 A Never.

9 Q Do you recall any conversations in any meetings
10 that the Chairman participated in where she was briefed on
11 Goldman that related to issues other than the facts and law
12 of the Goldman case?

13 A No.

14 Q All right. Let's move on to the next document.
15 Exhibit 31 starts off with an e-mail from [REDACTED] to
16 you, copy to [REDACTED] Wednesday, March 24, 2010,
17 11:18 a.m.

18 (Exhibit No. 31 was marked for
19 identification.)

20 THE WITNESS: Okay.

21 BY MR. KOTZ:

22 Q And so you say in the second e-mail down on this
23 page, on Wednesday, March 24, 2010, 11:16 a.m. to [REDACTED]
24 [REDACTED] "Please hold a spot for this on 4/14 between us,
25 but keep the pressure on for the memo."

1 What did you mean by "keep the pressure on for the
2 memo"?

3 A We have -- there's a general -- "rule" is not the
4 right word. There's a policy or practice that memos have to
5 be up two weeks before a closed meeting. Staff is not
6 always -- they're not 100 percent diligent about that.

7 This matter in particular, given the questions that
8 Commissioners' offices had back in January, I knew that the
9 Commissioners' offices would be very interested in this memo.
10 And so I wanted to make sure that by giving them the --
11 usually we don't give the a spot until we get the memo. I
12 didn't want them to think because they had secured April
13 14th, that meant they didn't have to meet the two-week
14 deadline.

15 Q I see.

16 A I wanted to make sure the memo got up.

17 Q I see.

18 A Usually it's a carrot --

19 Q Gotcha.

20 A -- is getting the date on the calendar. So I was
21 concerned that if we gave on the date, they might slip on
22 when they got the memo to us.

23 Q I see. And the memo is necessary so people have an
24 adequate time to prepare and understand the issues?

25 A Correct.

1 Q And then you also say, "Out of fairness for the
2 moment, some decisions still remain that are in Khuzami's
3 hands."

4 What did you mean by that?

5 A I don't know, other than the extent to which it's
6 possible they wouldn't be prepared to do it on April 14th.

7 Q Do you recall generally that there was a discussion
8 in this time period among the investigative team in the
9 Goldman case about whether to charge [REDACTED] and that
10 eventually Rob Khuzami made the decision not to go ahead with
11 charging [REDACTED]

12 A Yes.

13 Q Do you think that might have been the decision that
14 was left?

15 A That actually very well may. And so my comment
16 might have been referring -- in terms of why the memo isn't
17 up yet, they might not have decided yet. And actually, now
18 the more I'm thinking about it, I recall the decision about
19 whether to charge [REDACTED] was sort of a -- was up to the last
20 minute.

21 So it's quite likely that I was referencing that
22 Khuzami still hadn't made up his mind, which means, if the
23 memo doesn't hit the two-week deadline, it could be because
24 they're still finalizing that decision. So yes, that
25 refreshes my recollection.

1 Q Okay. They would need to make that decision
2 because that would be an important part of the memo?

3 A Yes, it would.

4 Q All right. Let's go on to the next one.

5 Exhibit 32 starts with an e-mail from [REDACTED] to you,
6 4/7/2010, 11:14 a.m.

7 (Exhibit No. 32 was marked for
8 identification.)

9 THE WITNESS: (Examining.) Yes.

10 BY MR. KOTZ:

11 Q All right. Do you remember this issue that arose?
12 [REDACTED] was an SEC employee who was detailed to PSI?

13 A Uh-huh.

14 Q Yes?

15 A Yes.

16 Q Okay. And there was a question about what
17 information she could share.

18 Do you remember what happened with that?

19 A I do. I remember this e-mail exchange and talking
20 to [REDACTED] about it. [REDACTED] Director of
21 Enforcement before being detailed to PSI. And [REDACTED] was
22 reaching out because she had information that she knew was
23 useful, presumably given the PSI's investigation into the
24 financial crisis and Goldman in particular.

25 My sense was that they hadn't -- either they hadn't

1 focused on this particular CDO, or they were -- they might
2 benefit from being able to talk to the SEC about it. This is
3 what I understood [REDACTED] view was.

4 I remember talking about this with [REDACTED] and others.
5 We were frustrated that she would think it was appropriate to
6 share anything that she knew from here with folks on the PSI
7 staff.

8 Q And was she instructed that she could not disclose
9 nonpublic information to PSI?

10 A I was in the loop up until that final decision to
11 actually tell her that. But the decision -- I was part of
12 discussions where we discussed telling her that she was not
13 authorized. We couldn't authorize her to share that
14 information. Only the Commission could have authorized that,
15 and that never happened, to my knowledge.

16 Q Okay. And so as far as you know, [REDACTED]
17 never discussed any nonpublic information regarding the
18 Goldman information with PSI?

19 A I hope she did not and would expect that she did
20 not.

21 Q You certainly don't know that she did?

22 A Correct. I have no information that she did.

23 Q All right. Let's move to the next document. And
24 if you want to take a break at any time -- we're actually
25 moving along pretty well, but it's fine if you want to take a

1 break.

2 [REDACTED]: Do you want to take a break?

3 THE WITNESS: I'm fine.

4 MR. KOTZ: All right. I prefer to just kind of
5 move through it.

6 THE WITNESS: Yes.

7 MR. KOTZ: All right. The next e-mail we're going
8 to mark as Exhibit 33. It's an e-mail from you to Mary
9 Schapiro, copy Kayla Gillan, Didem Nisanci, Myron Marlin,
10 4/11/2010, 10:53 p.m.

11 (Exhibit No. 33 was marked for
12 identification.)

13 THE WITNESS: Okay.

14 BY MR. KOTZ:

15 Q And so in this e-mail, you say, "Wednesday CCM
16 calendar includes a number of serious items."

17 What is CCM, by the way?

18 A Closed Commission meeting.

19 Q "The Goldman CDO case advocate is on for this week.
20 I'm preparing a memo about Goldman case. Will be happy to
21 discuss at any time. There is still a live issue that I've
22 discussed with Myron and Rob about whether to do a press
23 conference -- a double-edged sword, as I'm sure Myron has or
24 will discuss."

25 What did you mean by "a double-edged sword"?

1 A During the week of this week, when we started
2 talking about bringing the Goldman case, on one hand the view
3 was that this was a significant case arising out of the
4 credit crisis, particularly related to mortgage-backed
5 securities, which is an area that the public was very
6 interested in; and that, therefore, it would counsel in favor
7 of a press conference to get a wider audience.

8 A press conference basically means more likely to
9 be on TV, and TV actually is more likely to reach the most
10 number of people. Therefore, press conferences are more
11 likely to get a message out about all of our
12 enforcement-related messages out to the widest audience.

13 On the other hand, there were some people who
14 believed that the public might view this as -- this might
15 seem interesting in hindsight -- but not that big of a deal.
16 So the first big CDO-related case you bring from a firm like
17 Goldman, you know, the big investment bank, is over a case
18 that they made \$15 million. And so people would say, that's
19 really the best the SEC has to offer?

20 So that was a constant debate from about this time,
21 quite frankly, up until Wednesday, I think, even.

22 Q But the determination was made to do a press
23 conference?

24 A Correct.

25 Q Because the prevailing view was it would be viewed

1 positively?

2 A Yes. It was worth -- it was important enough that
3 the benefits seemed to outweigh the potential concerns.

4 Q And even among the folks who believed that there
5 would be positive attention on the SEC arising out of the
6 Goldman case, is it fair to say that folks were surprised at
7 how much positive attention and how much attention in general
8 the Goldman case?

9 A Yes. That is very fair to say.

10 Q And is that something that you felt personally that
11 you were surprised?

12 A Yes.

13 Q All right. Let's move on to that week. So the
14 next document we're going to mark is Exhibit 34. This starts
15 with an e-mail exchange from Robert Khuzami to Mary Schapiro
16 with a copy to you, 4/12/2010, 10:54 p.m.

17 (Exhibit No. 34 was marked for
18 identification.)

19 MR. KOTZ: And then I will show you the next one
20 also so you have the context.

21 THE WITNESS: Okay.

22 MR. KOTZ: So the next document, just so you have
23 context, that we're going to mark as Exhibit 35, is an e-mail
24 from you to Mary Schapiro. And although it didn't print out,
25 we can tell you that it was Wednesday, 4/13/2010,

1 12:28 a.m. -- is that 12:28 a.m.?

2 [REDACTED]: I believe it is.

3 MR. KOTZ: Okay. So that would be the middle of
4 the night. But you sent the e-mail. We're going to mark it
5 as Exhibit 35. Obviously, people are working hard.

6 (Exhibit No. 35 was marked for
7 identification.)

8 THE WITNESS: It is less surprising to me than to
9 you, I suppose.

10 MR. KOTZ: I know that Myron Marlin's e-mails are
11 always in the middle of the night. But I haven't seen that
12 many from you.

13 THE WITNESS: Our taxpayer dollars at work. It's
14 not abnormal for Myron and I to be talking over our work.

15 MR. KOTZ: Oh, okay.

16 THE WITNESS: (Examining.)

17 BY MR. KOTZ:

18 Q And so in these two e-mails, there's discussions
19 about the actual timing of filing of the Goldman case as well
20 as Quadrangle.

21 Now, do you remember this issue with Quadrangle?
22 What was the discussions about the filing of Goldman
23 vis-...-vis the filing of the Quadrangle case?

24 A I'm sorry. I was stuck on the -- oh, Wednesday
25 12:00, so Tuesday night/Wednesday morning.

1 Q Right.

2 A I'm sorry. I was trying to get --

3 Q So the first e-mail --

4 A These are in order.

5 Q Yes. The second one is actually only a few hours,
6 even though it turned to a different day. It was only
7 actually a couple hours after the first one.

8 But it looks from this e-mail that the approach at
9 that point was to file Quadrangle on Wednesday and Goldman on
10 Thursday.

11 A That's my recollection.

12 Q Okay. And Mary Schapiro specifically said, "Let's
13 make sure we don't announce Goldman same day."

14 Do you know what her thinking was there?

15 A Yes. She had two reasons, I believe. There's the
16 general view and the specific view.

17 Her general view, and we all share this, is
18 bringing two very large cases the same day isn't a very good
19 idea because it'll -- the press will be -- they'll be
20 confused, first of all: Which one do we focus on? But
21 again, our goal is always to get our enforcement message out
22 widely, and we would lose that if we brought two cases the
23 same day.

24 I think her other concern was that Cuomo would take
25 it that we brought Goldman on the same day, even though it

1 wouldn't be true, to beat out his Quadrangle case. And she
2 didn't think that that was a terribly good idea.

3 Q So Cuomo might be upset that Goldman was filed on
4 the same day as Quadrangle, and perhaps if it got more
5 immediate attention, then he would be upset that the SEC did
6 that?

7 A In my experience, working with his office -- I
8 don't know him personally -- and in interactions I've had,
9 been part of, with him, he would take it as a personal
10 affront to his action -- he would take it that we did it on
11 purpose, even if we didn't, and would be offended and angry.

12 Q Now, what about the idea of filing Goldman on
13 Wednesday and Quadrangle on Thursday? I mean, why did you
14 choose going with Quadrangle first?

15 A We didn't have any control over that. On this
16 particular matter, Cuomo's office was driving the timing, as
17 the case on multiple occasions related to this and other
18 investigations.

19 My recollection is we got very little notice that
20 they were ready to bring this case. They said, we're
21 bringing this case. And oftentimes we have a late stage
22 investigation and we're ready to go also, but we're rushing
23 to kind of close the loop so that we can bring our case with
24 theirs at the same time.

25 Q So you had two big cases that week, Goldman and

1 **Quadrangle.** You didn't have a choice as to when to bring
2 **Quadrangle.** So the only one that you could potentially have
3 **any discretion on was Goldman?**

4 A Correct.

5 [REDACTED]: Could you have brought Goldman on
6 Wednesday?

7 THE WITNESS: Well, the meeting was Wednesday. So
8 in theory, we could have brought it on Wednesday and there
9 was -- but the problem was, my recollection is that they
10 weren't ready.

11 I don't think the staff was ready to -- believe it
12 or not, even though the discussion in January about the
13 complaint not being ready, this week it was the same
14 circumstance, that my recollection is that Lorin in
15 particular, Lorin Reisner, was working on the complaint
16 until -- I think until the morning that it was brought.

17 MR. KOTZ: All right. Well, let's go through the
18 e-mails. So the next one we're going to mark as Exhibit 36.
19 And that starts with an e-mail from [REDACTED] to Ken Lench
20 and [REDACTED] 4/14/2010, 11:06 p.m.

21 (Exhibit No. 36 was marked for
22 identification.)

23 MR. KOTZ: And then I'm going to give you --
24 together with that I'm going to give you Exhibit 37. I'm not
25 sure you're on these e-mails, but they're still e-mails that

1 I wanted to ask you about.

2 Exhibit 37 starts with an e-mail from [REDACTED] to
3 Ken Lench, 4/14/2010, 10:11 p.m.

4 (Exhibit No. 37 was marked for
5 identification.)

6 THE WITNESS: Okay.

7 BY MR. KOTZ:

8 Q All right. And so the previous e-mails, Tuesday
9 night 10:54 p.m., Wednesday morning 12:00 in the morning,
10 12:28 a.m., it seemed that the consensus was to file the
11 Quadrangle case on Wednesday and file Goldman on Thursday.

12 And then if you look at these e-mails, there's
13 communication Wednesday, April 14th, so, you know --

14 A Wednesday night.

15 Q Wednesday night. Right. So on Monday night --
16 [REDACTED]: I'm sorry. I should say this is --
17 and this is my error.

18 MR. KOTZ: That should say Tuesday?

19 [REDACTED]: It should say Tuesday.

20 BY MR. KOTZ:

21 Q Okay. So on Monday night and Tuesday, it seemed as
22 though the consensus was to file Goldman on Thursday. But
23 then by Wednesday, Ken Lench asked [REDACTED] "How did we
24 land on Friday?" The response is, "No idea." And Ken Lench
25 asked [REDACTED] "Whose idea was it to file Friday?"

1 And [REDACTED] says, "Front office. Just don't know their
2 thinking."

3 So what I'm trying to understand is what changed
4 such that as of Tuesday morning, it was -- Goldman was going
5 to be filed on Thursday, and then on Wednesday, the decision
6 was made to file Goldman on Friday.

7 A Cuomo moved the Quadrangle case to Thursday. So
8 once the Quadrangle case got moved to Thursday, we agreed to
9 move -- we just pushed it back a day and agreed to do Goldman
10 on Friday.

11 Q And as your counsel indicated, was there any
12 discussion about pushing Goldman forward on Wednesday? Or is
13 that the point in which you felt that the complaint wasn't
14 ready?

15 A I don't believe that folks thought that they were
16 ready. I don't remember any serious discussion about doing
17 it Wednesday because I think people came quickly to the fact
18 that we weren't ready by Wednesday.

19 I think the other -- I think the other issue, quite
20 frankly, is that the expectation was going to be that
21 Wednesday afternoon's meeting was going to be quite long. So
22 I don't know when -- and in fact, my recollection is that it
23 went until after 5:00. So I don't know when on Wednesday we
24 would have done that.

25 Q And --

1 BY [REDACTED]:

2 Q I'm sorry. Was there any discussion as to, well,
3 let's just wait till Monday for Goldman, particularly if
4 there was any of the sort of anti-Friday filing crowd
5 weighing in?

6 A I don't recall. It wouldn't surprise me if there
7 was. I'm trying to keep straight in my head the discussions
8 around filing the Goldman statement in which there were
9 discussions about whether to do Monday. And I don't want to
10 agree with your proposition and be wrong, but generally
11 speaking, we have these discussions pretty openly with
12 people.

13 So it wouldn't surprise me if someone said, "Can we
14 wait?" But I don't think that people believed that we could
15 wait until Monday because, for reasons I said earlier, it's
16 unlikely that we would be able to keep control of the story
17 until Monday on a case like this.

18 BY MR. KOTZ:

19 Q But when [REDACTED] says, "Whose idea was it to
20 file Friday?" "Front office," was it the front office? I
21 assume that refers to the front office of Enforcement, maybe
22 Rob Khuzami?

23 A That's what he means.

24 Q Was it Rob Khuzami or the front office that made
25 that decision? Or was this sort of a consensus decision that

1 was made based on the fact that Quadrangle was moved and the
2 Chairman herself said, we don't want to bring both of them on
3 the same day?

4 A I think -- and just on the point, the Chairman
5 didn't want to bring them both the same day. But that's --
6 nor would Rob have wanted to bring them both the same day.

7 Q It wasn't unique to --

8 A Just so there's no lack of clarity.

9 Q It wasn't unique to her. That would definitely
10 have been Rob's and Lorin's views. And I don't think anybody
11 would want to bring -- it's much our general practice not to
12 bring, if possible, two big cases the same day.

13 So it wasn't that they were doing it because the
14 Chairman directed it so much as a consensus view. But I
15 think, to your specific question, I think it was a consensus
16 view. But from their perspective, I don't know that they had
17 visibility into the discussions around Quadrangle. So all
18 they know is that their bosses told them that we were doing
19 it on Friday.

20 Q But you're clear in your recollection that the
21 reason that the Goldman case was moved from being filed on
22 Thursday to Friday was Quadrangle was moved?

23 A As far as I'm concerned, I'm crystal clear that
24 that was the reason.

25 Q All right. I'm going to go to this one.

1 Exhibit 38 starts with an e-mail from you to [REDACTED]
2 Myron Marlin, and John Nestor, 4/15/2010, 9:44 a.m.

3 (Exhibit No. 38 was marked for
4 identification.)

5 THE WITNESS: (Examining.) A busy week.

6 BY MR. KOTZ:

7 Q Right. Speaking of that, this self-funding press
8 conference with Senator Schumer and former SEC Chairman, did
9 that factor in at all into the timeline discussion vis-...-vis
10 the Goldman case? That was on Thursday.

11 A I don't think that factored at all into it. We had
12 discussions around the Quadrangle, like kind of how it will
13 be perceived by the Chairman being at a press conference on
14 this and Quadrangle being brought at the same time, and
15 whether there was going to be any perception by anybody
16 about -- or any issues about this all going on at the same
17 time. Will we get -- will this step on the Quadrangle case
18 press?

19 But we didn't discuss this in the context of the
20 Goldman case at all, is my recollection.

21 Q All right. And you say here, "Why file GS tomorrow
22 at 9:30? Sometimes things are not that smooth when filing.
23 Why not give them a little more lead time?" [REDACTED] says, "The
24 clerk's office opens at 8:30." You say, "Right. So why file
25 at 9:30?"

1 Did you ever get an answer to that?

2 A Not to my knowledge.

3 Q All right. Let me show you the next document we're
4 going to mark as Exhibit 39. It starts off with an e-mail
5 from Myron Marlin to you -- to John Nestor with a copy to you
6 and [REDACTED] Thursday, April 15, 2010, 12:38 p.m.

7 (Exhibit No. 39 was marked for
8 identification.)

9 THE WITNESS: Okay.

10 BY MR. KOTZ:

11 Q Now, Myron Marlin, I guess, in his communications
12 role was preparing a timeline of events for Thursday and
13 Friday?

14 A Yes. He does this from time to time.

15 Q And there's references now to the Stanford report,
16 which I guess is the Office of the Inspector General report?

17 A Yes.

18 Q Did you ever hear any conversations where it was
19 discussed -- where the Stanford OIG report was discussed in
20 relation to when the Goldman case would be filed? In other
21 words, when somebody said, we want to file the Goldman case
22 on X time because of the Stanford IG report?

23 A No.

24 Q Do you have any idea why the Goldman case was filed
25 first thing, and then the Stanford report second?

1 A I don't know for sure. My recollection -- I was
2 only peripherally in the loop on this. My recollection was
3 that the Stanford report may not have been ready first thing
4 in the morning. That's my recollection.

5 [REDACTED]: How about a couple-of-minute break?

6 MR. KOTZ: Yes. We can do that. Off the record.

7 (A brief recess was taken.)

8 MR. KOTZ: Back on the record.

9 Let me show you another document. It's a little
10 earlier in time but a little different subject. We're going
11 to mark it as Exhibit 40. It starts with an e-mail from
12 Myron Marlin to you, [REDACTED] Didem Nisanci, 4/14/2010,
13 6:08 p.m.

14 (Exhibit No. 40 was marked for
15 identification.)

16 THE WITNESS: Okay.

17 BY MR. KOTZ:

18 Q Do you remember Scott Friestad raising an issue
19 that a reporter knew that the recommendation was on the
20 calendar?

21 A I remember learning about it from this e-mail.

22 Q And was there concern arising from that?

23 A Yes.

24 Q What was that concern?

25 A We would always be concerned if -- it's not unusual

1 for reporters to, you know, start calling us around Thursday
2 or Friday, after closed meetings, about matters from time to
3 time.

4 And we were concerned that the story was going to
5 get out before we were able to put it out in the way in which
6 we believe it's appropriate to put it out. And obviously, it
7 raised a concern with us about how it was that the reporter
8 would get this information.

9 Q Do you know which reporter it was?

10 A I never talked to Scott, so I don't know. But I do
11 recall having conversations around this time that Kara
12 Scannel from the Wall Street Journal might have been calling
13 around. But I don't know if there was Thursday. I don't
14 know if that's who Scott was talking about.

15 Q Did you ever learn who might have provided this
16 reporter with that information?

17 A No. I don't know that -- knowing that it's on the
18 calendar is one thing, as opposed to knowing -- that's a
19 discrete piece of information --

20 Q Right.

21 A -- that a very large number of people would have
22 had access to, as opposed to the decision, perhaps, or more
23 detail about the meeting.

24 Q But nevertheless, the fact that a matter is on the
25 calendar is nonpublic?

1 A From the Commission's perspective, it is, except
2 it's not uncommon -- in this case it would -- sometimes -- I
3 don't think it was the case here. Sometimes a company might
4 know, a potential defendant might know that we're thinking
5 about it.

6 We don't -- it's not our routine to tell them. But
7 sometimes, for a variety of reasons, staff might tell a
8 potential defendant that it's being considered that week.
9 But I didn't think that was the case here.

10 Q All right. Let's go to the next one we're going to
11 mark as Exhibit 41. It starts with an e-mail from Kayla
12 Gillan to you, 4/16/2010, 4:21 p.m.

13 (Exhibit No. 41 was marked for
14 identification.)

15 THE WITNESS: (Examining.) Do I need to read the
16 article or --

17 BY MR. KOTZ:

18 Q No, no. Just Kayla asks you, "Was the Commission
19 vote to authorize the suit 5-0?" And you reply, "I'll fill
20 you in when we talk."

21 Any reason you didn't just tell her?

22 A There was -- I thought it would be more useful to
23 give her the context -- I don't -- I thought it would be more
24 useful to give her the context around the meeting as opposed
25 to just seeing what it was. Was this an -- I don't think

1 this article had the vote, did it?

2 Q No.

3 A My recollection is that Kayla was not in the office
4 on this day, and so -- I don't know where she was. I just
5 thought it would be better to talk. It's my general
6 preference.

7 Q All right. I'll show you the next document, marked
8 Exhibit 42. It starts with an e-mail from you to Myron
9 Marlin, 4/18/2010, 3:38 p.m.

10 (Exhibit No. 42 was marked for
11 identification.)

12 THE WITNESS: Okay.

13 BY MR. KOTZ:

14 Q First of all, you were aware that the actual vote
15 that was clearly nonpublic information from the Commission
16 meeting about the Goldman lawsuit was leaked to the press?

17 A Correct.

18 Q And are you aware of who might have leaked that to
19 the press?

20 A No.

21 Q Now, in this e-mail, Ken Lench is saying that in
22 addition to hearing it was a 3-2 vote, that one of the
23 Republicans was unhappy because Goldman was not given the
24 chance to settle. And this is also subject: Kara Scannel.

25 A Right.

1 Q And you say, "I do not believe that is true."

2 What were you referring to as not true?

3 A I didn't believe it was accurate that Goldman -- I
4 didn't think it would be accurate for a reporter to write
5 that Goldman wasn't given a chance to settle.

6 Q Do you know if it's accurate to say that one of the
7 Republicans was unhappy because maybe they thought Goldman
8 was not given a chance to settle?

9 A That's not what I was referring to. But I don't --
10 I don't -- candidly, I don't recall that being one of the
11 issues that any Commissioner raised. But I presume I was
12 addressing the substance of the point as opposed to the
13 procedure.

14 Q All right. And so getting to the substance of the
15 point, I wanted to ask you about that.

16 Was it your understanding -- I mean, you had
17 experience in enforcement even before you came into the
18 Commission's office. Was it your understanding that it was
19 sort of the general policy or protocol of the Enforcement
20 Division, traditionally, that when they were going to bring
21 an action, after the Commission approved the recommendation
22 to go forward with the action, a call would be made to the
23 defendant saying, the Commission's approved it; you know, you
24 got one last chance to try to resolve this, you know,
25 48 hours or whatever?

1 A I think I would call it a common practice. It's
2 certainly not a rule, and I've certainly been part of other
3 cases, not including this one, where we didn't do that. So
4 it's not uncommon to not offer that call, particularly -- and
5 now I'm not necessarily talking about Goldman, but I think it
6 applies, where there's an impression among the staff that
7 settlement is not likely.

8 Q So is it your understanding, then, in the
9 particular case on Goldman, the decision was made
10 affirmatively not to follow that practice of, immediately
11 after Goldman Sachs -- the case against Goldman Sachs was
12 approved by the Commission, to go back to them, for good or
13 bad reasons; but just initially, the question is, was it an
14 affirmative decision not to call Goldman after the Commission
15 approved the recommendation to go forward with the lawsuit to
16 give them this window?

17 A I don't -- I don't know that I can agree with the
18 proposition that it was an affirmative decision not to call
19 them. I think that the consensus was that there wasn't going
20 to be a settlement, and that nobody called them.

21 But I wasn't part of any discussion where anybody
22 said, and by the way, we won't call Goldman. I think, in all
23 the conversations I had, it was -- it was generally presumed
24 that this was a case that was going to litigate; that
25 Goldman -- I was part of a number of conversations where it

1 was presumed that Goldman had no interest in settling and
2 that it was going to litigate. So nobody was talking about
3 engaging in that kind of conversation.

4 Q Now, in your position, both having worked in the
5 Enforcement Division and the Chairman's office, do you think
6 it is a good practice for the Enforcement Division to really,
7 no matter whether there was indications about settlement or
8 not, to go to a defendant and say, look. We may not have had
9 settlement discussions, but we're bringing the case. The
10 Commission's approved it. You got one last chance?

11 A My honest, personal opinion in this?

12 Q Yes.

13 A I actually don't think it's a good idea to have a
14 practice that parties get an opportunity to settle after the
15 Commission approves an action because I think that undermines
16 the Enforcement Division's ability to have honest discussions
17 about possible settlement in many instances beforehand.

18 If companies know that every time they get a --
19 it's like a second bite at the apple. If they know that they
20 get to first see if the Commission approves the action and
21 then they get a chance to settle, my personal opinion is that
22 doesn't send a particularly good message because it
23 undermines the ability of the Enforcement staff to have any
24 impetus to settle, you know, in many instances.

25 So I think there are instances where -- I think

1 it's a discretionary issue. If the staff believes that it
2 would be fruitful to engage in settlement discussions, I
3 think it's a very good idea because it's always -- it's
4 better to settle and not use the litigation resources if you
5 can come to a good settlement.

6 But as a general policy matter, to have a rule that
7 you always call a company after and see if they want to
8 settle, my personal view is that that would be a bad policy.

9 Q Okay. Now, do you think that because it was common
10 practice for the SEC to do that, and that perhaps lawyers who
11 represented a lot of clients in SEC cases or companies who've
12 been familiar with SEC cases knew that it was common practice
13 for the SEC to contact the defendant after the Commission had
14 recommended going forward with the action, that in this case
15 Goldman might have been waiting for that call; and that if
16 that call had been made, they might have had settlement
17 discussions before the case was filed?

18 A I'm certainly aware that the conversational wisdom
19 among securities defense lawyers is that that's the practice
20 by the staff. I wouldn't comment on what Goldman was
21 expecting other than to say, again, we had a lot of
22 discussions around the interactions between the team and
23 Goldman.

24 And at least my impression was that they made it --
25 they were sort of scorched earth about it in their approach,

1 that this was going to litigate, you know, till the end of
2 time. And so I don't -- they might have been -- they may --
3 I don't know. They might have been expecting it, but I'm
4 not -- I don't know whether that was appropriate or fair
5 under the circumstances. I didn't have any interactions with
6 Goldman, of course, so I don't know.

7 Q But you're aware that relatively shortly after the
8 case was filed, Goldman did come in with settlement
9 discussions?

10 A Yes.

11 Q So is it at least possible that that was the first
12 point that they knew it was happening, and as soon as that
13 happened, they came in with settlement discussions; so
14 perhaps if they had found out a few days before, they might
15 have come in with those same discussions?

16 A My view, and I know this was an issue that's been
17 debated in the media around this case -- my view is, much
18 like I mentioned earlier, that we might not have foreseen how
19 big of a case this was in the press, it may well be that
20 Goldman Sachs didn't -- underestimated the extent to which
21 this would be damaging to them, and that their early
22 settlement overtures were a result of the pressure they were
23 under at that time.

24 I think they were Wells'd in August. They had
25 numerous conversations, as far as I know, with the staff

1 between August and March. And at least what I understand
2 from the investigative staff is, they showed no interest
3 whatsoever in settlement.

4 So I don't think -- I've never thought it was fair
5 for Goldman to be out there saying that they had some
6 expectation or right to a settlement overture when, quite
7 frankly, in most of our cases, those overtures come from the
8 company in the context of an investigation at some point,
9 even if it's just, no, we think this is a bad case and we
10 intend to litigate. But we might be interested in settling
11 if the Commission approves it.

12 Usually there's some hint that there's worthwhile
13 conversation. And my understanding is that didn't happen
14 here. So I think it's an unfair position for Goldman to
15 take.

16 Q Okay. All right. Let me show you the next
17 document, and that's an SEC administrative regulation, Public
18 Affairs Press Relations Policies and Procedures, I'm going to
19 mark as Exhibit 43.

20 (Exhibit No. 43 was marked for
21 identification.)

22 BY MR. KOTZ:

23 Q Now, I first want to ask you if just you're
24 generally aware and familiar with this document, and then I
25 wanted to ask you about a specific provision.

1 A (Examining.) I am generally familiar with it.

2 Q Okay. Then if you could turn to page 6 of 12,
3 15(c), Notification of Defendants. It says, "Every effort
4 should be made to avoid the possibility that defendants in an
5 SEC" --

6 A I'm sorry. I'm sorry -- okay. Got it.

7 Q "Every effort should be made to avoid the
8 possibility that defendants in an SEC enforcement action
9 first learn of the action when they read about it in the
10 newspapers or when they are called by a reporter for comment
11 about the SEC's complaint. The division regional or district
12 office primarily responsible for the filing of a particular
13 complaint shall take all necessary steps to see that
14 defendants and their counsel are given timely advice
15 concerning the action."

16 Were you aware of that particular provision or
17 regulation?

18 A I'm aware of it generally. I don't recall the --
19 you know, word for word, I don't recall it specifically. It
20 is my recollection that someone reached out to Goldman Sachs,
21 though, at or about the time the case was filed, so --

22 Q Okay. The "at or about," I guess, is key. Did you
23 understand, whether it was this specific regulation or
24 generally, that the policy of the SEC was to reach out to a
25 defendant before the case was filed? Is that your

1 **understanding of this language or of the policy?**

2 A It is my understanding. But how soon before, I
3 think, does vary from case to case. I'm not aware -- I
4 don't -- I don't know if there's any more guidance on this in
5 Enforcement.

6 I'm not aware of any particular time frame that
7 is appropriate. But I am aware that attempts are made,
8 consistent with the policy, to reach out to defendants before
9 we file.

10 Q Okay. And so are you aware that in this case, in
11 the case of the Goldman ABACUS action, the call that was put
12 in to Goldman's counsel was after the SEC filed its case?

13 A I'm not aware.

14 Q If that was the case, would that, in your view,
15 volatile the spirit or even the literal words of the policy?

16 A (Examining.) I guess I'm hesitant -- I'm not so
17 familiar with this and whether there's any other -- I'm a
18 little uncomfortable opining on it just on the spot. I don't
19 know. I'm hesitant to say.

20 I mean, every effort -- I don't know what
21 circumstances would have led to someone to believe that
22 particular timing's appropriate, so I -- I understand what it
23 says here and take you at your word that it may have been
24 after.

25 But I don't know -- I don't have an opinion on the

1 spot as to what would be appropriate or not appropriate as to
2 when you should contact someone.

3 Q Okay. Do you think, just generally as a policy
4 matter, that it's a good idea for the SEC to contact a
5 defendant such as Goldman prior to their filing the action
6 against them, even if it's 30 seconds before?

7 A I think it's a good practice. Part of my
8 hesitation comes from that the fact that there's a variety of
9 reasons in a lot of cases that we can't contact defendants
10 before we file. This isn't like an emergency Ponzi scheme or
11 something like that, so I don't mean to try to equate them.

12 Q Right.

13 A But just my discomfort about opining on this is,
14 just from my experience in Enforcement and I see just about
15 every case that comes through, there's a lot of cases where
16 it's not -- there's a sliding scale of when it may or may not
17 be appropriate to reach out to people.

18 And so I just would want to -- I'd have to think
19 more about whether it's fair to --

20 Q But are you aware of any specific factors in the
21 Goldman case such that it would be problematic to inform
22 Goldman that the SEC filed its case a minute or two before
23 rather than reaching out to them a minute or two after?

24 A Nothing that I can think of as I sit here.

25 Q All right. Let me show you the next document.

1 We're going to mark it as Exhibit 44. And this starts with
2 an e-mail from Myron Marlin to John Nestor, 4/16/2010,
3 3:55 p.m.

4 (Exhibit No. 44 was marked for
5 identification.)

6 THE WITNESS: Okay.

7 BY MR. KOTZ:

8 Q Were you aware of concerns expressed by Jim Duffy,
9 the interim CEO of the New York Stock Exchange, about the SEC
10 not giving the New York Stock Exchange a heads up about the
11 Goldman action?

12 A Yes. I think, just to be -- to put a -- I think,
13 just to make sure we're clear, [REDACTED] misspoke in his e-mail.
14 Jim Duffy was the interim CEO of the New York Stock Exchange
15 regulation, which I think is a significant difference from
16 the chairman of the New York Stock Exchange.

17 Q Okay.

18 A New York Stock Exchange regulation is the
19 regulatory arm of the NYSE, which is responsible for market
20 surveillance.

21 Q I see.

22 A That's significant to me because, my recollection,
23 I did talk to Mark and Lorin and maybe Tom Sporkin about
24 this. It's relevant because charged with market
25 surveillance, as we all know in hindsight, there was enormous

1 trading volume in Goldman.

2 And I think what he was communicating, or my
3 understanding, is that they didn't get a heads up about this,
4 which, candidly, I'm not aware that we do give them a heads
5 up, by the way, when we bring cases. I'm not aware either
6 way. I've never heard of that practice.

7 But the concern that was expressed to me, that the
8 folks had heard from NYSE, was that they just had trouble
9 keeping up with their market surveillance related to Goldman
10 on that day because of the high trading volume.

11 Q And then [REDACTED] sends an e-mail to Lorin
12 Reisner, with a copy to Thomas Sporkin, which is eventually
13 forwarded to you, saying that, "Jim Duffy was seeking someone
14 to discuss the SEC policies on press releases and the impact
15 of these on U.S. marketplaces. I've provided him with your
16 contact information. Please let me know if there's anything
17 I can do to assist with this."

18 Do you know if Lorin Reisner ever called Jim Duffy
19 back?

20 A I don't know.

21 Q Do you know if anybody ever called Jim Duffy back?

22 A I do not.

23 Q Are you aware that when the SEC filed the
24 settlement with Goldman a couple months later, they did give
25 the NYSE a heads up?

1 A I was not aware of that.

2 [REDACTED]: NYSE Reg. Right?

3 MR. KOTZ: Yes. But I don't know if it was the
4 NYSE Reg or not. Some portion of the NYSE. I'm not sure if
5 it was Duffy personally, but somebody in the NYSE.

6 THE WITNESS: It's only relevant because I think
7 they're separate entities.

8 MR. KOTZ: Okay. Yes.

9 THE WITNESS: So it's not necessarily a chain. So
10 I just -- for clarity purposes --

11 BY MR. KOTZ:

12 Q But do you think it's a good practice, where the
13 SEC has a matter that could potentially cause a significant
14 impact on the market, that they give the NYSE, whether
15 Regulation or another part of it, a heads up?

16 A My impression when I saw this and talked about this
17 was that it made good sense to think about -- I don't know
18 all the implications, so I wouldn't say definitively. But it
19 made good sense to me that if they're doing market
20 surveillance, for example, they should know so they have
21 people ready to look at it if we're going to bring a case
22 that might have significant impact. So yes.

23 Q Okay. I'm going to show you the next document,
24 speaking of market surveillance. Exhibit 45 starts with an
25 e-mail from you to Ricardo Delfin, David Becker, and Didem

1 Nisanci, 4/16/2010, 2:31 p.m.

2 (Exhibit No. 45 was marked for
3 identification.)

4 THE WITNESS: (Examining.) Uh-huh.

5 BY MR. KOTZ:

6 Q You said, "I will pass this on to the appropriate
7 people." Did you? And who would "the appropriate people"
8 be?

9 A Sure did. Given it was Goldman-related, my
10 practice would be -- I get a lot of tips. I think you and I
11 have discussed in the past about, through the Chairman's
12 office, my practice would typically be to send them to the
13 Office of Market Intelligence.

14 In this instance, my recollection is that I also
15 shared this with probably Lorin Reisner. I'm not positive.
16 I'd have to look at my e-mails. I believe I would have
17 shared this with Lorin or someone from the Goldman team just
18 because it was related to the Goldman matter and they might
19 also want to know.

20 Q Do you know if an investigation or inquiry was
21 opened up as a result?

22 A I do not know.

23 Q Did you ever have conversations with David Becker
24 or Didem or anyone else about this matter other than the
25 referral?

1 A I talked to [REDACTED] I did not talk to David or
2 Didem.

3 Q Would you have any concern that if there was an
4 allegation that, potentially, somebody within the SEC had
5 provided information, that it would be a conflict for the
6 Enforcement Division to conduct the investigation?

7 A That didn't occur to me. [REDACTED] came into my office.
8 He was quite concerned about this because he knew I would be
9 the person who would know where to send the tip.

10 Q Right.

11 A And my recollection is that [REDACTED] wasn't saying that
12 someone called him and said anyone -- it was a rumor. Like
13 his impression is that people were spreading this rumor, as
14 opposed to someone had told him that they were aware of this.

15 And so my view was, maybe it's along the lines of
16 we were saying this is something that needs to be handled by
17 the right people. It certainly shouldn't be something that
18 we in the Chairman's office ought to be looking at.

19 Q Right.

20 A So I don't think, quite frankly, if there was an
21 allegation of insider trading, tipping, so to speak, by
22 somebody in the Chairman's office -- I'd have to think about
23 it. But I'm not sure if that would be inappropriate for the
24 Enforcement Division. I don't know.

25 Q But in this case, I mean --

1 A That's not what I thought treat.

2 Q Right. And [REDACTED] was bringing this forward.

3 A Yes.

4 Q It wasn't like somebody else was saying --

5 A Immediately. [REDACTED] made it very clear, like he hung
6 up the phone and he walked into my office -- no. He told me
7 that he called David Becker first, General Counsel, and then
8 he told me. And he said, I don't want to talk -- he was very
9 concerned about the appearance of how it was handled.

10 And he said, I don't want to talk about the issue
11 other than I want to make sure it goes to the right people
12 and that the right people have an opportunity to look at it.
13 And he was quite concerned.

14 Q We talked before about the New York Stock Exchange
15 coming forward about the heads up.

16 Did you have any involvement in any decisions
17 regarding filing the action against Goldman Sachs and
18 announcing it during trading hours? Do you know how that
19 decision was made?

20 A I don't believe a decision was made to bring it
21 during trading hours. Quite frankly, that's not -- that's
22 not normally a discussion that takes place. We bring our
23 cases when the courts are open, which is typically, for the
24 most part, during trading hours. And so this is nothing --
25 this was nothing unusual.

1 Q Was there a concern expressed afterward because of
2 the effect that the case had on the overall stock market as
3 well as Goldman stock?

4 A We had a number of -- we had received a number of
5 questions or concerns about the fact that it was brought
6 during the trading day affected the overall stock market.
7 And people expressed concern about the timing. But, of
8 course, it was brought -- it would have had -- particularly
9 as to the overall stock market, if it was brought immediately
10 before the trading day, also it would have presumably had
11 that effect. So nothing would have changed.

12 Q But were you aware that when it came to the
13 settlement of the Goldman case, it wasn't announced till
14 after the trading day?

15 A Yes.

16 Q And was that a conscious decision?

17 A It was.

18 Q And what was the reason for that?

19 A Because, in particular, given what we had observed
20 with Goldman in April, and quite frankly, the markets were
21 watching Goldman, including the litigation, closely. And, I
22 mean, every time, as far as I could tell, CNBC talked about
23 it, it would affect their stock price.

24 So there was a concern that bringing it after the
25 close of the markets would allow the information to be

1 equally distributed into the marketplace so that nobody would
2 be advantaged by the information.

3 Q But are you aware that while the SEC announced the
4 settlement of the Goldman case after the market hours, prior
5 to the end of market hours they announced that there would be
6 a press conference, and the announcement of a press
7 conference had a ripple effect on the market?

8 A Sorry. Do you mind --

9 Q Basically, there's two steps. In order to get a
10 press conference, you have to tell reporters that there's
11 going to be a press conference.

12 A Uh-huh.

13 Q You have to do that in advance, before you actually
14 release the information. So the SEC sent out the word to the
15 press that there was going to be a press conference coming
16 up. The word that was sent out was prior to the market
17 closing. The actual press conference occurred after the
18 market closed.

19 A Right.

20 Q But because there were rumors and stories about
21 Goldman, people assumed that when the SEC stated they were
22 going to have a press conference, it was about Goldman.

23 A Right.

24 Q And actually, that did cause the stock to be
25 affected.

1 **Were you aware of that?**

2 **A** I recall that the press release notice went out to
3 the media shortly before the market closed, and that the
4 Goldman stock price changed after that.

5 **Q** And so do you think, in hindsight, maybe that was a
6 mistake, and that even the announcement of the press
7 conference should be after the market if you were going to
8 try to deal with that issue of the effect on the stock?

9 **A** Yes, apparently. I think it was done -- the
10 announcement of the press release was done very close to the
11 end-of-the-market close. My recollection is that people
12 didn't foresee that that would have the effect that it did.

13 **Q** All right. Let me show you the next document.
14 We're going to mark it as Exhibit 46. It starts with an
15 e-mail from you to [REDACTED] 4/23/2010, 9:29 a.m.

16 **(Exhibit No. 46 was marked for**
17 **identification.)**

18 **THE WITNESS:** Okay.

19 **BY MR. KOTZ:**

20 **Q** And do you know what this is about?

21 **A** I do.

22 **Q** Okay. Could you tell me?

23 **A** After we brought the Goldman case, there was
24 another Goldman-related case on the calendar related to
25 Goldman Sachs Execution and Clearing, which is their clearing

1 arm, a case brought out of the [REDACTED] It was a
2 reg showcase, I think.

3 And in the climate that continued into the week of
4 April -- you know, well after Goldman -- there's two things
5 that were going on here. One is we were concerned that any
6 case -- this was not a huge case. But our concern was that
7 anything to do with Goldman was a big deal.

8 Q Right.

9 A As to the executive session, after the Wall Street
10 Journal article detailing what was discussed at the
11 April 14th meeting, there was a lot of concern among
12 Commissioners' office about the leaking of information by
13 people apparently at closed meetings.

14 And so I had meetings with multiple Commissioners'
15 offices and talked about what steps we could take, if any, to
16 improve -- reduce the likelihood of that recurring, one of
17 which was to increase the number of executive sessions on
18 more matters that might either have a lot of significant
19 discussion among the Commissioners that might generate
20 interest outside of the closed Commission room, or -- it was
21 more -- but just increase the number of executive sessions.

22 Q I see.

23 A The "Don't send an e-mail," what I meant was I was
24 concerned if -- [REDACTED] then often sends e-mails around to a wide
25 group of people about that matter. And I was concerned that

1 without context, somebody might misunderstand the policy.
2 And I wanted to make sure that it was discussed with the
3 Commissioners' offices.

4 Q But it had nothing to do with the ABACUS case?

5 A It had nothing to do with the ABACUS case.

6 Q All right. So the next document I'm going to show
7 you is dated 6/17/2010, 6:40 p.m., marked as Exhibit 47. It
8 starts with an e-mail from Lorin Reisner to you.

9 (Exhibit No. 47 was marked for
10 identification.)

11 THE WITNESS: Okay.

12 BY MR. KOTZ:

13 Q So at some point in time after the Goldman case was
14 filed, did you then learn that there were settlement
15 discussions?

16 A Yes.

17 Q And I guess in this time frame, June, mid to late
18 June of 2010, it was discussion of extending the time for
19 Goldman to answer?

20 A Correct.

21 Q So at what point in time did you understand that a
22 settlement in principle had been reached? Forgetting about
23 all the dotting the I's and crossing the T's, but when did
24 you understand that there was a settlement in principle?

25 A Not until July. My understanding is that some

1 terms of the settlement had been -- there was -- I don't know
2 which they were. But the reports I was getting is that, over
3 the course of the settlement discussion, there were some
4 terms that were agreed upon. But as of early July, I think
5 there were still significant terms that were being discussed
6 up to within a week or two or the settlement being filed.

7 Q So the settlement was filed on Thursday, July 15th?

8 A Correct.

9 Q When do you think you understood that there was
10 going to be a settlement? Was it, you know, a week before
11 that, or a couple weeks?

12 A I believe it was -- so I guess I'll -- I think we
13 knew -- we were having -- we were getting more discussion
14 from the Enforcement Division that settlement might be coming
15 or might be imminent within -- I don't remember when I first
16 understood -- within two weeks, maybe.

17 Q Right. Okay.

18 A And then I don't -- but I think -- my recollection
19 is it was still somewhat touch and go until within a week, if
20 not a few days, of it being filed. And in fact, I recall a
21 discussion Tuesday or Wednesday morning, even, where there
22 were discussions that maybe there would be no deal.

23 So that's why I don't -- I don't view the
24 settlement discussions, even within the final few days, as
25 "dotting I's and crossing T's," that there were still

1 significant things being discussed over which there were
2 disagreements up till shortly before.

3 Q So at what point was it, though, placed on the
4 calendar for the 15th? That must have been before.

5 A It was. It was shortly before, though. This one,
6 I don't remember specifically, but I believe either Monday of
7 that week or -- within a week. No more than a week before.

8 Q And was that unusual, to have such a quick
9 turnaround, to schedule something for only a week in advance,
10 particularly something, you know, as big a deal as this?

11 A I'm hesitating because if I say it's unusual, it
12 might give you a misimpression. It's unusual in the sense
13 the 95 percent of our cases are calendared in this normal
14 course we talked about earlier.

15 Q Right.

16 A It's not unusual in the sense that at least once a
17 week or every other week, we have a matter that we need to
18 calendar with a very short time frame. So it's not unusual.
19 There's a variety of reasons why we do that. And we try to
20 accommodate Enforcement staff.

21 Here there were particular circumstances that
22 caused them to want to file it within a week's time frame,
23 which would be consistent with the kinds of things we would
24 consider in other cases.

25 Q What were those particular circumstances?

1 A In this circumstance, my recollection is that there
2 were two issues. One is the Tuesday after the settlement,
3 Goldman was going to announce its earnings, and had informed
4 the Enforcement staff that they would be disclosing -- that
5 they needed to reserve \$550 million for a potential
6 settlement with the SEC. So essentially, our settlement was
7 going to go public Tuesday.

8 Also, on Monday, there was a -- their answer was
9 due. And so the sense was they needed to bring the -- they
10 would either have to file a settlement no later than Monday,
11 or file something with the court. Somehow they would have to
12 file something on Monday.

13 So I think, as is often the case with litigants,
14 deadlines, whether it's a jury trial, an answer filing, a
15 motion deadline, drives settlement discussions.

16 Q Right. Right. Now, what about the Commissioners
17 and the Chairman? How would they have enough time to analyze
18 and make a decision on the settlement if, you know, it's
19 still not even finalized a day or two before the meeting?

20 A This is a conversation I have with Lorin and Rob.
21 [REDACTED] and I working on the car are very -- in the
22 case of our conversations with the Commissioners, are always
23 concerned about ensuring that the Commissioners have enough
24 time to think through things. And, quite frankly, they
25 expect it and prefer it.

1 So now this is refreshing my recollection that I
2 talked to Lorin or Rob Wednesday or Thursday the preceding
3 week. Lorin gave me a call to give me a heads up that he
4 thought that -- so now we're ten days out from the filing --
5 this deadline and earnings call --

6 **Q Right. Right.**

7 A -- shortly after they got the call from Goldman to
8 tell me that he thought they were going to be able to reach a
9 settlement with Goldman before the earnings call or the
10 filing deadline.

11 He wanted to know, if they arrived at a settlement,
12 if we would be able to get the matter before the Commission.
13 And I said, it depends how far along you are. When can you
14 get me the -- my normal questions -- when can you get me the
15 memo?

16 **Q Right.**

17 A When can you get the stuff to the Commissioners'
18 offices? He said, we probably won't have a memo till Monday.
19 I said, that's a little bit late. Out of fairness to the
20 Commissioners, let's see how the next day or so proceeds.

21 But if you have enough of a settlement, you're
22 going to need to reach out directly to all the Commissioners'
23 offices and offer to come brief them personally so you can
24 get them all up to speed. And my advice was, you should
25 reach out to Commission counsel and give them a heads up.

1 Q And is that what happened?

2 A That's my understanding. I know, in fact, maybe
3 even as of Friday, I don't know when he -- I don't know when
4 they did it, but Lorin and Rob reached out to the
5 Commissioners, each of the offices, to set up meetings, I
6 think, for the following week to come brief them on the
7 Goldman settlement.

8 Q But it was a relatively short time that the
9 Commissioners had to really consider this because, from what
10 we understand, there were still discussions back and forth
11 early that week that the decision -- that the meeting took
12 place.

13 A Right. So what they did was they sent a memo up.
14 Maybe they offered to come orally brief them. They sent a
15 memo up. I think it was Monday morning, but I can't be
16 100 percent sure.

17 And then the idea would be that the remaining
18 few -- so at least they understand the background behind the
19 settlement, the litigation posture, why they believed it was
20 a good settlement, and all the terms they had agreed upon.
21 And if there was any additional things worked out over the
22 course of that week, there would be supplemental memo and
23 oral briefing.

24 So again, it's not -- this case is certainly -- I'm
25 not trying to downplay that it was a significant case. But

1 it's not unusual to bring cases before the Commission in a
2 short time frame. And a lot of the Commissioners are used to
3 dealing with -- for example, they do duty officer matters
4 every day, where they literally have to make a decision on
5 sometimes a 25-page memo in a matter of two hours.

6 So it's -- I'm not trying to downplay it. It's
7 somewhat unusual, but not so unusual that they're not
8 accustomed to dealing with that kind of thing.

9 Q Was the July 15th date, was that a special session
10 or a regular meeting or what? Was it an executive session,
11 perhaps?

12 A I'm sure that it was an executive session.

13 Q Was it kind of a regularly scheduled executive
14 session, or was it one scheduled simply for this matter
15 because of the time constraints of the matters that occurred
16 the following week?

17 A My recollection -- I'm only trying -- some time
18 within that two-week period, we had a meeting separate from
19 the actual closed meeting date. And I don't remember if it
20 was this case or another case that was within a week of it.

21 The executive session, on most calendar days we
22 have an executive session, a regular calendar. It's just a
23 matter of clearing people out of the room. So executive
24 session doesn't connote a special meeting. It just connotes
25 that we clear people out of the room for those matters only.

1 Q Okay.

2 A And so every -- for example, most of the meetings
3 are on Thursday. Sometimes, as you know, they're on a
4 Wednesday. We have executive session and regular session
5 items. So that wouldn't connote anything airplane.

6 I just don't recall whether this one was done on
7 a -- it was Thursday. The 16th was Thursday. So I would --
8 [REDACTED]: I think it was the 15th, but it was
9 Thursday.

10 THE WITNESS: That's right. The 15th was Thursday.
11 That was probably the regular calendar day.

12 MR. KOTZ: All right. Let me show you the next
13 document we're going to mark as Exhibit 48. And in the top,
14 it's an e-mail from you to Myron Marlin, 7/14/2010, 9:58 p.m.

15 (Exhibit No. 48 was marked for
16 identification.)

17 THE WITNESS: (Examining.) Yes.

18 BY MR. KOTZ:

19 Q Do you recall that this article came out a day
20 before the settlement was announced?

21 A I do.

22 Q What did you mean by, "Guess they've got first
23 crack at framing the story"?

24 A The debate with Myron about when you bring an
25 action -- because remember, he's a communications person --

1 Q Right.

2 A -- is all about, particularly with a copy of the
3 means of, in the media, as he explains to me, who and how you
4 frame a story. So we have a -- we don't talk about our cases
5 until we bring it. We bring our case, we do a press release.
6 We do whatever our communication strategy is.

7 Stories like this come out before enforcement --
8 significant enforcement actions, sometimes our general belief
9 is as leaked by the defendant because they're not constrained
10 as we are by rules.

11 Q Right.

12 A And if they get their story out to the press first,
13 they get to frame how people view it. So when you read a
14 story that talks about, you know, the amount -- I don't
15 remember what this particular article was, but either that
16 the settlement is good for Goldman, you know -- there were
17 some stories that were coming out about the settlement being
18 small.

19 Whatever the story is, this is their spin, so that
20 the first impression people of the settlement is from
21 Goldman's perspective. That's what I meant.

22 Q Okay. And given the fact that there were leaks and
23 that this story came out, was there more of an urgency for
24 the SEC to file and announce the settlement so that the SEC
25 press release and information about the settlement could come

1 out?

2 A My recollection is that by 9:30 Wednesday night, we
3 had decided to bring the case Friday -- I mean, on Thursday
4 already, I think.

5 Q Okay. But the case was brought Thursday afternoon,
6 after the Commission meeting occurred, which ran relatively
7 late in the day.

8 A Correct.

9 Q And do you think one of the reasons that the SEC
10 decided to bring it, instead of the same day as the
11 Commission meeting, afterwards, even though it was late in
12 the day, and not wait till the next day, was because of
13 concerns about leaks and/or Goldman framing the story?

14 A Oh, I do. I only hesitated because I don't believe
15 we made at that time after reading the article. But that's
16 what I meant by this. So I was -- this confirmed -- Myron's
17 view was, and I think John Nestor's view was, that if you
18 bring it Wednesday afternoon, you know, then the --

19 Q Thursday afternoon.

20 A I'm sorry, Thursday afternoon -- then our press
21 release and our complaint goes out, and the people get
22 that -- what we view as -- our press release is obviously
23 from our perspective, but a more objective, from our
24 perspective, view of the facts overall.

25 If you wait till Friday and it leaks, then Goldman

1 gets to control the story. And this was communicating to
2 Myron that, look, Goldman's out first, and so they get to
3 bring the story.

4 Q And so this article sort of accentuated the point
5 you were making?

6 A It accentuated the point that he was making. Yes.

7 Q I'm sorry. Yes. It accentuated the point that
8 Myron was making.

9 A Yes. Out of fairness to Myron, I don't want to
10 leave you with a misimpression because he's very careful
11 about this. He has views about public -- the press. He
12 always caveats his -- if Enforcement has a reason to bring a
13 case at a particular time, like the complaint isn't ready or
14 there's any law enforcement interest, I don't want to give
15 you the impression he drives the train.

16 There's always -- there's always an enforcement --
17 it's always Enforcement's decision at the end of the day when
18 to bring a case.

19 Q Right. But in this case, the Commission had
20 already approved it.

21 A Correct.

22 Q So everything was done.

23 A Well, at this point we --

24 Q Well, not at that point. But at the point that --

25 A Oh, yes.

1 Q -- a decision was made to file and issue it on
2 Thursday, it was after the Commission had approved it.

3 A Correct.

4 Q Then just a question of whether they would do it
5 immediately on Thursday or Friday.

6 A Correct.

7 Q So there's really no enforcement concern in that.

8 A That's right, unless they -- again, unless they
9 wanted an opportunity -- if it's a settlement, if they wanted
10 an opportunity to talk to somebody, if there was a
11 coordination issue, whatever it may be. That didn't exist
12 here.

13 Q Now, were you aware that that Thursday, July 15,
14 2010 was also the day that the financial regulatory reform
15 legislation was approved by the Senate? It was going to be
16 voted on, and eventually it was approved?

17 A I'm aware that it was approved that day. I was not
18 aware -- I don't believe we were aware, when we made the
19 decision to bring the case on -- to bring the settlement on
20 Thursday, that it would be voted on. In fact, our
21 understanding was that it would not be voted on on that day.
22 I think most of us believed it was probably going to happen
23 later.

24 Personally, I was surprised that they both -- my
25 recollection is there's a cloture vote and then it was

1 approved. I remember being surprised, and discussing with
2 others that we were surprised, that it actually was approved
3 that day.

4 Q Okay. But you did see that when the press reports
5 came out, it was sort of a double story: SEC settles with
6 Goldman/financial regulatory from approved?

7 A I observed that.

8 Q And was that a concern --

9 A That certainly wasn't anybody's aim.

10 Q Was that a concern just in terms of perception,
11 given the previous complaint?

12 [REDACTED]: Which previous complaint?

13 BY MR. KOTZ:

14 Q There was a complaint by Congressman Issa, which is
15 what we're investigating, one of the things, that the action
16 against Goldman Sachs was done to financial regulatory
17 reform. And here the settlement is almost a joint story with
18 the financial regulatory reform going through.

19 A Yes. I think the story about -- the story about --
20 we were, of course, attuned to when the reg reform was going
21 to pass because it imposed significant responsibilities on
22 the SEC. So in light of -- and yes, in light of Congressman
23 Issa's letter, people were concerned about that.

24 But, quite frankly, as of the time the action was
25 approved and our expectation for when we were going to bring

1 the settlement, we believed it was not going to coincide. So
2 in other words, we didn't actually think it was going to play
3 out that way. So we were surprised.

4 Q But just to be clear, essentially the filing and
5 announcement of the Goldman settlement, and the vote to
6 approve financial regulatory reform's timing, was a
7 coincidence?

8 A Oh, yes. That was definitely a coincidence.

9 Q Now, you mentioned earlier that you had worked on
10 financial regulatory reform issues?

11 A Uh-huh.

12 Q Yes?

13 A Yes.

14 Q And is it fair to say that the SEC, or the Chairman
15 particularly, was generally in favor of financial regulatory
16 reform going through?

17 A Yes. I mean, I just want to -- I'm only hesitating
18 because there's a ton of stuff --

19 Q There were parts they are more in favor of than
20 others.

21 A Yes. There's a lot of stuff in it.

22 Q But all things being equal, I think the Chairman's
23 on record as saying she thought it was a good thing?

24 A That's correct.

25 Q And did you have communications with members of

1 Congress or staff of members of Congress about financial
2 regulatory reform?

3 A Yes. Just from a timing perspective, I want to
4 make sure there's no confusion in the record, not -- most of
5 my communications -- not necessarily at the same times we
6 were considering the things that you're looking into.

7 Q All right. Well, let me --

8 A But yes. Over the period of the last year and a
9 half, I've had a number of conversations with congressional
10 staff related to that bill.

11 Q In any conversation you ever had with congressional
12 staff about financial regulatory reform, did the subject of
13 the Goldman investigation and/or lawsuit come up prior to
14 Goldman being filed?

15 A Never prior to Goldman being filed.

16 Q Subsequent to Goldman being filed, in any of the
17 conversations you had with congressional staff, did the
18 subject of the Goldman settlement come up prior to the
19 Goldman settlement being filed?

20 A Never.

21 Q Did you ever have any communications with the White
22 House regarding financial --

23 A I'm sorry. I can't -- the only caveat I would give
24 is after the Goldman case was filed, there was a phone call
25 that I listened in to. I didn't participate. I was present

1 with SEC staff talking to a number of staffers from the Hill,
2 at which I can't be sure that nobody asked, why didn't you
3 give -- this was a talking point at this point -- why didn't
4 you give them a chance to settle?

5 It would have just come up like that. There was no
6 conversation about it, but it's possible that someone from
7 the Hill asked the question about why they didn't get a
8 chance to settle. But no conversation about settlement
9 occurred.

10 Q Did you ever have any communications with the White
11 House about financial regulatory reform?

12 A I don't believe I did after I learned -- the answer
13 to your question is yes. But I believe those conversations
14 were prior to my learning of the Goldman case.

15 So back in May of 2009, May or June of 2009, I had
16 one or two conversations with somebody in the White House
17 Counsel's office about I don't even remember what, an issue
18 related to financial reg reform, a particular substantive
19 issue as they were looking at the Treasury proposal.

20 That's something that related to the SEC. And it
21 was an area that I was knowledgeable on, so I had a
22 conversation with somebody back then.

23 Q Throughout the financial regulatory reform process,
24 is it fair to say there were sort of ebbs and flows, where it
25 looked more something was going to pass and then other times

1 when it looked less likely?

2 A That's fair.

3 Q Were there any times where it looked less likely
4 that the financial regulatory reform would pass, where the
5 matter was discussed that if the SEC brought a case that
6 related to the financial crisis, that would help momentum for
7 the bill?

8 A Never.

9 Q Do you think the SEC's action against Goldman --
10 some are speculating that it did help momentum for the
11 financial regulatory reform bill.

12 Do you think that that was the case?

13 A I do not.

14 Q How come?

15 A I just -- I don't think -- I don't think an
16 enforcement action by the SEC would influence the reg reform
17 or -- I mean, I think that is not a logical or rational
18 implication. I think that we had been working on financial
19 reg reform for the better part of two years, at which point
20 we brought numerous cases related to the financial crisis.

21 We never knew when it would pass, if it would pass,
22 when we were going to bring a case, whether we were going to
23 bring it here or there. And so these events are so
24 disconnected, I find it hard to believe that any case that
25 the SEC brings would influence it, or that anyone would

1 believe that we could have that kind of effect.

2 Q Now, the SEC was poised to bring a significant case
3 against Goldman.

4 Was there any consideration to give the White House
5 a heads up that this was coming?

6 A Absolutely not.

7 Q Would that be so improper? I mean, the President
8 is the head of the whole government. On some level, Mary
9 Schapiro works for him. He's the head of the government.
10 Shouldn't he know what his government is doing?

11 A I actually don't -- even the extent to which Mary
12 Schapiro works for the President is something that I'm not
13 sure she views quite like that. I mean, the SEC is an
14 independent agency. We don't coordinate or discuss our law
15 enforcement actions with anyone other than appropriate law
16 enforcement agencies with whom we're working.

17 So I'm not aware of anybody talking to the White
18 House about any law enforcement action. Chairman Schapiro
19 and President Obama don't have regular conversations, let
20 alone about enforcement actions. So no, we don't do that.

21 Q All right. I want to ask you now a series of
22 questions. Okay?

23 Do you have any reason to believe that the SEC's
24 action against Goldman Sachs, or the timing of that action,
25 was in any way related or specifically to advance financial

1 regulatory reform legislation?

2 A No.

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

7 A No.

8 Q Are you aware of any information indicating the SEC
9 coordinated its action against Goldman Sachs with the
10 Executive Office of the President, the White House, or any of
11 its employees?

12 A No.

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

18 A No.

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

22 A No.

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

1 any congressional employees prior to the complaint being
2 filed?

3 A No.

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

9 A No.

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

16 A No.

17 Q And with respect to the settlement with Goldman,
18 are you aware of any information indicating that the SEC
19 coordinated the Goldman settlement with the Executive Office
20 of the President, the White House, members of Congress,
21 congressional employees, the Democratic National Committee,
22 the Democratic Senate Campaign Committee, or the Democratic
23 Congressional Campaign Committee, or any of their employees?

24 A No.

25 Q And are you aware of any information indicating

1 that anyone at the SEC shared any information concerning the
2 Goldman settlement with the Executive Office of the
3 President, the White House, its employees, members of
4 Congress or congressional employees, or the Democratic
5 National Committee, the Democratic Senate Campaign Committee,
6 the Democratic Congressional Campaign Committee, or any of
7 their employees?

8 A No.

9 [REDACTED]: Prior to it being filed?

10 BY MR. KOTZ:

11 Q Prior to it being filed?

12 A I'm not aware of any such information.

13 Q Have you had communications at all with the
14 Democratic National Committee, the Democratic Senate Campaign
15 Committee, or the Democratic Congressional Campaign
16 Committee?

17 A No.

18 [REDACTED]: At all?

19 THE WITNESS: Ever in my life?

20 BY MR. KOTZ:

21 Q Well, in connection with your duties at the SEC?

22 A In relation to my duties, no.

23 Q Are you aware of any information indicating
24 specifically that anyone at the SEC shared any information
25 concerning the Goldman Sachs information or the Goldman

1 settlement prior to those matters being filed?

2 A I'm sorry?

3 Q Are you aware of any information indicating that
4 anyone at the SEC shared any information with the news media
5 or journalists concerning either the Goldman Sachs
6 investigation before it was filed or the Goldman Sachs
7 settlement before it was filed?

8 A No.

9 Q I mean, you're aware generally that they were
10 released, but you're not aware specifically of anyone who
11 provided any information?

12 A Correct.

13 Q And you don't know necessarily that the leaks came
14 from the SEC?

15 A Nor am I aware -- that's right. That's why -- that
16 was a part of my "No," was that point.

17 Q Although if it came from a closed Commission
18 meeting, the vote, do you think it was likely that it came
19 from somebody with the SEC? Who else would know?

20 A If there were details about the discussions of the
21 Commissioners, it would have to come from someone at the SEC.

22 MR. KOTZ: All right. Why don't we take a minute
23 and see if we have anything else. Let's go off the record.

24 (A brief recess was taken.)

25 MR. KOTZ: Back on the record.

1 BY MR. KOTZ:

2 Q Just to clarify one matter, looking back on it now
3 with hindsight, knowing the effect that the filing of the
4 Goldman action had on the market and had on Goldman stock, do
5 you think it would have been advisable, had the SEC realized
6 that impact, to file and announce the SEC action against
7 Goldman not during trading hours?

8 A I think -- let me answer like this. I think there
9 is good reason to think about the question of whether it's
10 appropriate to file cases like this during market hours. I'm
11 reticent -- I've thought about this some, and I know others
12 have thought about it.

13 I'm reticent to say that there ought to be a policy
14 or a rule because courts are open during -- it would be very
15 hard to have a blanket policy that we can only bring our
16 cases before or after market hours because that's just not
17 always feasible.

18 So I think it's worth thinking about that question
19 when we file actions, but I don't know if it would be a good
20 blanket policy.

21 Q Right. But you could have a flexible policy. But
22 the fact is, as part of the policy, would be a consideration
23 of the impact on the market or the impact on a particular
24 stock. Right? I mean, you could have --

25 A I think that's worth thinking about.

1 Interestingly, when I've talked about this issue, we
2 affirmatively don't -- in a way, we don't think classically
3 about the effect on the markets when we file actions because
4 we're not looking to influence -- whenever you think about
5 effect on the markets, there's two sides to it.

6 So we don't -- we're usually neutral about it. We
7 bring our case when it's ready, and we file it, and it has
8 its effect. I'm not saying that that's good or bad policy.
9 I'm not putting a value judgment on it.

10 I'm just saying, classically, we were intentionally
11 neutral about that; they were filed when they were filed. I
12 think this is a unique circumstance that showed there can be
13 an effect on the market, and it does raise -- it's worth
14 thinking about the question of whether, in certain
15 circumstances, we ought to consider whether -- when it's
16 appropriate to file an action.

17 I haven't formed in my head yet what -- how that
18 would be best applied.

19 Q And at least when the settlement was filed, the SEC
20 wasn't neutral in the sense that a decision was made to file
21 and announce it after trading hours?

22 A That's correct.

23 MR. KOTZ: All right. Is there something you
24 wanted to add or clarify from your testimony?

25 THE WITNESS: Yes. There were just two or three

1 things that just struck me. I think one was just from
2 looking at e-mails. I don't need to pull it up again. I
3 guess when I read through them and there were questions I
4 thought you might ask that I thought were worth
5 understanding --

6 MR. KOTZ: Okay. Please.

7 THE WITNESS: You showed us some series of e-mails
8 that I'm on that show an attempt in January, and maybe also
9 in April but for sure in January -- there's discussions
10 about, is this Commissioner going to be able to be there, and
11 is that Commissioner able to be there? And I know there's
12 been some public discussion about, different Commissioners'
13 votes.

14 And I just want to make sure that you understand
15 and are clear that my attempts to get -- my discussions about
16 who was going to be at the meeting and when were centered
17 around ensuring that there were five Commissioners there.

18 MR. KOTZ: Okay.

19 THE WITNESS: I wasn't trying to get a particular
20 Commissioner there or not there.

21 MR. KOTZ: Okay.

22 THE WITNESS: This is normal practice for us. On a
23 case like Goldman and others that are significant, where we
24 believe it will either be controversial or important or
25 whatever, Commissioners like to weigh in.

1 MR. KOTZ: Right.

2 THE WITNESS: And so I was, I know from these
3 e-mails, working very hard to find a date that everyone would
4 be there, which is, incidentally, how we ended up with
5 April 14th, which I don't think we really cover. But we
6 ended up with April 14th because that was a specially set
7 meeting --

8 MR. KOTZ: Right.

9 THE WITNESS: -- not for Goldman, but for a number
10 of matters that five Commissioners needed to be present for.
11 And around April 14th, there weren't a lot of -- there were
12 no meetings where there would be five Commissioners. That's
13 why it was on a Wednesday. It was the only day that, within
14 a month, we could find that all five Commissioners were here
15 at the same time.

16 So I just wanted to make sure you understood that.

17 MR. KOTZ: That's very helpful information.

18 THE WITNESS: So it's -- because someone could look
19 at those e-mails and it looks like, why is he talking about
20 this Commissioner and that Commissioner? And I wanted to
21 make sure you understood why.

22 MR. KOTZ: And at the end of the day, all five
23 Commissioners were there, both with respect to the Goldman
24 action and then with respect to the settlement.

25 THE WITNESS: Correct.

1 MR. KOTZ: Anything else?

2 THE WITNESS: The last -- the whole series of
3 questions about all the potential contacts with other
4 agencies, which obviously I answered --

5 MR. KOTZ: Yes.

6 THE WITNESS: -- I'm not aware of any.

7 MR. KOTZ: Right.

8 THE WITNESS: I guess -- I don't know. You have a
9 lot of e-mails. But I just wanted to add that I have a
10 specific recollection of having particular conversations with
11 respect to Goldman. We went out of our way to not disclose
12 it to particular agencies, and even moreso, to make sure
13 there couldn't be an appearance of impropriety in our
14 conversations with political agencies.

15 Specifically, I recall Treasury reaching out to us
16 on the day that Goldman was filed to seek kind of what I
17 viewed as like a special briefing. And our response was, no.
18 You can get the information along with everybody else.

19 MR. KOTZ: This is after it was filed?

20 THE WITNESS: It was after it was filed. But my
21 concern was that they were getting -- they wanted special
22 nonpublic information as opposed to what everybody was
23 getting.

24 MR. KOTZ: I see.

25 THE WITNESS: But, I guess, more to the point, you

1 know, we're part of this Financial Fraud Enforcement Task
2 Force, which Justice -- we're part of it, and we have regular
3 meetings with them, and we think it's a great idea.

4 But we're an independent agency. They're not, in
5 precisely the same way, legally an independent agency. So
6 we've had constant discussions about getting financial
7 crisis-related cases, like kind of the imprimatur of the
8 Financial Fraud Enforcement Task Force.

9 From their perspective, it's the President's task
10 force. We've studiously avoided participating in anything
11 that reflects "the President's task force." We try very hard
12 not to give the impression that our cases are politically
13 motivated.

14 MR. KOTZ: Right.

15 THE WITNESS: And so, relevant here, and I remember
16 on this case having discussions before bringing it in April,
17 about whether it would be appropriate to state that we were
18 part of the Financial Fraud Enforcement Task Force. And we
19 came to the conclusion, after discussing it, that it wouldn't
20 be appropriate because we wouldn't want anyone to think that
21 this was anyhow political-motivated.

22 MR. KOTZ: Okay. Well, that's helpful.

23 THE WITNESS: So we really -- frustration,
24 perhaps -- we work very hard to avoid the appearance of
25 anything political affecting our cases. So, obviously, the

1 aftermath in the press that this was political, people take
2 that, the staff in particular, to heart when they're just,
3 you know, working on their cases.

4 MR. KOTZ: Right. Okay.

5 THE WITNESS: The only other thing I remember is
6 you were asking the policy, which -- the policy about not --
7 when you contact --

8 MR. KOTZ: Right.

9 THE WITNESS: I wasn't -- just to make sure we're
10 clear, I wasn't part of any discussions about when we should
11 contact Goldman or not, nor would it be my role or
12 responsibility in the Chairman's office either to decide when
13 to call them or to enforce the policy. I just wanted to make
14 sure that was clear.

15 MR. KOTZ: Okay. Good.

16 [REDACTED]: That last point was a favor to me.

17 MR. KOTZ: That's a good point. All the points
18 were very helpful.

19 Anything else you want to add?

20 THE WITNESS: Nothing that I can think of.

21 MR. KOTZ: Anything you have?

22 [REDACTED]: No. I think we're good.

23 MR. KOTZ: Okay. We're going to go off the record
24 in a second. I have no more questions. The one thing I
25 would ask -- and this is actually very important -- in order

1 to preserve the integrity of our investigation, I would ask
2 that you not discuss the content of your testimony with
3 anyone. Obviously, you can discuss it with counsel.

4 THE WITNESS: Right.

5 MR. KOTZ: But not with anyone else.

6 THE WITNESS: Understood.

7 MR. KOTZ: All right. With that, we're off the
8 record.

9 (Whereupon, at 4:20 p.m., the examination was
10 concluded.)

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REPORTER'S CERTIFICATE

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I, [REDACTED] reporter, hereby certify that the foregoing transcript of 145 pages is a complete, true and accurate transcript of the testimony indicated, held on August 11, 2010, at 1:01 p.m. in the matter of: OIG-534.

I further certify that this proceeding was recorded by me, and that the foregoing transcript has been prepared under my direction.

Date: 8/19/10

Official Reporter: [REDACTED]

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PROOFREADER'S CERTIFICATE

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In the Matter of: OIG-534

Witness: Number 37

File Number: OIG-534

Date: Wednesday, August 11, 2010

Location: Washington, D.C.

 This is to certify that I, [REDACTED] (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.

[REDACTED]

(Proofreader's Name)

8/19/10

(Date)

Chapter Break

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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

 COPY

Witness: Number 38

PAGES: 1 through 61

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

DATE: Thursday, August 12, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 10:12 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

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C O N T E N T S

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2			
3	WITNESS:		EXAMINATION
4	Myron Marlin		4
5			
6	EXHIBITS:	DESCRIPTION	IDENTIFIED
7	1	Confidentiality and	
8		Nondisclosure Agreement	6
9	2	E-mail chain 11/4/2009, 6:32 p.m.	11
10	3	E-mail chain 11/4/2009, 8:12 p.m.	11
11	4	E-mail chain 1/4/2010	14
12	5	E-mail 1/24/2010	15
13	6	E-mail 1/26/2010	16
14	7	E-mail chain 3/21/2010	19
15	8	E-mail 4/11/2010	20
16	9	E-mail chain 4/14/2010, 10:12 a.m.	22
17	10	E-mail chain 4/14/2010, 6:08 p.m.	29
18	11	E-mail 4/15/2010, 12:07 p.m.	31
19	12	E-mail chain 4/15/2010, 9:44 a.m.	33
20	13	E-mail 4/17/2010	36
21	14	E-mail chain 4/18/2010	38
22	15	SEC Administrative Regulations	40
23	16	E-mail chain 4/16/2010	42
24	17	E-mail chain 7/14/2010	47
25			

P R O C E E D I N G S

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MR. KOTZ: Okay. We're on the record at 10:12 a.m.
on August 12, 2010 at the United States Securities and
Exchange Commission.

Will you please raise your right hand?
Whereupon,

MYRON L. MARLIN
was called as a witness and, having been first duly sworn,
was examined and testified as follows:

EXAMINATION

MR. KOTZ: Could you state and spell your full name
for the record?

THE WITNESS: Myron Laurence Marlin. M-y-r-o-n.
L-a-u-r-e-n-c-e. M-a-r-l-i-n.

MR. KOTZ: Okay. Mr. Marlin, 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)

(b)(6),(b)(7)(C) And if your attorneys would like to introduce
themselves for the record.

(b)(6),(b)(7)(C): Sure. (b)(6),(b)(7)(C).
(b)(6),(b)(7)(C): (b)(6),(b)(7)(C). And I think our
firm's Schertler and Onorato. It's located here in
Washington, D.C.

BY MR. KOTZ:

1 Q Okay. This is an investigation by the Office of
2 Inspector General, case number OIG-534. I'm going to ask you
3 certain questions, and you'll be providing answers under
4 oath. The court reporter will record and later transcribe
5 everything that is said. Please therefore provide verbal
6 answers to the questions, as a nod of the head or another
7 non-verbal response won't be picked up by the court reporter.

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

16 A Yes.

17 Q Great. I'll give you the perjury warning. As you
18 can see, your responses and statements given today are
19 provided after you've sworn an oath. It will taken down
20 verbatim by the court reporter. This is an official U.S.
21 government law enforcement investigation. The claims
22 asserted in this case are serious ones. It is very important
23 you tell me everything you know about the matter at hand and
24 are completely forthcoming and truthful with me.

25 I'm formally advising you that your testimony today

1 is subject to the laws of perjury. Providing false or
2 misleading testimony under oath is a very serious offense.
3 If the evidence shows the testimony you've given is false we
4 may refer it as appropriate. Do you understand those
5 instructions?

6 A Yes.

7 MR. KOTZ: Great. All right. So I want to just
8 first put into evidence the confidentiality and
9 non-disclosure agreements. And why don't we put it in
10 combined as Exhibit 1. And if each of you could just attest
11 that this your signature on these documents.

12 (Exhibit No. 1 was marked for
13 identification.)

14 [REDACTED]: Yes.

15 [REDACTED]: Yes.

16 MR. KOTZ: Okay. Great.

17 BY MR. KOTZ:

18 Q All right. Let's start with a little background.
19 Could you describe your education, beginning with college?

20 A Yes. [REDACTED]

21 Q [REDACTED]

22 A [REDACTED]

23 Q [REDACTED]

24 A [REDACTED]

25 Q [REDACTED]

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

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

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

13 Q (b)(6),(b)(7)(C)
14 A
15 Q
16 A
17 Q
18 A

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

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

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

24 Q (b)(6),(b)(7)(C) you came to the SEC?

25 A Yes.

1 Q Okay. When did you come to the SEC?

2 A I think about March of 2009.

3 Q And what's your position at the SEC?

4 A Director of Communications.

5 Q And is that a political position?

6 A My position is political. Yes.

7 Q Okay. And is there a communications department?

8 A There's a Public Affairs office, Office of Public
9 Affairs.

10 Q Okay. So what's your relationship, working-wise,
11 to the Office of Public Affairs?

12 A Sort of serves as a liaison, essentially, back and
13 forth between the Chairman's office and the Public Affairs
14 office. I stay in pretty close contact with John Nester, who
15 you I assume know. We fill each other in on what the
16 press -- he fills me in on what the press is calling about; I
17 fill him in on what the Chairman's office is doing. We have
18 a pretty close working relationship.

19 Q And so what are your duties and responsibilities as
20 director of communications?

21 A I serve as a counselor to the Chairman on
22 communications issue, work and shaping messaging. I do a lot
23 of the documents around the sort of rule-making that we do
24 when there's open meetings. I work together with John and
25 try to figure out what the appropriate thing is to do with

1 respect to certain cases. It's a variety of things.

2 Overseeing the speech writing for the Chairman, accompanying
3 her with interviews. It runs the gamut.

4 Q Who do you report to?

5 A Didem or Mary.

6 Q Okay. All right. Did there come a time when you
7 became aware of the existence of an investigation by the SEC
8 into the sale of collateralized debt obligations by Goldman
9 Sachs, known as the Abacus investigation?

10 A Yes.

11 Q Okay. Do you know when you first heard about this
12 investigation? I mean I assume it wasn't until you came to
13 the SEC?

14 A That's correct. I don't know when I first heard
15 about that investigation. I recall that I heard about --
16 that there was an investigation with respect to Goldman -- I
17 don't know -- early '09 -- I mean early '10, 2010.

18 Q Okay. And did you understand that that
19 investigation about Goldman was considered a national
20 priority investigation for the SEC?

21 A No.

22 Q Okay. Did you understand that it was just
23 generally a significant matter that the SEC was working on?

24 A Somewhat difficult, because I knew that there were
25 cases involving Goldman. I'm not like exactly when I knew

1 what this case was, if that makes sense.

2 Q Okay. When you became aware of the specific case,
3 the Abacus case, at that point did you understand that that
4 was sort of a significant investigation for the SEC?

5 A It's hard for me to answer when I knew about this
6 case. So I guess if you work your way back until like right
7 before this case was filed, I knew this was a big case. Yes.

8 MR. KOTZ: Okay. All right. Well, let me show you
9 some documents. I'm going to mark as Exhibit 2 an e-mail
10 exchange between you and Stephen Cohen. It starts with an
11 e-mail from you to Stephen Cohen, 11/4/2009, 6:32 p.m.

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

14 THE WITNESS: So I read up?

15 MR. KOTZ: Sure.

16 [REDACTED]: Is there any possibility to get
17 copies or -- thank you.

18 THE WITNESS: Okay.

19 MR. KOTZ: All right. And then I'm going to show
20 you another e-mail string, which comes out of this same
21 string, which we're going to mark as Exhibit 3, which starts
22 with an e-mail from Stephen to Cohen to you, 11/4/2009 at
23 8:12 p.m.

24 (Exhibit No. 3 was marked for
25 identification.)

1 MR. KOTZ: So it's essentially the same string,
2 except at the end there's a different response.

3 THE WITNESS: Okay.

4 BY MR. KOTZ:

5 Q So when Stephen Cohen references in this e-mail on
6 November 5, 2009 5:15 p.m., "we have a very significant case
7 brewing on this, as you know," was that the Abacus case?

8 A I have no idea.

9 Q Okay. You said, "let's talk later on this." Do
10 you remember having a conversation with Steve Cohen about a
11 case against Goldman Sachs?

12 A No. I remember having a conversation with Steve
13 Cohen about Goldman Sachs. I don't remember this particular
14 timeframe or this set of e-mails.

15 Q Do you remember generally that there was, I guess,
16 a Goldman series in this McClatchy newspapers? Do you
17 remember that occurring?

18 A I did know that there was a McClatchy series. Yes.

19 Q And do you remember that around the time you knew
20 there was a McClatchy series you learned that the SEC was
21 actually bringing a case against Goldman that, at least
22 somewhat, related to the series?

23 A Ask the question one more time.

24 Q Sure. You say in here, "Note the question by the
25 reporter. Is the government doing anything about this?" So

1 my question is do you recall learning about a series about
2 Goldman and then coming to an understanding that the SEC had
3 a case that was related to what was talked about in the
4 series?

5 A No, I suppose is the simplest answer. I can't
6 recall that particular timeframe. I just remember that they
7 had that series on a CDO case.

8 Q But you don't remember that the SEC had a case
9 going on at that time?

10 A No. What I remember was that there were CDO cases
11 involving Goldman.

12 Q Okay.

13 A When I knew Abacus -- as I said, I'm not clear when
14 I would have known Abacus, that is this case that we brought
15 in April.

16 Q Okay. So are you saying you wouldn't know it by
17 the name Abacus, but you would know there was a Goldman case?
18 I mean Stephen Cohen refers to "a very significant case
19 brewing on this." I don't know that there were any other
20 cases relating to Goldman, other than the Abacus case.

21 A I'm under the impression there are other cases
22 against Goldman. Yes. That's my understanding.

23 Q Okay. So why would Stephen Cohen inform you that
24 there's a significant case brewing on this?

25 A You'd have to ask him. The e-mail says -- you

1 know, there's some question out there, so he wants to
2 indicate that there's some sort of a case brewing, to let us
3 know that, yeah, something's up.

4 Q Okay. And you say to him in your e-mail, "Steve,
5 can you please look this over and decide how to handle this?"
6 What would he handle?

7 A Figure out what, if anything, we could say.

8 Q To the reporter?

9 A Presumably if we could say anything he would
10 probably be the person we'd first touch base with to figure
11 out what, if anything, was going on, what the reporter knows
12 about. Sure.

13 Q And did you say anything to the reporter?

14 A No. I don't recall talking to the reporter at all.

15 Q Okay. All right. Let's go to the next document.
16 We'll mark this Exhibit 4. Actually, the top has an e-mail
17 from you to yourself, 1/4/2010, 12:08 p.m.

18 (Exhibit No. 4 was marked for
19 identification.)

20 THE WITNESS: Okay.

21 BY MR. KOTZ:

22 Q Do you remember this article that came out?

23 A Yes.

24 Q Okay. What do you remember about it?

25 A I remember Steve sent it to me. I think I came

1 [REDACTED], and I remember thinking, okay, if we ever
2 bring this case I'd like to keep this so I could read what
3 the case is about, because newspapers are usually an easier
4 way to understand what's going on then reading the complaint.

5 Q Was there a concern expressed that the details of
6 the SEC's case was laid out in the newspaper?

7 A Steve expressed that concern. Sure.

8 Q Did you have any concern about that?

9 A I just -- I don't recall having a concern about it.
10 No.

11 MR. KOTZ: All right. We'll mark the next document
12 as Exhibit 5. It's an e-mail from Steve Cohen to you, Kayla
13 Gillan and Didem Nisanci, Sunday, January 24, 2010, 9:56 a.m.

14 (Exhibit No. 5 was marked for
15 identification.)

16 BY MR. KOTZ:

17 Q Did you ask to be kept apprised of significant
18 cases?

19 A I generally say, yeah, please let me know if
20 something's coming out on the calendar so that we could be
21 prepared to announce it hopefully.

22 Q So at least in January of 2010 you were aware of
23 the Goldman CDO case. It may not have been called Abacus,
24 but --

25 A Right. That's right. I was told about some sort

1 of a case. That's correct. I couldn't of told you that it
2 was the case that we ended up bringing.

3 Q Okay. All right. But you know now that this is
4 the case that you ended up bringing?

5 A I can just assume that at this point.

6 Q Okay. And so were you aware that actually even
7 prior to this, in December, this same Goldman CDO case was
8 placed on the Commission calendar and then withdrawn from the
9 calendar?

10 A Prior to this?

11 Q Yes. It was placed on the calendar twice. First
12 in December and withdrawn, then in January and withdrawn.

13 A No. I did not know that.

14 Q Okay. But at this point, in January, I guess you
15 were under the impression that the case was about to be
16 brought?

17 A I have this recollection that something was likely
18 to happen in the case, because I remember being briefed at
19 some point by Steve, was told about the case.

20 MR. KOTZ: Okay. Let me show you the next
21 document. I'm going to mark it as Exhibit 6. This is an
22 e-mail from Steve Cohen to you, 1/26/2010, 1:27 p.m.

23 (Exhibit No. 6 was marked for
24 identification.)

25 THE WITNESS: Okay.

1 BY MR. KOTZ:

2 Q Do you remember -- Steve Cohen says, "I flagged the
3 issue we discussed," and he will discuss with Rob. "I'll
4 raise it again at the end of the day. Let me know how
5 strongly you feel." He prefers to file Monday. Do you
6 remember what the issue was?

7 A No.

8 Q I think that there was a discussion about when to
9 file the case, whether to file the case on Thursday, Friday,
10 or Monday. And I think there was kind of a debate between
11 various folks on whether you would want to file a case like
12 this on Friday.

13 A Back in January?

14 Q Yep.

15 A I have no recollection of that whatsoever.

16 Q Okay.

17 A Is there anything you can tell me that might remind
18 you?

19 [REDACTED]: Is it possible that the issue you
20 discussed with Mr. Cohen about whether waiting to file until
21 Monday might result in a leak or the news media getting the
22 story out before the complaint is actually filed?

23 MR. KOTZ: Yeah. I think that's what Steve Cohen
24 testified.

25 THE WITNESS: That's a common -- that's a common

1 thing we talk about, where big cases you don't want to hold
2 until over the weekend. That's true. I don't have any
3 recollection of this case being sort of ready to go or
4 anything like that back in January. I just kind of remember
5 something must have been up, because I remember being briefed
6 about it months earlier. And as you can see, it's because I
7 guess it was ready to be calendared at some point back in
8 January.

9 BY MR. KOTZ:

10 Q And were you aware that the Chairman at this time
11 was anxious to have Goldman case brought?

12 A I mean -- no. No.

13 Q And then in addition to discussions about whether
14 you want to hold a case over to Friday, were there also
15 discussions about whether it is advisable to file an
16 enforcement case that's going to get some press attention on
17 Friday?

18 A Can you ask the question again? I'm sorry.

19 Q In testimony in this case we've had, you know,
20 maybe ten, fifteen witnesses. And they've all discussed the
21 fact that there was this running debate going on as to
22 whether you would file an enforcement case on Friday because
23 of -- evidentially, traditionally, the enforcement division
24 never filed any big cases that would get any press attention
25 on Friday, with the idea being you'd get less press attention

1 over the weekend. Others had the view that with the 24/7
2 news cycle, with the Internet, that's irrelevant.

3 A Right.

4 Q Do you remember that discussion?

5 A I remember that we talk about when best to file
6 cases. I don't remember it in connection with any
7 Goldman-related matter prior to, you know, back in January or
8 whatever this was, this time period. I just don't remember
9 that timeframe with the case. But, yeah. We talk about why
10 the Commission closed meeting on a Thursday usually or on a
11 Wednesday usually. Because there are -- you know, there's an
12 argument that says you want to file a particularly big case
13 on a day when other cases aren't being filed. My own view is
14 Friday's okay, as long as it's not late in the day.

15 Q Okay. All right. Let's go to the next document,
16 and mark this as Exhibit 7. This is an e-mail from you to
17 Didem Nisanci, dated 3/21/2010 8:24 a.m.

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

20 (b)(6),(b)(7)(C): I'm sorry David. Exhibit 7? Is
21 this -- do I have the right number?

22 MR. KOTZ: Yeah.

23 BY MR. KOTZ:

24 Q Okay. Do you remember anything about this?

25 A Not the e-mail. No.

1 Q But I mean do you remember the op-ed or briefing I
2 guess it's --

3 A I can't remember the exact time, but ABS is one of
4 our rules that we proposed, and Gretchen is somebody that
5 writes about sometimes rule-making.

6 Q But do you remember what the op-ed you're referring
7 to here was?

8 A I'm guessing it possibly was the op-ed that we were
9 drafting with I think it was [REDACTED] on [REDACTED]

10 Q Okay. So did it have anything to do with Goldman
11 Sachs?

12 A I don't remember Goldman Sachs coming up in that,
13 in any op-ed. No.

14 MR. KOTZ: Okay. All right. Move to 4/11/2010,
15 10:53 p.m. Exhibit 8 is an e-mail from Steve Cohen to Mary
16 Schapiro with a copy to Kayla Gillan, Didem Nisanci, and you.

17 (Exhibit No. 8 was marked for
18 identification.)

19 THE WITNESS: Okay.

20 BY MR. KOTZ:

21 Q Okay. And so in this e-mail that Stephen Cohen
22 sends he says, "I'm preparing a memo about Goldman case and
23 will be happy to discuss anytime. There is still live issue
24 that I've discussed with Myron and Rob about whether to do a
25 press conference. Double-edged sword, as I'm sure Myron has

1 or will discuss."

2 A Right.

3 Q What was that about?

4 A That was about whether or not to do a press
5 conference or some other kind of event other than a press
6 conference. And the issue there was the fact that there are
7 folks who believed this was a narrow case, that we could be
8 criticized for bringing such a narrow case after a two-year
9 investigation and that we could be accused of hyping it if we
10 did a press conference. So this was one of these things
11 where some people were saying, let's have a press conference;
12 some people were saying, let's not.

13 Q What was your view?

14 A Have a press conference.

15 Q How come?

16 A It's just -- it's the Goldman case. I don't know.
17 It seems like it would be a big case. People would want to
18 know about it.

19 Q All right. So do you remember the sequence of
20 events that week that the Goldman case was filed? The
21 Goldman case was filed on a Friday, April 16th.

22 A Right.

23 Q And there were numerous matters going on during
24 that week.

25 A Correct.

1 Q There was this Quadrangle case. Do you remember
2 that one?

3 A Yes.

4 Q Okay. And there were efforts to coordinate when to
5 file what. Is that fair? Or when to announce what?

6 A Yes, although many things were out of our control.

7 MR. KOTZ: Right. All right. Let me show you the
8 next document, this one, Exhibit 9. It's an e-mail exchange
9 between you and John Nester, 4/14/2010 at 10:12 a.m.

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

12 THE WITNESS: Okay.

13 BY MR. KOTZ:

14 Q So I assume when you say G's you're referring to
15 Goldman?

16 A Yes.

17 Q Okay. And so how was the decision made to file
18 Goldman on Friday that week?

19 A A series of discussions ultimately leading to Mary
20 saying Friday is better, because we can't do it on Thursday
21 when the Quadrangle case is.

22 Q Why couldn't you do it on Thursday when the
23 Quadrangle case is?

24 A Well, her view was that it would ruin the
25 relationship with Cuomo. My own view was that with

1 Quadrangle on Thursday, together to with as Nester refers to
2 a press conference on the Hill, it just doesn't make sense to
3 have yet a third story on Thursday, so we moved to Friday.

4 **Q Okay. And so why would there be a concern about**
5 **having too many stories on one day?**

6 **A It's just too much for the press to cover anything.**
7 You already have two stories that you want to have -- get
8 attention for. So now all of the sudden bringing Goldman, it
9 ends up creating a problem for the press covering anything.
10 They can't cover everything. So you already had two stories,
11 and these were both two stories that might not necessarily
12 generate, you know, good press on their own. We would have
13 to do a little bit of -- what's the right word? -- outreach
14 to ensure that the people actually would cover those other
15 two stories.

16 **Q Which other two?**

17 **A Quadrangle and the press conference on the Hill**
18 with the former Chairman.

19 **Q Okay. But you wouldn't need to do that for the**
20 **Goldman case?**

21 **A I think Goldman would generate its own press.**

22 **Q So is there a benefit to have only Goldman on that**
23 **day, on a one particular day? If it generates a lot press**
24 **than kind of the media would be saturated with --**

25 **A No. It's just simply Friday was not a busy day.**

1 Thursday was the busy day. Quadrangle moved from Wednesday
2 to Thursday, so it just made sense, move Goldman from
3 Thursday to Friday.

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

5 Q Was there any discussion about moving the Goldman
6 Sachs filing to Wednesday, which is when it was going before
7 the Commission?

8 A The discussions actually about which day to file it
9 on was on Wednesday, and Wednesday I think the closed
10 Commission meeting was pretty late that evening. There was
11 no way -- I mean if I might say, one of the extra concerns
12 that I had was that I didn't even think I'd be able to be
13 ready, from the communications standpoint, to bring Goldman
14 on Thursday, when you already had so much work going into
15 Quadrangle and so much work going into prep for the press
16 conference on the Hill, not to mention all of the work that
17 we needed to still do to do all of the materials to have
18 ready to be posted in response to the IG's report regarding
19 Stanford.

20 Q And was there any discussion about possibly
21 bringing the Goldman action on Monday, just waiting until
22 then?

23 A Well, sir, as we've talked about before it tends
24 not to be something that you do with large cases, to hold it
25 over the weekend. So I don't really think that that was

1 discussed. I don't know. It's possible somebody said it
2 some point, but I think it wasn't really an issue. I think
3 for me the issue was, you know, Thursday or Friday, Friday or
4 Thursday. That was it.

5 Q And did anyone disagree with the decision to move
6 Goldman Sachs to Friday, among people you spoke with?

7 A The only person I remember pushing back a little
8 was Rob, because he thought that the Stanford report would
9 overshadow the Goldman case.

10 BY MR. KOTZ:

11 Q And so who made the ultimate decision to file
12 Goldman on Friday?

13 A In this case, Mary made the ultimate decision, just
14 because we worked -- it worked its way up to her.

15 Q Okay. But it was sort of a consensus opinion,
16 other than what you mentioned about Rob?

17 A Well, Rob I think also agreed that it didn't make
18 sense to bring it on Thursday. I'm not aware of anybody
19 who -- I'm not aware of anybody who thought Thursday was the
20 better day.

21 Q And why did Quadrangle move from Wednesday to
22 Thursday?

23 A I have no idea.

24 Q But I mean was the SEC able to have any flexibility
25 with Quadrangle? I mean could they have done Goldman on

1 **Thursday and Quadrangle on Friday?**

2 A I have this vague recollection of saying, could we
3 do that, and somebody saying no, because it really wasn't in
4 our hands. It was mostly a Cuomo announcement. So, you
5 know, that would have been better.

6 Q But since there was another party involved the SEC
7 has less ability to rearrange things?

8 A Yeah. My sense was it wasn't just that it was
9 another party. It was that they were the moving force in
10 this particular announcement regarding Quadrangle. That's my
11 understanding.

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

13 Q And did anyone address Rob Khuzami's concern that
14 the Goldman filing might be overshadowed by the Stanford
15 report?

16 A I probably countered a little bit, because when I
17 was with him I probably said something like, actually, I
18 think there's a concern of just the opposite. So what's the
19 right answer? I don't know what the right answer is. But at
20 the end of the day everybody realized it didn't make sense to
21 do it Thursday, so Friday ended up being just the day.

22 BY MR. KOTZ:

23 Q And how was it determined to issue the Stanford
24 report on Friday? Do you remember that?

25 A That happened, as far as I could tell, at a meeting

1 on Tuesday night that I walked into, and somebody indicated
2 to me that it shifted. Because I was going into that meeting
3 thinking it was going to be filed Wednesday, and I knew that
4 there was a lot of work that we still had to do. And I just
5 was like, we still have a lot of work. And somebody said,
6 well, actually it's going to be filed Friday.

7 Q And did they say why?

8 A My recollection was there was some sort of dispute
9 over the redaction issues.

10 Q And was there any thought that the positive press
11 on Goldman would overshadow the press on Stanford?

12 A On Tuesday? No. I don't think anybody was
13 thinking about Goldman at that point.

14 Q But when it came to a point where it looked like
15 both would be on Friday, was there a discussion that that
16 might happen?

17 A I actually initiated some conversations, because
18 that was a concern that I had, that we would be criticized
19 for bringing it on the same day.

20 Q But at that point things were already fixed, in
21 terms of when things would be filed?

22 A At which point are we talking about?

23 Q When you're expressing this potential concern about
24 having Stanford and Goldman on the same day.

25 A No. That -- actually, Goldman wasn't yet fixed.

1 Wednesday morning Quadrangle and the press conference on the
2 Hill was fixed.

3 Q For Thursday?

4 A For Thursday. Stanford was fixed for Friday. The
5 only question was now Goldman Sachs. The obvious decision
6 initially, knee jerk reaction, is well, not Thursday, Friday.
7 But then ultimately the only reason we had discussions was
8 because of the possible criticism we might have. And so if
9 it wasn't for the Stanford report on Friday Goldman would be
10 filed on Friday and there'd be virtually no discussion.
11 Everybody would be like, obviously that makes sense.

12 The only reason I think we had discussions and
13 ultimately elevated it to Mary's level was because of this
14 concern that some people might criticize us for bringing it
15 on the same day. I think ultimately everybody realized, A,
16 Thursday's still not a good day and, B, they're going to
17 criticize us if we file it on Thursday, or if we file it on
18 Friday. Or if things are reversed they'll still raise the
19 criticism. So we just decided to do what we thought was
20 right anyway.

21 Q And Thursday was kind of out, so really it would
22 have been Friday or Monday at that point. Right?

23 A As I said, I don't remember Monday being a serious
24 focus.

25 Q Okay. Okay. So the idea would be if you're

1 worried about criticism that you're filing Goldman and
2 Stanford on the same day you could move Goldman back to
3 Thursday. But you had the other issues with Quadrangle.

4 A And the realization that if they're going to
5 criticize us for filing it on Friday they could criticize us
6 on Thursday as well.

7 Q What about the sense that since the Stanford report
8 has some information in it that was critical of the SEC that
9 it might be good for the SEC if a good news story came out on
10 the same day?

11 A I mean that's a byproduct of having it be on
12 Friday, but the reason for moving it was Quadrangle and, to
13 my mind, I guess the press conference.

14 BY [REDACTED]:

15 Q Is it fair to say that it was Mary Schapiro's
16 decision to file the Goldman Sachs complaint on Friday?

17 A I mean only because it ultimately elevated to her
18 level you can say that. But as I said, I don't know that
19 anybody really had a different view.

20 MR. KOTZ: Okay. All right. Let me show you the
21 next document. It's an e-mail exchange between you and
22 Stephen Cohen, [REDACTED] and Didem Nisanci at the top
23 4/14/2010, 6:08 p.m., which we'll mark as Exhibit 10.

24 (Exhibit No. 10 was marked for
25 identification.)

1 THE WITNESS: Okay.

2 BY MR. KOTZ:

3 Q Do you remember there being a concern that there
4 was reporter who knew that the Goldman recommendation was on
5 the calendar?

6 A I remember hearing somebody that understood that
7 there was -- that a reporter heard that there was this on the
8 calendar.

9 Q Was there a concern about that point about
10 information leaking out?

11 A There's always a concern about information leaking
12 out.

13 Q Right. But I mean a more particular concern,
14 because it looked like somebody knew that it was on the
15 calendar? Or that's kind of just run-of-the-mill?

16 A I don't know how to answer that. I don't know
17 that -- I don't know.

18 Q Okay. You don't remember, you know, a particular
19 concern around the time of the filing of the Goldman case
20 that there's a reporter who knows about this, and the
21 information is going to get leaked out specifically, rather
22 than just the generic concern that you always have?

23 A I mean I don't recall thinking about this
24 particular e-mail by Thursday or Friday if that's what you
25 mean.

1 **Q** Okay. Yeah. All right. Let me show you the next
2 document, marked as Exhibit 11. It's an e-mail from you to
3 Rob Khuzami and (b)(6),(b)(7)(C) 4/15/2010, 12:07 p.m.

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

6 BY MR. KOTZ:

7 **Q** What's a call out list?

8 **A** Before I was mentioning how we could do a press
9 conference or any series of other things. One of the other
10 things you can do is a conference call with reporters, with
11 everybody; a conference call with just reporters who've
12 called in to ask about it, so that you put everybody
13 together. Another thing you can just do is just call out to
14 individual reporters that you think are covering the story.
15 So that's what a call out list is about.

16 **Q** And so why did you want to make sure that Louise
17 Story was on the call out list?

18 **A** Well, this is about Quadrangle actually.

19 **Q** Okay.

20 **A** What's happening, if I recall correctly, is Rob's
21 getting ready to go on a plane to Tulane. We never actually
22 ironed out whether or not we were going to have a conference
23 call or what with respect to Quadrangle, because it was so
24 much in flux. And Rob said, let's just not do a conference
25 call. I think his line was something like, I don't want to

1 have a party that nobody shows up for on Quadrangle.

2 So I think he said, let's just do call outs instead
3 to individual reporters. I'm pretty sure that around that
4 time I stopped in at Didem's office and mentioned the fact
5 that we were just doing call outs, and she reminded me, as
6 she occasionally does, that Louise has contacts in Cuomo's
7 office; make sure you have Louise on your call out list. So
8 my recollection is I went back and I said, just confirming,
9 is Louise Story on your call out list.

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

11 Q In your experience at the SEC so far, have there
12 ever been any occasions in which journalists or media outlets
13 have been given advance notice that a complaint was coming,
14 with the understanding that they would have to hold the
15 story, but just to give them time to get something ready?

16 A I think the most you can do is just say,
17 something's coming down the pike. I don't think you can say
18 a particular case is coming down the pike. So you might say,
19 be by your desk in two hours; something big is coming down.
20 I guess I'd have to check with Becker, Khuzami, or somebody
21 else to see if you can actually go the next step and say what
22 the case is. I don't think you can do that.

23 Q Okay. But at least in your experience that's never
24 occurred?

25 A As far as I know.

1 Q Okay.

2 A I don't recall it happening. No.

3 MR. KOTZ: Okay. All right. Let's go to the next
4 document. I'm going to mark it Exhibit 12, an e-mail
5 exchange that starts with an e-mail from Stephen Cohen to
6 [REDACTED] you, and John Nester, 4/15/2010, 9:44 a.m.

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

9 THE WITNESS: Okay.

10 BY MR. KOTZ:

11 Q You prepared the timeline for the activities on
12 Thursday and Friday of that week?

13 A I did. Yes.

14 Q Okay. And what's the purpose of that?

15 A There were so many balls up in the air, and I just
16 was -- I was of the mind that maybe the right hand didn't
17 know what the left hand would be doing, and I just wanted to
18 make sure everybody was aware of when everything else was
19 happening.

20 Q And this you did at 2:38 in the morning.

21 A Yeah.

22 Q Now, Stephen Cohen asks, "Why file GS tomorrow at
23 9:30? Sometimes things are not always that smooth when
24 filing. Why not give it a little more lead time, 9:00?"

25 [REDACTED] says, "Clerk's office opens at 8:30." Stephen

1 Cohen says, "Right. So why file at 9:30." Do you know why
2 the decision was made to file at 9:30?

3 A I don't. I don't remember why the complaint would
4 be filed -- why somebody said file it at 9:30.

5 Q Was there an interest in filing Goldman first thing
6 in the morning? I mean was that a decision that was made?

7 A Sure. You wanted to space it out, because Stanford
8 was later in the afternoon, so you wanted to get Goldman
9 early in the morning.

10 Q Any thought of doing Stanford first and then
11 Goldman later?

12 A My recollection was that Stanford was already an
13 afternoon event, so the morning was what was open.

14 Q Do you know why Stanford was an afternoon event?

15 A I have a recollection that on Tuesday night, when
16 they said it's Friday, somehow it came up 1:00, 1:30. I
17 don't know why it wasn't chosen to be the morning that day.
18 My general view on these things is just don't do it late on a
19 Friday.

20 Q Why not?

21 A Well, it's the criticism. You get criticized. So
22 people will say, oh, you filed something late on a Friday.

23 Q But is it effective from a communication or press
24 perspective to file a story that you don't want to get a lot
25 of coverage late on a Friday or on a holiday weekend?

1 (b)(6),(b)(7)(C): I'm sorry. Could you repeat the
2 question.

3 BY MR. KOTZ:

4 Q No. I'm just saying is there a benefit from -- I
5 mean given the 24/7 news cycle and all that, is there a
6 benefit for filing -- announcing something that you may not
7 want to get as much press coverage about, to do it on a
8 afternoon? Or is that just about the criticism that you
9 might get?

10 A My belief is that you should not file something
11 late, because of the criticism that you can get.

12 Q But is there any benefit from a press perspective
13 to doing it late?

14 A If the story is going to get covered anyway,
15 probably not. Probably not, because everybody's going to
16 still write the story anyway.

17 Q And the whole back and forth --

18 (b)(6),(b)(7)(C): David, would it be all right if we
19 took a short break?

20 MR. KOTZ: Sure.

21 (b)(6),(b)(7)(C): Thanks.

22 (A brief recess was taken.)

23 MR. KOTZ: Back on the record.

24 BY MR. KOTZ:

25 Q Do you recall that that morning that the Goldman

1 case was going to be filed there was a problem with the
2 filing and it got delayed?

3 A Yes.

4 Q And what do you recall about that?

5 A That somebody showed up to the courthouse, and it
6 didn't have the proper signature I think it was, the
7 complaint.

8 Q And so it was filed like an hour later than you
9 intended?

10 A Right. Something like that. Yeah.

11 Q Did that effect the schedule?

12 A Actually no. I think -- my recollection is that it
13 didn't, because -- well, I mean only in the sense that didn't
14 have the ability to give as much lead time to reporters, who
15 would then be jumping on to a press conference call. But
16 everything else seemed to be in line.

17 MR. KOTZ: All right. Why don't we skip ahead to
18 Exhibit 13, which starts with an e-mail from Rob Khuzami to
19 John Nester and Lorin Reisner with a copy to you and Steve
20 Cohen, 4/17/2010, 12:12 p.m.

21 (Exhibit No. 13 was marked for
22 identification.)

23 THE WITNESS: Okay.

24 BY MR. KOTZ:

25 Q Do you remember this issue that came up, where

1 there was a concern expressed, I think through the media, by
2 Goldman Sachs that they weren't given an opportunity to
3 settle?

4 A Yeah. That was brought to my attention after the
5 filing.

6 Q Okay. Did you play any role in any decisions about
7 when to give notice to Goldman Sachs or not?

8 A No. That's an enforcement matter.

9 Q Okay. So this was just brought to your attention
10 because it was in the press?

11 A Correct. Well, I assume, you know.

12 Q Okay. Did you look into this at all or try to
13 figure out what happened?

14 A I don't remember if I took the lead on it, but I
15 remember seeing the e-mails that suggested basically what's
16 said here, they had every opportunity to settle.

17 Q Okay. Do you know if there was a conscious
18 decision made in this case not to inform Goldman that the
19 case was going to be brought, right after the Commission
20 approved the recommendation going forward but a few days
21 before they brought the case?

22 A Can you ask the question one more time? I'm sorry.

23 Q We've learned that traditionally when the SEC
24 brings a case what they will do is, you know, they'll have
25 discussions with the firm all along, the Wells meeting.

1 Sometimes there are settlement discussions; sometimes there
2 aren't. But right after the Commission approves the
3 recommendation to go forward with the case the call would be
4 put in to the defendant and saying, look, the case is going
5 to filed; you know, here's one last change; you have 48
6 hours, 24 hours or something. In this case that wasn't done.
7 Do you know why? Do you know if that was something that was
8 particular to this case or what?

9 A I just have a recollection of it because of the
10 e-mails afterwards and the -- you know, the points that Rob
11 and I think Lorin were making about how they had a strategy
12 of not wanting to settle, so -- meaning they Goldman -- so
13 they chose not to perhaps tell them one last time. So I
14 don't have first-hand knowledge. I just know from trying to
15 respond to reporter's questions.

16 MR. KOTZ: All right. Let me show you the next
17 document. At the top is an e-mail from Steve Cohen to you,
18 4/18/2010 3:38 p.m. We're going to mark it Exhibit 14.

19 (Exhibit No. 14 was marked for
20 identification.)

21 THE WITNESS: Okay.

22 BY MR. KOTZ:

23 Q Do you know whether that was true, that one of the
24 Republicans was unhappy because Goldman was not given the
25 chance to settle?

1 A The only reason I gather I don't believe it was
2 true is because I wrote, "I don't believe it was true."

3 Q I think that was Steve Cohen writing that.

4 A Oh. I see.

5 Q And I think he was -- he actually testified that eh
6 was talking about he doesn't believe that it is true, that
7 Goldman was not given the chance to settle.

8 A Oh. I see. I mean I don't remember at one point I
9 was -- wait. So the question was about was somebody unhappy
10 about not giving --

11 Q Right. Do you know if that was true, that -- not
12 whether -- setting apart whether they were given the chance
13 to settle, was it true that one of the Republicans was
14 unhappy because maybe they thought that Goldman was not given
15 the chance to settle?

16 A As I was about to allude, I didn't think I knew,
17 until I thought I was confronted with an e-mail that said I
18 did know that I didn't know. So I don't know.

19 Q Okay. Do you remember, with this issue of Goldman
20 complaints about not giving an opportunity to settle -- do
21 you remember there was something that was raised in the press
22 about a phone call not being returned?

23 A Yes.

24 Q Do you know if that was true, that a phone call was
25 not returned?

1 A I don't know that I ever ran that to ground, so I'm
2 not sure.

3 MR. KOTZ: Okay. All right. I'm going to show you
4 this document. And I'm going to mark this as Exhibit 15.
5 It's an SEC Administrative Regulations, Public Affairs Press
6 Relations, Policies, and Procedures.

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

9 MR. KOTZ: And I'm just going to ask you a
10 particular part. You don't have to read the whole thing.

11 THE WITNESS: Okay. Go ahead.

12 BY MR. KOTZ:

13 Q Are you familiar, generally, with this document?

14 A Yes.

15 Q Okay. So if you'll turn your attention to page 6
16 of 12, under 15C, it says, notification of defendants. It
17 says, "Every effort should be made to avoid the possibility
18 that defendants in an SEC enforcement action first learn of
19 the action when they read about it in the newspapers or when
20 they are called by a reporter for comment about the SEC's
21 complaint. The division, regional, or district office
22 primarily responsible for the filing of a particular
23 complaint shall take all necessary steps to see that the
24 defendants and/or their counsel are giving timely advice
25 concerning the action."

1 A Okay.

2 Q Were you aware of this provision? Maybe not these
3 words, but just this provision?

4 A No.

5 Q Okay. Do you know if, in this case of the Goldman
6 Abacus case, Goldman was notified that the SEC was bringing
7 an action against them before the action was brought?

8 A Well, I know they were Wells-ed.

9 Q Right. Okay. Do you know if there was any
10 notification around the time that the case was brought in
11 April?

12 A No.

13 Q Do you think that this is a good provision, a good
14 policy? Or do you think that -- I mean it's a press
15 relations policy, so it's sort of related to what you do.

16 A Right. Yeah. I don't think it's appropriate for
17 press people to be contacting press people about cases. It's
18 fine if enforcement decides whether it's appropriate for
19 enforcement people to contact lawyers against lawyers.

20 Q But I mean as a general sense, do you think it's a
21 good idea that when the SEC brings an action against somebody
22 that they make sure to have someone, in enforcement or
23 whoever, let them know that the case is being brought?

24 A From a pure communications standpoint?

25 Q Yeah.

1 A Not considering the legal issues involved, or
2 whatever the enforcement relationship is --

3 Q Right.

4 A I guess if I was on the other side I'd want to know
5 if something is coming down. So unless there's some reason
6 not to say, I suppose it would be better to just let them
7 know than to not let them know.

8 BY [REDACTED]:

9 Q What do you understand the purpose of this
10 provision to be, if you know, that is on the bottom of page
11 6?

12 A You know, my sense is it's just, first of all, more
13 geared towards enforcement from sort of, you know, the
14 divisional, regional, or district office filing the case. So
15 it's about them, not really press people. And it's just a
16 simple matter of courtesy the way I see it.

17 MR. KOTZ: All right. Let's move onto the next
18 one, marked as Exhibit 16, an e-mail exchange starting with
19 an e-mail from you to John Nester, 4/16/2010, 3:55 p.m.

20 (Exhibit No. 16 was marked for
21 identification.)

22 THE WITNESS: Okay.

23 BY MR. KOTZ:

24 Q Do you remember this issue with Jim Duffy from the
25 New York Stock Exchange contacting SEC?

1 A I remember, you know, this issue coming up at some
2 point on Friday. Yes.

3 Q Okay. What do you remember about it?

4 A Just that people had raised the issue of why it was
5 filed during the trading day.

6 Q Okay. And do you know if anybody got back to Jim
7 Duffy about this issue?

8 A I do not.

9 Q Was there any consideration prior to the filing to
10 not file the Goldman case during the trading day?

11 A As far as I know, no.

12 Q Okay. Was it something that folks talked about
13 afterwards, when they realized what the impact the Goldman
14 case had on the market?

15 A Yes.

16 Q And what was that discussion?

17 A Do we have -- it was sort of like, wait, do we have
18 a policy that says you don't file cases during a trading day,
19 and the general view back was we file all of cases generally
20 during the trading day. And I remember reaching out to
21 David, internal counsel, just to confirm we didn't have a
22 rule that said we couldn't do that. And he said, no, there's
23 no rule. It says you file it whenever you want to file it.

24 Q And was there any discussion about whether it made
25 sense to consider the impact on the market of a case and make

1 **a discretionary decision to file at a different time?**

2 A I'm sorry. In this case beforehand?

3 Q **No. Afterward.**

4 A I don't remember the -- I don't remember the
5 conversation being, okay, let's figure out what we do going
6 forward. It was more like, did we do something that we
7 shouldn't have done in this case, and the answer was, as far
8 as I understood, no.

9 Q **Because there was no policy in place on the issue?**

10 A I don't know what the -- I just remember calling
11 David and saying, any concern here. And he said, no, you
12 can -- we file all of our cases pretty much during the
13 trading day.

14 Q **Were you aware that when the SEC filed the**
15 **settlement it did it after the trading day?**

16 A Yes.

17 Q **Was that a conscious decision?**

18 A From what I can recall it was. Yes.

19 Q **For what reason?**

20 A The way I recall it is either Lorin or Rob said, I
21 think we should just do it after the trading day. Because I
22 remember saying, wait a second, do we -- is there some rule
23 now that we need to do this. I didn't know that. And
24 they're like -- I can't remember if it was Rob or Lorin who
25 just said, I think, you know -- I'm sorry. I think what it

1 was I said, David had told me we don't need to file it, you
2 know, after -- just cases in general, after the trading
3 hours. And they said, no, we know that, but we feel like we
4 should do that in this case.

5 Q Okay. Did they say why in this case?

6 A No.

7 MR. KOTZ: Were you aware that in connection with
8 the settlement, while the settlement was filed after the
9 trading day, there was, I guess, some kind of an announcement
10 to the press before the end of the trading day that something
11 was coming? I guess you do that because you actually
12 announce a case.

13 (b)(6),(b)(7)(C) : A press advisory it's sometimes
14 called.

15 THE WITNESS: I'm sorry. Say that again.

16 BY MR. KOTZ:

17 Q There's something called a press advisory that you
18 do before you actually announce something. Is that right?
19 That you have to contact press to let them know that you're
20 going to have some kind of announcement?

21 A Right. I mean but that -- it doesn't have to be
22 before the press release. It could be after the press
23 release, if that's what you're talking about. I mean to
24 alert reporters that there's a press conference coming?

25 Q Right. Well, we understand that when the SEC filed

1 the settlement.

2 A Right.

3 Q While the settlement was announced after trading
4 hours, the press advisory was before trading hours, and
5 because there had been a lot of speculation about the Goldman
6 case, I guess, people assumed that the announcement was the
7 Goldman settlement. And so there was a sharp effect on stock
8 before the end of the trading day, based not on the
9 announcement of the settlement, but based on the fact that
10 there was a press announcement or press advisory.

11 A Okay.

12 Q Were you aware of that?

13 A I'm sorry. Was I aware that there was an effect on
14 the stock as a result of the advisory going out?

15 Q Right.

16 A I'm not -- actually, I don't know. No. Until you
17 just told me, I didn't know that.

18 Q Okay. All right. So moving forward to the
19 settlement, when did you first learn that the Goldman case
20 was going to be settled? Just to give you context, so
21 Thursday, July 15th was the day of the Commission meeting and
22 it was filed.

23 A Right. I mean I knew there were settlement talks
24 going on for a while.

25 Q Right.

1 A When I knew it would actually be settled, and it
2 was all signed, sealed, and delivered? It was announced
3 what? Wednesday?

4 Q **Thursday.**

5 A Thursday?

6 Q **July 15th.**

7 A Maybe Tuesday or Wednesday. I'm not sure.

8 MR. KOTZ: Okay. All right. Let me show you the
9 next document. We'll mark this as Exhibit 17. It's an
10 e-mail from Steve Cohen to you, 7/14/2010, 9:58 p.m.

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

13 THE WITNESS: You just handed me two. Are they
14 both the same?

15 MR. KOTZ: Oh. I'm sorry.

16 THE WITNESS: Okay. I'm not reading the entire
17 article, but --

18 MR. KOTZ: Yeah.

19 THE WITNESS: Okay.

20 BY MR. KOTZ:

21 Q Do you know what he was referring to, when Steve
22 Cohen said, "Guess they got first crack at framing the
23 story"?

24 A I am assuming that he's suggesting Goldman was
25 trying to create this perception that whatever a settlement

1 would be would be favorable to them.

2 Q Okay. Do you remember discussions with Steve Cohen
3 about concerns at that timeframe, when the settlement was
4 about to be announced and filed, that there might be either
5 leaks or Goldman going out there with the story before it was
6 officially announced?

7 A Well, the conversations were about the fact that we
8 just wanted to announce it as quickly as we could after it
9 came out of the closed Commission meeting, because if we
10 didn't they would have the ability to go out and start
11 announcing it.

12 Q They being Goldman?

13 A They being Goldman.

14 Q So why would you not want Goldman to announce it
15 first?

16 A Well, because it's our story. We want to be able
17 to go out and announce it. Because also if we're not
18 announcing it until Thursday and then they start to announce
19 it, our hands are tied. We can't say anything. So you want
20 to be able to announce it when everybody's ready to announce
21 it, file it when it needs to be filed, issue the release when
22 it needs to be released.

23 Q Right. What does he mean by "framing the story"?

24 A Putting a perspective around the story.

25 Q And so if you recall that week, the Commission met

1 late in the day on the Goldman settlement. And then it was
2 filed and announced later that day, as we said.

3 A That's right.

4 Q Do you remember any discussion about holding that
5 over until Friday? Because I mean it was kind of late in the
6 day. I don't know how much time you had to kind of get
7 ready.

8 A Yeah. The discussion was -- I apologize. Say it
9 again. It was Thursday was the announcement?

10 Q Thursday, July 15th. Let me show you actually ---
11 you know what would help maybe --

12 A Because Wednesday we had the entire discussion
13 about what the timeframe was.

14 Q Okay. So what was the discussion on Wednesday?
15 You knew that the Commission was meeting the next day.

16 A Yeah. Sure. Sure.

17 Q And you knew that the Commission meeting was in the
18 afternoon.

19 A Right.

20 Q And you probably didn't know how long it would
21 take, but --

22 A There were some estimates as to how long it would
23 take.

24 Q Okay. So you understood on Wednesday that the
25 Commission would probably approve it sometime in the

1 **afternoon on Thursday?**

2 A That's right.

3 Q **And so what was the discussion about when to file**
4 **it?**

5 A Just that. Do you file it Thursday, Thursday
6 night, or do you wait until Friday morning. But, again, as I
7 said, the concern in waiting until Friday morning was Goldman
8 goes out there and tells the whole story, and we are not able
9 to say anything because we haven't agreed that we're going to
10 talk yet.

11 Q **And were there any countervailing factors the other**
12 **way?**

13 A I think the only thing was just would we be able to
14 do it late that night; would we have enough time between in
15 order to find reporters and getting them to the press
16 conference, before the story was pretty much, you know, past
17 the deadlines.

18 Q **Were you aware that that same Thursday, July 15th,**
19 **was the date that the Senate was going to vote on the**
20 **financial regulatory reform bill?**

21 A Was I aware of that at what time?

22 Q **Let's say on Wednesday.**

23 A No.

24 Q **No? But when did you become aware of that?**
25 **Thursday?**

1 A I think Thursday morning.

2 Q Okay. Now, we heard there was some discussion
3 about perception, given the fact that there was a complaint,
4 which we are now investigating, that the Goldman case was
5 brought to influence financial regulatory reform that it
6 would look bad if the SEC filed this Goldman settlement on
7 the day of the, you know, ultimate act relating to financial
8 regulatory reform. Do you remember those discussions?

9 A I don't know which discussions. I just know I too
10 thought it was going to be perceived poorly if we end up
11 doing it on the same day as a reg reform passes.

12 Q Right. And so was there any discussion about
13 perhaps pushing the Goldman settlement to Friday? It
14 wouldn't have been very long. I mean as it is, you were, you
15 know, trying to get it out Thursday evening.

16 A Yes. Yes. There was.

17 Q Okay. And so what was that discussion?

18 A I went into the Chairman's office right before the
19 advisory went out and said, this timing is just unfortunately
20 a bad coincidence, and would it make sense to just hold this
21 until Friday. And a number of folks talked about it. And we
22 all said, wait a second; if we hold it to Friday people will
23 then be able to say we held it because of reg reform.

24 So the thinking was the day before we made the
25 decision. It was done unaffiliated with anything else, other

1 than just it was in the best interest of the SEC to bring it
2 Thursday night, and so we said let's just bring it Thursday
3 night. It was the same sort of issue as previously, which
4 was the next day people would still criticize us.

5 Q Right. Although, I mean, you are aware that when
6 the story came out it was literally a slash headline. It was
7 Goldman Case Settled/Regulatory Reform --

8 A Yeah. Yeah.

9 Q You know --

10 A You never know how these things are going to play
11 out.

12 Q Right. Were you surprised, generally, with respect
13 to the filing of the Goldman action how much press it got?

14 A Yes.

15 Q Okay. Was that, do you think, the general
16 consensus, that folks were surprised at how much press it
17 got?

18 A Yes.

19 Q Okay. Now, you aware of the financial regulatory
20 reform legislation that went through Congress?

21 A Yes. It's been on our plate the whole time I've
22 been here.

23 Q Okay. And what -- did you have a lot of
24 involvement with issues related to it?

25 A Just occasionally reporters would call, and I had

1 help working with John to try to figure out -- or with [REDACTED]
2 [REDACTED] legislative affairs -- what the best
3 approach is in dealing with a reporter's questions.

4 Q Did you ever have any conversations with any
5 members of Congress or staff of members of Congress about
6 financial regulatory reform?

7 A No. I don't do that.

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

12 A Ask the question one more time. Sorry. I missed
13 something there.

14 Q Sure. Sure. Has anybody at the SEC ever mentioned
15 financial regulatory reform legislation in connection with
16 the Goldman Sachs investigation or in connection with the
17 filing of an action against Goldman Sachs? In other words,
18 where they talked about the two somehow being related?

19 A Are you getting back to like beforehand?

20 Q Yeah. Just generally. Generally.

21 A Oh, the criticism has generated discussions.

22 Q Right, right, right. Okay. Yeah. I'm talking
23 about prior to filing the Goldman case.

24 A No. No, no, no.

25 Q Okay. Is it fair to say that the SEC generally was

1 in favor of financial regulatory reform? I mean obviously
2 certain areas that were better than others, but all things
3 being equal --

4 A I guess that's a fair assessment. Sure.

5 Q Okay. Was there ever any conversation about --
6 well, let me back up for a second. Were you aware generally
7 that there were kind of ebbs and flows in financial
8 regulatory reform, there were times where it looked more
9 likely to pass, times where it looked less likely to pass?

10 A Yes.

11 Q And so was there any conversation at any point in
12 time, something to the effect that, you know, if the SEC
13 brought a big case that related to the financial crisis it
14 would have an impact on financial regulatory reform?

15 A I can't recall any conversation like that.

16 Q Okay. Now, people have speculated when the SEC
17 brought its case against Goldman that it effected some
18 momentum in financial regulatory reform. Do you know -- do
19 you think that that's true?

20 A I don't think I'm in a position to answer that.

21 Q Okay. Do you have any reason to believe that the
22 SEC's action against Goldman Sachs, or the timing of that
23 action, was in any way related to or specifically to advance
24 financial regulatory reform?

25 A To the best of my recollection, I have no reason to

1 believe that.

2 Q Okay. Are you aware of any information indicating
3 that the SEC's action against Goldman Sachs, or the timing of
4 that action, was related to or to advance financial
5 regulatory reform? Are you aware of any information
6 indicating that that was the case? It's a slightly different
7 question, but not that different.

8 A I'm not -- I think the answer is no to both, so --

9 Q Okay. All right. I'm going to continue with a
10 series of questions now.

11 A Okay.

12 Q Are you aware of any information indicating that
13 the SEC coordinated its action against Goldman Sachs with the
14 Executive Office of the President, the White House, or any of
15 its employees?

16 A No. To the best of my recollection, I do not know
17 that.

18 Q Are you aware of any information indicating that
19 anyone at the SEC shared any information concerning its
20 Goldman Sachs investigation with the Executive Office of the
21 President, the White House, or any of its employees, prior to
22 the complaint being filed?

23 A I'm not aware of that.

24 Q Have you had any conversations with the White House
25 about financial regulatory reform?

1 A I don't believe so. No.

2 Q Have you had any conversations with the White House
3 about the Goldman Sachs case prior to its being filed?

4 A I'm sorry? About the Goldman case? No.

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

8 A I'm not aware of that. No.

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

13 A No.

14 Q Are you aware of any information indicating that
15 the SEC coordinated it's action against Goldman Sachs with
16 the Democratic National Committee, the Democratic Senate
17 Campaign Committee, the Democratic Congressional Campaign
18 Committee, or any of their employees?

19 A No.

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

1 A No.

2 Q Have you had any discussions with anyone from the
3 Democratic National Committee, the Democratic Senate Campaign
4 Committee, the Democratic Congressional Campaign Committee
5 about say financial regulatory reform?

6 A Say the categories one more time. Just about
7 regulatory reform?

8 Q Right.

9 A Go ahead. Ask the question one more time.

10 Q Have you had any discussions the Democratic
11 National Committee, the Democratic Senate Campaign Committee,
12 the Democratic Congressional Campaign Committee?

13 A No.

14 Q Okay. Are you aware of any information indicating
15 that anyone at the SEC shared any information concerning its
16 Goldman Sachs investigation with the news media or any
17 journalist before the case was filed?

18 A I'm sorry. Ask the question one more time.

19 Q Are you aware of any information indicating that
20 anyone at the SEC shared any information concerning its
21 Goldman Sachs investigation with the news media or any
22 journalist before the complaint being filed?

23 A To the best of my recollection, no.

24 Q I mean you're aware, generally, that there was
25 information leaked out, I assume. But you're not aware

1 specifically that it came from the SEC or who might have done
2 it. Right?

3 A Correct.

4 Q Okay. All right. And with respect to the
5 settlement, other than the conversation that took place about
6 possible criticism if the SEC announced the settlement the
7 same day as financial regulatory reform, were there any
8 other discussions in connection with the Goldman settlement
9 regarding financial regulatory reform, regarding what its
10 impact might have on financial regulatory reform?

11 A With respect to settlement?

12 Q Yeah.

13 A No. It was just, as I've said before, the
14 discussion about the perception.

15 MR. KOTZ: Right. All right. I think we're going
16 to take a minute or to and see if we have anything else. Is
17 that all right? We'll go off the record.

18 (A brief recess was taken.)

19 MR. KOTZ: All right. Back on the record. I have
20 no further questions. The one thing I would ask, in order to
21 preserve the integrity of our investigation, that you not
22 discuss the content of your testimony with anyone. Obviously
23 you can discuss it with counsel, but anyone who might be a
24 potential witness in this case I would ask you not to discuss
25 it with.

1 THE WITNESS: Okay.

2 MR. KOTZ: All right. And with that, we're off the
3 record.

4 (Whereupon, at 11:31 a.m., the interview was
5 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 59 pages is a complete, true and accurate transcript of the testimony indicated, held on August 12, 2010, at 10:12 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:

8/19/10

Official Reporter:

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

Diversified Reporting Services, Inc.

PROOFREADER'S CERTIFICATE

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In the Matter of: OIG-534
Witness: Number 38
File Number: OIG-534
Date: Thursday, August 12, 2010
Location: Washington, D.C.

This is to certify that I, (b)(6),(b)(7)(C) (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

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

8/19/10

(Proofreader's Name)

(Date)

Chapter Break

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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

 COPY

Witness: Number 39

PAGES: 1 through 69

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

DATE: Thursday, August 12, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 2:31 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, ESQ., Inspector General

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

6 Office of the Inspector General

7 Securities and Exchange Commission

8 100 F Street, N.E.

9 Washington, D.C., 20549

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

11

12

13 On behalf of the Witness:

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

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C O N T E N T S

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WITNESS:

EXAMINATION

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

4

EXHIBITS:

DESCRIPTION

IDENTIFIED

1	E-mail chain 4/13/2010	23
2	E-mail chain 4/14/2010, 2:19 p.m.	25
3	E-mail chain 4/14/2010, 2:36 a.m.	26
4	E-mail chain 4/15/2010, 8:12 a.m.	29
5	E-mail chain 4/15/2010, 9:44 a.m.	35
6	E-mail dated 4/15/2010, 12:38 p.m.	37
7	E-mail chain 4/15/2010, 7:42 p.m.	39
8	E-mail chain 4/14/2010, 6:08 p.m.	40
9	E-mail chain 4/14/2010, 10:12 a.m.	41
10	E-mail chain 4/18/2010	42
11	E-mail dated 4/19/2010	42
12	E-mail dated 4/20/2010	45
13	SEC Administrative Regulations	47
14	E-mail chain 6/4/2010	50
15	E-mail chain 7/14/2010	53
16	E-mail chain 7/15/2010, 9:55 a.m.	55
17	E-mail chain 7/15/2010, 4:27 p.m.	61

P R O C E E D I N G S

MR. KOTZ: All right. We're on the record at 2:31 p.m. on August 12, 2010 at the United States Securities and Exchange Commission.

I'm going to swear you in.

Will 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 Could you state and spell your full name for the record please?

A

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

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

Q

All right.

(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 colleague from the Office of the Inspector General, (b)(6),(b)(7)(C) This is an investigation by the Office of Inspector General, case number OIG-534. I'm going to be asking you certain questions, and you'll be providing answers under oath.

The court reporter will record and later transcribe everything that is said. Please therefore provide verbal

1 answers to the questions, as a nod of the head or another
2 non-verbal response won't be picked up by the court reporter.
3 Also, so the record will be clear, please let me finish my
4 question before you provide your response.

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

11 A I do.

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

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

1 A I do.

2 Q Great. Okay. All right. Why don't we start with
3 some background. Could you describe for me your education?

4 A

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6 Q

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17

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

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

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

25 came in here in the fall of 2008, September of 2008.

1 Q What is your position with the SEC?

2 A My position is (b)(6),(b)(7)(C) with
3 the Division of Enforcement.

4 Q What are your duties?

5 A My duties are to work on internal communications
6 and external communications for the Division of Enforcement.

7 Q And how do you interface with the public affairs
8 unit or Myron Marlin, as director of communications? How
9 does that work?

10 A Frequently and often, and on, you know, all sorts
11 of matters pertaining to communications. So, you know,
12 whether it's, you know, working on, you know, press releases
13 on cases to come out, to -- you know, all sorts of -- if it's
14 a communications issue and it has to do with the Enforcement
15 Division then I'm in touch with them. We coordinate very
16 closely.

17 Q Okay. And is there some kind of reporting
18 relationship?

19 A No. I report to Rob Khuzami.

20 Q But in terms of if there's an enforcement matter
21 that is at issue, and there's an interest from the Chairman's
22 office, from Myron's part, and an interest from your part,
23 who -- you know, kind of who -- how does it work, in terms of
24 if there's a disagreement?

25 A Discussion. You know, a discussion would take

1 place among OPA representative or representatives, either
2 Nester, [REDACTED] or [REDACTED] or Myron or myself, and we would
3 just kind of talk it out.

4 Q And so in terms of communications, what is your
5 purpose of your job? What are you trying to achieve?

6 A Right. Inform the public about -- so on the
7 external side. Right?

8 Q Right.

9 A So inform the public on the efforts of the
10 Enforcement Division to enforce the nation's securities laws.
11 On the internal side it's just to -- not just to, but to help
12 ensure that employees in the staff, in the division,
13 understand kind of, you know, what's going on. As you know,
14 we've had a lot of restructuring and reorganization and those
15 sorts of things.

16 So during the last number of months during that
17 process that has been a major kind of role if you will, in
18 just making sure that -- whether it's division-wide e-mails
19 that go out to the staff from Rob kind of describing what's
20 going on, what the next steps are. With relation to
21 restructuring and reorganization, creating specialized units,
22 so there was a lot of internal communications that had to
23 take place with kind of rolling out the units, announcing
24 that the units are being created internally, but then
25 obviously externally there's a side to that too. And we had

1 a press conference and a press release that went out kind of
2 announcing to the public. So that might give you a good
3 sense.

4 Q Okay. In terms of the external part, informing the
5 public --

6 A Yes.

7 Q Does the SEC Enforcement Division have an interest
8 in having their enforcement cases get press attention?

9 A Yes.

10 Q Okay. And what are the reasons for that?

11 A Deterrents would be one.

12 Q Okay. So explain that a little bit in detail, so
13 we have it kind of for the record.

14 A Sure.

15 Q How would that work?

16 A Right. So, you know, if you have -- we allege
17 wrongdoing in a case, whether it's a settled or a litigated
18 matter, announcing it to the public that the SEC Enforcement
19 Division is -- and then obviously as presented to the
20 Commission, the Commission has decided to pursue that
21 matter -- you know, other entities in the markets will read
22 that press coverage, if you will, and hopefully sit up and
23 take notice and say, okay, well the SEC thinks that this is;
24 you know, the Commission has acted here; they voted; they
25 think that, you know, this behavior is outside the bounds of

1 the securities laws. Therefore we need to make sure that we
2 don't do that.

3 Q Right.

4 A So that's the deterrent effect that we hope to
5 have.

6 Q And what about generally? Is it not a good thing
7 for the Enforcement Division, for the SEC's reputation to, in
8 the press or to the public, to be a good one?

9 A Yes. I think so.

10 Q I mean is there a benefit for the Enforcement
11 Division that the public has confidence in the SEC and the
12 Enforcement Division, that if the SEC or the Enforcement
13 Division has a good reputation then wouldn't people have more
14 confidence in the division and perhaps be more willing to
15 bring complaints to their attention, things like that?

16 A I would agree with that personally. My personal
17 view would be that. So, yes. I think that would make sense.

18 Q And so, you know, there's been some negative
19 attention with the SEC, some related to the Enforcement
20 Division having to do with some reports that our office
21 issued, some other matters. And so do you think that it is
22 important for the SEC if they bring an action that is a
23 significant action for there to be press reports on it, so
24 the public is aware that the SEC is, you know, on the job and
25 doing good work?

1 A That would seem to make sense. Yes.

2 Q Okay. And so it's part of your job to make sure
3 that where the SEC takes an action that it is appropriately
4 communicated outside the building, externally to the public?

5 A Yes.

6 Q Okay. And is part of that job to try to ensure
7 through the media that, you know, the best or whatever
8 appropriate press coverage is given to the SEC's enforcement
9 cases?

10 A I mean I would -- I don't know that I would say a
11 blanket yes or no to that statement. It would be a more kind
12 of complex answer, in that there are many ways, like a press
13 release kind of posted on the website; OPA e-mails out a
14 press release. But frequently then after we do that
15 sometimes, you know, reporters will call in and they will ask
16 for follow-up interviews with the people who did the case or
17 with Rob Khuzami himself. Or I'm sure people call and
18 reporters ask for Mary Schapiro. So I mean there are a
19 number of different kind of levels to -- I think the way you
20 described getting press coverage or whatever. So I mean it's
21 sometimes, you know, multiple layers if you will.

22 Q And so is part of your duties to sort of maximize,
23 you know, positive coverage of the SEC Enforcement Division's
24 actions and accomplishments?

25 A I don't know that I would say maximize, but I would

1 say inform the public to be sure of what the SEC is doing.

2 Yes. What the division is up to.

3 Q Right. Okay. All right. And who do you report
4 to? Rob Khuzami?

5 A Rob Khuzami. Yes.

6 Q Okay. And do you have anybody in your group or in
7 the communications group?

8 A Under me?

9 Q Yeah.

10 A No.

11 Q Okay. And so is there anyone within the
12 Enforcement Division that you work with vis a vis media
13 related or communication-related issues?

14 A No. Not full time. But I work with everybody in
15 the decision if they have a matter that is going to become
16 public.

17 Q Right.

18 A So that would include all the, you know, regional
19 directors or any of the SO's or even other investigators who
20 might be working on a case that is going to be coming before
21 the Commission or has been voted on by the Commission that
22 might become public. So I do work with all of those folks on
23 those sorts of matters.

24 Q Okay. Did there come a time where you became aware
25 of the existence of an investigation by the SEC into the sale

1 of collateralized debt obligations by Goldman Sachs known as
2 the Abacus investigation?

3 A Yes.

4 Q Do you remember when you first learned about that?

5 A I don't remember the date.

6 Q Okay. So just to give you kind of a context, in
7 December of 2009 it was first placed on the calendar, taken
8 off the calendar. January 2010 it was first placed on the
9 calendar and taken off the calendar. And eventually it was
10 placed back on the calendar in April, and in the middle it
11 was filed and announced. Were you aware of the first two
12 instances when the Abacus case was placed on the calendar?

13 A Could you rephrase the question? Was I aware of
14 the first two instances in April when it came up?

15 Q No. When it happened. So were you aware, say, in
16 December?

17 A No.

18 Q That Abacus had been placed on the calendar?

19 A No. I was not.

20 Q Were you aware in January that Abacus had been
21 placed on the calendar?

22 A I was not.

23 Q Okay. So the first time you became aware of it was
24 within a week or two, or maybe a few weeks --

25 A Probably.

1 Q -- from the actual filing?

2 A That's correct.

3 Q Okay. And so in what context did you become aware
4 of it?

5 A To the best of my recollection, Rob mentioned to me
6 that there's a case coming up involving Goldman Sachs.

7 Q And you understood that a case involving Goldman
8 Sachs would get significant news coverage?

9 A Yes.

10 Q Okay. And so what was your role, in terms of the
11 process, I guess after the case is filed? What would be your
12 role?

13 A Could I take a half of a step?

14 Q Sure. Please.

15 A To more completely answer your question kind of.

16 Q Please.

17 A Kind of when -- to the best of my recollection,
18 when Rob first told me about it, it was in the context of
19 complex products. And so what he mentioned was that there
20 was a CDO case involving Goldman Sachs that was going to be
21 coming up. So that might be important, but that's what I
22 recall.

23 Q Okay. And so why were you notified, and what was
24 your role, in terms of I guess communicating the case outside
25 the SEC?

1 A Right. So my role is to talk -- as with other
2 cases -- to talk with the people who conducted the
3 investigation about the case itself, to work with them on
4 drafting and editing a draft press release that might
5 ultimately become public, and to talk then with the Office of
6 Public Affairs and to the Chairman's Office about, you know,
7 announcing to the public that a certain action has occurred.

8 Q Okay. And why in this case would you be
9 communicating with the Office of Public Affairs and the
10 Chairman's Office?

11 A Just like with any case, when there is a case that
12 is going to be announced, that's going to be filed, you know,
13 we do a press release. And so I communicate on a frequent
14 basis, as I mentioned a couple of minutes ago, about those
15 sorts of issues with them. So, you know, we talk about any
16 number of cases that are coming up.

17 Q Okay. Now, how many cases that the Enforcement
18 Division brings would you draft a press release for? You can
19 give me like a percentage. I mean obviously enforcement are
20 bringing cases all the time. But do we have a press release
21 for every one?

22 A No.

23 Q Okay. What percentage of them would you say have a
24 press release?

25 A That's difficult to answer. I would have to take a

1 look. But there's a way. I mean you could take a look at
2 how many press releases are sent out from OPA and then how
3 many cases are brought in comparison.

4 Q But you can't give a ballpark? Do you think it's
5 10 percent, 50 percent, 75 percent?

6 A I would guess something around 40 percent or so.
7 Something like that.

8 Q And how is it determined whether there will be a
9 press release associated with a case?

10 A A discussion with the Office of Public Affairs,
11 with the Chairman's Office, and with leadership in the
12 Enforcement Division.

13 Q And would it be based on whether you think the
14 public would be interested in it, do you think? I mean is
15 that part of the factors?

16 A No. Actually the conversation is almost always
17 surrounding the deterrent effect or kind of what is the
18 importance of the case. Right? So why is this case
19 important? It is a complex structure that not many cases in
20 this area has been brought before, and so it kind of -- I
21 don't know if sends the message is the right word, but sends
22 a message to the market that, you know, like we discussed
23 earlier, that people need to set up and take notice that this
24 kind of behavior is being watched closely by the SEC.

25 Q Now, are there situations where there are

1 enforcement investigations that are brought, where you draft
2 press releases where you mostly handle the press release and
3 send it out yourself without a lot of interaction with OPA
4 and the Chairman's Office?

5 A No.

6 Q Okay. So they're all involved in every one?

7 A I would say every one or almost every one. That's
8 correct. And when you say draft, if I could just -- when you
9 say I draft the draft press releases, I work with folks doing
10 the investigation, technically speaking.

11 Q Right.

12 A You'll see the sent e-mails, if you take a look at
13 them that, what they do is usually the people who actually
14 work the case will draft a press release and send it to me or
15 send it to myself, OPA, and the Chairman's Office all at the
16 same time for us to then edit that draft press release. So I
17 very rarely actually from scratch would draft a press
18 release. I'll take a look at kind of an early version and
19 try to, you know, do some edits.

20 Q Okay. Now, did you get a sense in the case of the
21 Abacus investigation that -- the Abacus action -- that this
22 was something that would get, say, more press coverage than
23 just the regular enforcement case that was brought?

24 A That was my guess. Yes.

25 Q And that was why? Because it was Goldman Sachs?

1 A Because, as when Rob first told me about it, it was
2 a complex -- it was a CDO case, and it was also a
3 mortgage-related case, and we've been doing a lot in the
4 mortgage-related area from, you know, across the spectrum of
5 that industry. So this is yet another one of those, and yes,
6 because it's Goldman Sachs.

7 Q Okay. And then maybe also because it relates to
8 the financial crisis?

9 A That's correct. Yes.

10 Q Okay. So was there a particular interest, given
11 this terrible financial crisis, for the SEC to show to the
12 public that they are bringing actions relating to the
13 financial crisis?

14 A Could you repeat the first part of the question
15 again?

16 Q You know, was there a particular interest on the
17 part of the Enforcement Division, you know, where you have a
18 financial crisis that effects so many people, for it to be
19 important that the SEC shows that it's working on matters
20 related to the financial crisis and bringing actions against,
21 you know, companies or individuals that engaged in
22 wrongdoing?

23 A Yes. And I think that that would always be a
24 priority, you know, whether it's ten years ago or ten years
25 from now, that, you know, whoever enforces the nation's

1 securities laws it makes to inform the public, and frankly
2 the other market participants, what it is that the
3 Enforcement Division is doing and what the Commission
4 ultimately is doing.

5 Q Right.

6 A Because, again, we've talked multiple times about
7 the Enforcement Division. But it's really the Commission. I
8 mean the division doesn't do anything, as you know. The
9 Commission has to support. So it's really what the
10 Commission is doing.

11 Q Right. Now, was there sort of an increased
12 interest in ensuring that the SEC receives positive or
13 favorable coverage of the actions that they're bringing,
14 given that there was some negative coverage in the past
15 relating to various issues? I mean was there more of an
16 increased interest in making sure that the SEC and the
17 Enforcement Division appropriately get credit for the actions
18 they're bringing, given that there were other cases that
19 occurred that may have harmed their reputation or may have
20 brought issues that were negative?

21 A May I answer that with something other than a yes
22 or no?

23 Q Please. Sure.

24 A So I guess that would be a fair statement probably.
25 But I think informing the public, again, is first and

1 foremost what this is about and a deterrent effect is what we
2 discuss frequently. And since my job is an established
3 communications person for, you know, some years now, you
4 know, I don't want to see negative press befall the agency.

5 Q Right.

6 A So that's my answer.

7 Q But I mean the reputation effect, the reputation of
8 the agency and the Enforcement Division is also important, to
9 have a good reputation, have confidence out there.

10 A Yes.

11 Q And, you know, even in addition to the deterrent
12 effect, isn't it a good thing for the SEC's and Enforcement
13 Division's reputation to have coverage of their good works?

14 A Yes.

15 MR. KOTZ: All right. Let me show you a couple of
16 e-mails, and we'll get into the specifics of what occurred
17 the week that the Goldman case was filed. So I'm going to
18 show you Exhibit 1, which is an e-mail exchange on 4/13/2010,
19 11:03 p.m. beginning from [REDACTED] to [REDACTED]

20 (Exhibit No. 1 was marked for
21 identification.)

22 BY MR. KOTZ:

23 Q And so if you could kind of -- you know, just to
24 give yourself a little context, this is Tuesday, April 13th.
25 And eventually the Goldman case was announced and filed on

1 Friday. The Commission meeting that approved the Goldman
2 recommendation was on Wednesday.

3 A Okay.

4 Q So in this e-mail string, you're, I guess, copied
5 on Thursday, April 8th, which is the previous week initially
6 on a copy of the draft complaint. An I assume that the
7 purpose of that was to familiarize yourself with the case,
8 since you were going to be participating in the press
9 release?

10 A Yes.

11 Q Okay. And then [REDACTED] sends a revised
12 complaint, incorporating Lorin Reisner's comments on Tuesday,
13 April 13th, again, I assume for the purposes of familiarizing
14 yourself with the specifics of the matter?

15 A Yes.

16 MR. KOTZ: Okay. And at the top of the page, which
17 you're not copied on, but [REDACTED] says to [REDACTED]
18 "Let's discuss filing mechanics tomorrow." Okay. So that's
19 the first e-mail I want to show you. I want to try to give
20 you all the e-mails so you can, you know, have the context.

21 So then the next one I'm going to show you we're
22 going to mark as Exhibit 2. And that's an e-mail exchange
23 that starts from [REDACTED] to [REDACTED] 4/14/2010, 2:19
24 p.m.

25 (Exhibit No. 2 was marked for

1 identification.)

2 BY MR. KOTZ:

3 Q And this is you responding to the revised complaint
4 that we also see in the previous e-mail. And you say, "When
5 can you file? How early in the day?" And [REDACTED]
6 responds, "As soon as the SNDY clerk's office opens tomorrow
7 morning. Let me check the time." Then there's some
8 discussion about e-mailing the complaint. Do you remember
9 why you wanted to know when they could file, how early in the
10 day?

11 A I don't specifically recall in this instance, but I
12 can tell you that when we file cases, particularly cases in
13 New York as this one would be, that as soon as we file a case
14 there are reporters in the court, who -- they see that a case
15 has been filed right away and it becomes public almost
16 immediately after we file it, therefore, kind of becoming
17 public without the press release being out there, without the
18 SEC actually announcing it through the Office of Public
19 Affairs. And so what we try to do is coordinate the filing
20 time with the time that we send out the press release. So it
21 probably had to do with something along those lines.

22 MR. KOTZ: Okay. All right. And the next document
23 we're going to mark as Exhibit 3 is also in the same e-mail
24 exchange. This is an e-mail from you to [REDACTED]
25 4/14/2010, 2:36 p.m.

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

3 BY MR. KOTZ:

4 Q And you can see, this is the response to your
5 question, "When can you file? How early in the day?" They
6 give you the clerk's hours, office hours. And then you say,
7 "Thanks."

8 A Yes.

9 Q So basically they were indicating that the earliest
10 you could file is when the office opens at 8:30 in the
11 morning. Okay. And so in this timeframe, judging from these
12 e-mails, it looks like that the expectation was that the
13 Goldman case was going to be filed on Wednesday.

14 A No.

15 Q Well, all right.

16 A No.

17 Q All right. Well, on 4/13 -- no. There you're just
18 discussing filing mechanics tomorrow. So Wednesday there's a
19 discussion about filing mechanics. And then [REDACTED] - there's
20 an e-mail from [REDACTED] to [REDACTED] that says, "The
21 plan is to e-mail you a complaint, cover sheet and summons
22 late tonight or early tomorrow morning with the expectation
23 that you would sign on my behalf and then file the action as
24 soon as the clerk's office opens. Any problems with that?
25 Lemme know. [REDACTED] I'm sorry. So the expectation here from

1 the e-mails is that that Goldman case would be filed on
2 Thursday. Do you see that?

3 A I'm sorry. I don't see Thursday anywhere in the
4 e-mail.

5 Q Okay. So this is Wednesday e-mail. Right?

6 A Right.

7 Q This is Wednesday, 2:19 pm. "When can you file?
8 How early in the day?" "Soon as the SNDY's clerk's office
9 opens tomorrow morning. Lemme check that time." And then it
10 says, [REDACTED] The plan is to e-mail you a complaint, cover
11 sheet and summons late tonight, [so Wednesday night] or early
12 tomorrow morning, [Thursday morning] with the expectation
13 that you would sign on my behalf and then file the action as
14 soon as the clerk's office opens. Any problems with that?"
15 So it looks like at least that point in time it looks like
16 the plan would be to file the Goldman case on Thursday. Do
17 you recall that, and if so, why then it was switched to
18 Friday?

19 A I don't recall. I know that there was a lot of
20 discussion surrounding when to file.

21 Q Okay. And maybe this will refresh your
22 recollection. There was another case, a Quadrangle case.

23 A Yes.

24 Q Which was also going to be announced. And do you
25 remember that there was concern or the decision made not to

1 announce and file both Quadrangle and Goldman on the same
2 day?

3 A Yes.

4 Q And do you remember why that was the case?

5 A As I recall, there was not only Quadrangle, but
6 Chairman Schapiro had a press conference with Senator Schumer
7 and maybe a couple of other -- a number of other folks also
8 on Thursday.

9 Q Right.

10 A And so there were, you know, multiple things
11 already on Thursday out of our control. The Quadrangle case
12 involved, of course, the New York Attorney General's Office.
13 And so they were going to go public with theirs. As you
14 know, we work in concert and hand-in-hand with the criminal
15 authorities on a number of our cases, that being one of them.
16 And so, you know, we had both of those issues coming to the
17 public light on Thursday.

18 Q Okay. And so what would be the reason not to file
19 and announce too many things on the same day?

20 A Well, I don't know. I didn't make the decision.
21 So there may have been filing matters. I know that on a
22 number of our cases -- and I don't know on this, in this
23 instance with this case, if there were things that needed to
24 be taken care of with getting the complaint ready. I know
25 that a lot of times the folks who are working the case, as

1 they are kind of preparing the complaint, they have -- as you
2 see here in these e-mails, there are multiple drafts of the
3 complaints. And so, you know, a number of times it takes
4 longer to actually, you know, lockdown the final draft of the
5 complaint, and there are a number of edits that take place.
6 Those edits could have taken place, and that could be the
7 reason why it was changed to Friday.

8 Q Okay. But you weren't specifically involved in
9 that decision?

10 A Correct.

11 Q Okay. And do you recall any conversations that you
12 participated in, in which the decision was made to file the
13 Goldman case on Friday?

14 A No.

15 BY [REDACTED]:

16 Q How did you learn that it moved from Thursday to
17 Friday, the Goldman filing?

18 A I don't recall. Somebody mentioned it to me, but I
19 don't recall the details of that.

20 MR. KOTZ: Okay. All right. Let me show you the
21 next document. We're going to mark it Exhibit 4. It starts
22 with an e-mail exchange between you and Ken Lench, 4/15/2010,
23 8:12 a.m.

24 (Exhibit No. 4 was marked for
25 identification.)

1 THE WITNESS: Yes.

2 BY MR. KOTZ:

3 Q So this was another revised draft that's going
4 around, and then Ken Lench sends it to you, Wednesday, April
5 14th, 10:10 p.m. It says, [REDACTED] are you concerned we will
6 lose press by filing Friday. Maybe that's the point, given
7 the litigation risk. I don't know whose idea it was to file
8 Friday, but I know we usually don't. Ken." And you say,
9 "Ken, please call me -- [REDACTED] Thanks."

10 A Yes.

11 Q What do you remember about this?

12 A About this e-mail?

13 Q Yeah. The exchange there, this issue. It looks
14 like you probably had a conversation with Ken Lench.

15 A Right. I probably did. I mean I know, you know, a
16 couple of things. A number of -- you know, obviously a
17 number of people -- like he would be a very senior person
18 that worked on this case. And so they obviously are dealing
19 with a number of issues -- right? -- whether it's working
20 with their team to get the complaint and other, you know,
21 litigation materials prepared and finalized and ready to file
22 with the court. But there are also kind of other things
23 going on, like, you know, getting the press release
24 finalized, you know, working with the Secretary's office to
25 get things posted, and that kind of thing.

1 Q So what was the issue about losing press by filing
2 Friday?

3 A You'd have to ask him. I don't know.

4 Q We've seen in a number of communications and
5 e-mails -- and there's been a lot of testimony on this --
6 that there was sort of a running debate or discussion with
7 communications and public affairs folks about this idea, that
8 there was sort of -- the traditional conventional wisdom was
9 you never file a case on Friday, because you're not going to
10 get a lot of press. Is that, to your understanding, that
11 that was sort of conventional wisdom.

12 A That's right. And I'll tell you, I kind of
13 challenge that convention on a pretty ongoing basis. A lot
14 of people have been here for a long time. You know, back
15 when, you know, you wouldn't -- apparently it was determined
16 that, you know, cases aren't generally filed on Fridays
17 because it's not a good press day, whatever that means. So
18 I've heard that discussion. I've had that conversation with
19 a number of people during my time here.

20 Q And the other side of that is that, you know, we
21 just don't have newspapers anymore; there's a 24/7 news
22 cycle. With the Internet, that conventional wisdom is kind
23 of not really relevant.

24 A Correct.

25 Q I mean is that your kind of thinking?

1 A I wouldn't say it's not relevant, but I think it is
2 something to keep in mind, that, you know, you have, you
3 know, 24 hour news services and, you know, live, you know,
4 cable news channels dedicated to business news. And so there
5 are kind of -- you know, people are getting their news from
6 many other sources, so those are all things that are
7 considered.

8 Q Right. And, you know, one could say that certainly
9 the Goldman case, which was filed on Friday, got plenty of
10 press attention. And, you know, I mean one might say it's
11 hard to keep that conventional wisdom argument after that. I
12 mean it's hard to envision that Friday caused any less press
13 attention, because it was on a Friday in that case. So, you
14 know, I mean was that an instance where people looked at that
15 and said, can you really still take the position that Friday
16 is a bad press day?

17 A Some people may have. I was not a part of that
18 conversation, looking back.

19 Q Okay. Now, Lench also says, "Maybe that's the
20 point, given the litigation risk." Do you know what he means
21 by that?

22 A I don't. I can only assume that the litigation
23 risk would mean that, you know -- you'd have to ask him. I
24 would just be guessing. And I don't think I would join a
25 kind of discussion, at least from -- I'm not an attorney, so

1 talking about a litigation risk is or is not.

2 Q Was there -- do you remember any discussion about
3 the idea that if you decided not to file the Goldman case on
4 Friday and waited until Monday, you know, there's concerns
5 that there will be leaks, where it would get out, and that
6 the story would already be out there before the SEC filed
7 their case? And because the SEC hadn't filed their case they
8 couldn't even comment on it.

9 A That is correct.

10 Q Okay. So maybe that might have been what he was
11 referring to. I mean -- litigation risk, but maybe risk that
12 the information will get out there?

13 A Maybe. But I wouldn't want to guess what Ken
14 meant in his e-mail.

15 Q Okay. And do you remember anything about the
16 conversation that you had with him?

17 A I don't remember specifics from the conversation.
18 I assume I had a conversation. I assume he did what I asked
19 him to do here, which was please call me.

20 Q Right.

21 A I remember this case I probably talked with him
22 about, you know, all matters. Because those days were very
23 busy, compacted days, doing a lot of different things with a
24 number of different cases -- right? -- as we've already
25 discussed.

1 Q And so he says, "I don't know whose idea it was to
2 file Friday, but I know we usually don't." Do you know if
3 you told him whose idea it was to file Friday or you knew at
4 that time?

5 A No.

6 Q All right. So did you have a personal view on
7 whether it was a good idea to file the Goldman case on Friday
8 or perhaps wait until Monday?

9 A I did have a personal view. Yes.

10 Q What was the view?

11 A The view was not to wait for a Monday filing.

12 Q For what reason?

13 A Because of the risk of a leak.

14 Q And explain to me what the consequence of a leak
15 is.

16 A The consequence of a leak is that a story is
17 published in the public, for the public to consume, about a
18 matter that the SEC has acted on without the SEC's
19 explanation of what that matter is.

20 Q And so what would be the consequence of that?

21 A Misinformation. And therefore, you know, a very
22 strong potential of negating or reducing the deterrent effect
23 of the Commission's actions. It's just not the way to
24 proceed.

25 MR. KOTZ: Right. Okay. All right. Let me show

1 you next document. We'll mark this as Exhibit 5. It starts
2 with an e-mail from Stephen Cohen to you, Myron Marlin, and
3 John Nester, 4/15/2010, 9:44 a.m.

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

6 BY MR. KOTZ:

7 Q And so Steve Cohen sends an e-mail to Myron Marlin
8 and John Nester with a copy to you, "Why file GS [I assume
9 means Goldman Sachs] tomorrow at 9:30? Sometimes things are
10 not always that smooth when filing. Why not give a little
11 more lead time, 9:00?" And you respond, "Clerk's office
12 opens at 8:30." And he says, "Right. So why file at 9:30?"
13 Do you know what the answer to that is? Why did they decide
14 to file -- I guess there's a timeline. Why was the decision
15 in the timeline made to file the complaint at 9:30?

16 A To the best of my recollection, I don't remember a
17 case where we file -- and maybe it's happened, but -- where
18 we file the moment that a clerk's office opens first thing in
19 the morning. I guess it could have happened, but generally
20 speaking --

21 Q Do you know why?

22 A You know, again, like I said a few minutes ago, we
23 try to -- because of the -- as soon as -- particularly in New
24 York, as soon as a case is filed there are reporters or
25 stringers there, and then it becomes public almost

1 immediately without the benefit of our SEC press release
2 going out. And so it's a coordination effort.

3 Q But why wouldn't you want to file first thing in
4 the morning then? Why wouldn't you want to file the case
5 immediately when the clerk's office opens so there isn't
6 time -- what would be the reason not to file immediately when
7 the clerk's office opens? Isn't that the kind of safest
8 thing, do it as quickly as possible so you get the filing out
9 and then you can issue your press release?

10 A There are coordination issues with sending out a
11 press release around the same time as a filing. And why 8:30
12 as opposed to 9:30 or others, I don't know.

13 Q All right. If you look on page 2 of this exhibit
14 in the timeline it says, "8:30 a.m. -- Goldman: The SEC
15 pre-circulates its press release."

16 A Yes.

17 Q "9:30 a.m. -- Goldman: The SEC files its
18 complaint." "@9:45 a.m. -- Goldman: The SEC distributes its
19 press release." What does it mean to pre-circulate its press
20 release?

21 A Press releases have an internal pre-release
22 circulation that is done by the Office of Public Affairs to
23 the tenth floor and to the directors of offices and divisions
24 inside the SEC a certain amount of time before they're made
25 public.

1 Q So its just internally people get one last chance
2 to read it over?

3 A Yes.

4 Q I see. Were you aware that -- I mean Steve Cohen
5 actually was right when he said, "Sometimes things are not
6 always that smooth when filing," because there was a problem
7 with the Goldman filing, and it didn't actually get filed
8 until like closer to 10:30.

9 A Correct.

10 Q So do you think it might have been a better idea to
11 give them a little more lead time?

12 A Oh, to give the filers a little more lead time?

13 Q Yeah.

14 A Potentially.

15 Q And you don't know why the decision was made to do
16 it at 9:30?

17 A No.

18 Q Did you participate in drafting the timeline?

19 A No.

20 MR. KOTZ: All right. Let me show you another
21 document, and mark it as Exhibit 6. This is an e-mail from
22 Myron Marlin to John Nester with a copy to you and Steven
23 Cohen, Thursday, April 15th, 2010, 12:38 p.m.

24 (Exhibit No. 6 was marked for
25 identification.)

1 BY MR. KOTZ:

2 Q This is a timeline that I guess Myron Marlin is
3 sending out to you and a couple others. Did you participate
4 at all in preparing this timeline?

5 A No.

6 Q Did you ever have any conversations about when the
7 Stanford OIG report would be released?

8 A I may have heard discussions, but I wasn't like a
9 verbal participant in that aspect.

10 Q Did you hear any discussions where there was talk
11 about the Goldman case in the context of the Stanford case?
12 In other words, it would be a good idea to file them both on
13 the same day, or file them both on different days, or
14 anything like that?

15 A Not to the best of my recollection. No.

16 Q Do you have any idea why the decision was made to
17 file the Goldman case in the morning and issue the Stanford
18 case in the afternoon?

19 A No.

20 Q Do you recall a conference call at 6:00 p.m. the
21 night before the Goldman filing?

22 A Generally, yes.

23 Q Okay. You participated in that call?

24 A I believe so.

25 Q Do you remember who else was there? Was it people

1 on the phone or were people in a meeting?

2 A Well, this would have been Thursday, April 15th.

3 Is that the date?

4 Q Right. I can show you. Let me show you an e-mail
5 that will reference it.

6 THE WITNESS: Sure. Thank you. Yeah. Good.

7 MR. KOTZ: Exhibit 7, an e-mail from Lorin Reisner,
8 to [REDACTED] Myron Marlin and Ken Lench, a copy to you and
9 several others, 4/15/2010, 7:42 p.m.

10 (Exhibit No. 7 was marked for
11 identification.)

12 THE WITNESS: Okay.

13 BY MR. KOTZ:

14 Q So do you remember -- what do you remember about
15 this call? Were you on the phone? Was it in somebody's
16 office?

17 A I would have -- if I was on the call -- and I don't
18 remember much of any detail about this. That afternoon I was
19 with Rob going to the Tulane conference. So if I was on the
20 call I would have been doing it on my cell phone.

21 Q From New Orleans?

22 A Yeah. From there. From the Tulane conference.

23 Q But do you remember anything about the call?

24 A If anything, just the kind of general discussions
25 about kind of the schedule for the next day.

1 Q Did you have any particular concerns about how this
2 was all going to work? Obviously there were a lot of things
3 going on at the same time.

4 A Well, there were a lot of -- you know, there were
5 -- correct -- a number of things going on at the same time.
6 And so just making sure that everything was completed,
7 completed well, completed accurately and then rolled out to
8 the public in the most appropriate way.

9 MR. KOTZ: Okay. All right. Let me -- I want to
10 show you this document. It's an e-mail from Myron Marling to
11 Stephen Cohen, [REDACTED] and Didem Nasanci, 4/14/2010,
12 6:08 p.m. We're going to mark this Exhibit 8.

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

15 BY MR. KOTZ:

16 Q Do you remember this issue, where Scott Friestad
17 was informing folks that there's a reporter who knew that the
18 recommendation of the Goldman case was on the calendar?

19 A I had forgotten about this one, but now that I see
20 it I do recall. Yes.

21 Q Do you know which reporter it was?

22 A I don't.

23 Q Do you know how that reporter found out?

24 A No.

25 Q What was the concern, with respect to this issue?

1 A The same concern that we have discussed previously,
2 which is, you know, leak concerns that a story would go out
3 without the benefit of the Commission explaining the action.

4 MR. KOTZ: All right. Let me move on to the next
5 one, marked Exhibit 9. It's an e-mail from you to another
6 one of your e-mail accounts, 4/16/2010, 10:02 a.m.

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

9 THE WITNESS: This is Friday? Okay. Yes. Yes.

10 BY MR. KOTZ:

11 **Q So why did you send this to your Hotmail account?**

12 A Because as I was with Rob, working out of a hotel
13 business center, in order -- I was -- we were working on the
14 final drafts of the press release, Rob's comments for the
15 phone call that he had with reporters that day, the
16 complaint, any number of things. And in order to print out
17 from the business center any -- like this material, and get
18 in front of Rob, and for me to actually take a look at a
19 hardcopy, make edits, or whatever, in order to print it out I
20 had to e-mail it to my Hotmail account, in order to print it
21 out in the business center. There was no other way to print
22 out a document.

23 **Q But you didn't forward it to anyone from your**
24 **Hotmail account prior to it being filed?**

25 A Correct. I did not forward it to anyone. Correct.

1 MR. KOTZ: All right. We'll go to the next one.

2 It's an e-mail at the top from Stephen Cohen to Myron Marlin
3 4/18/2010, 3:38 p.m., Exhibit 10.

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

6 BY MR. KOTZ:

7 Q Now, the statement at the bottom from Ken Lench,
8 that Kara Scannel heard that it was a 3-2 vote, and one of
9 the Republicans was unhappy because Goldman was not given the
10 chance to settle. Do you know if it was true that one of the
11 Republicans was unhappy because Goldman was not given the
12 chance to settle?

13 A I don't know.

14 Q Okay. Do you have any idea how Kara Scannel heard
15 this information?

16 A No.

17 Q Do you remember any conversations about this
18 particular matter? It looks like you were one of many it was
19 sent to.

20 A No. I don't.

21 MR. KOTZ: All right. Let's move on to the next
22 one, marked as Exhibit 11, an e-mail from Diana Henriques to
23 you, 4/19/2010, 10:27 p.m.

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

1 BY MR. KOTZ:

2 Q Do you remember this communication?

3 A I do.

4 Q What do you remember about it?

5 A That she had these questions.

6 Q And did you speak to her?

7 A I don't recall.

8 Q Do you share some of the concerns that are
9 expressed here, that it seems as though Goldman Sachs was,
10 you know, in her words, trying to undermine the litigation or
11 otherwise trying to put a story out there that maybe was
12 negative towards the SEC somehow?

13 A No. I'm not even sure that I talked with her.

14 Q Okay.

15 A I remember receiving this e-mail, but I don't
16 recall that I ever connected with her. During that time, if
17 I could just to kind of give you a sense, there were all
18 manner of -- in the day of, and really the week following,
19 the filing of the Goldman case there were dozens, and dozens,
20 and dozens, and dozens of contacts from reporters of all
21 sorts of different news organizations, asking all sorts of
22 questions. And so this is one of the many that came in. Some
23 reporters I talked to and returned calls to. Others I just
24 didn't have time; I didn't get to.

25 Q Was there concern that the Commission vote was

1 reported in the Wall Street Journal?

2 A There was concern that the Commission vote was
3 reported publicly, period.

4 Q Right.

5 A Yes.

6 Q And did anyone think that this was done somehow to
7 make the SEC look bad?

8 A I'm sure some people may have thought that.

9 Q How? I mean why would the SEC look bad if --

10 A Well, according to the reporting of the time, it
11 was -- you know, when it was reported in the press, as I
12 recall the press reports, it was that, well, this case isn't
13 that strong, because it was a 3-2 vote. So I can imagine
14 that some people, who felt it was a strong case here at the
15 SEC might have had a difference of opinion.

16 Q I see. And this idea that Goldman Sachs is clearly
17 pulling out all stops -- did anyone think that Goldman Sachs
18 was behind this in some way?

19 A Behind?

20 Q I guess I don't really understand. There was a
21 report about the vote. I assume that the only people who
22 would know about the vote would be people who were in the
23 Commission meeting. So I don't know how Goldman Sachs would
24 know about it. I just don't understand kind of the point
25 here.

1 A I don't either.

2 Q Okay. Did anyone think that the information, the
3 non-public information about the Commission vote, came from
4 Goldman Sachs somehow?

5 A I have no way of knowing that.

6 Q Okay. I mean, wasn't it more likely coming from
7 someone within the SEC?

8 A It would only be a guess at this point. I wouldn't
9 know.

10 MR. KOTZ: Okay. All right. Let me show you the
11 next document, mark it as Exhibit 12, an e-mail from Louise
12 Story to you, 4/20/2010, 6:04 p.m.

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

15 BY MR. KOTZ:

16 Q Do you know why Ms. Story was checking in on 4/20?

17 A I don't specifically know.

18 Q Do you remember talking to her?

19 A No. Not specifically. Again, this is the same
20 timeframe where we were being inundated with press calls from
21 any number of reporters.

22 Q Were you aware of the issue that was, I guess,
23 conveyed in the press, that Goldman Sachs felt like they
24 weren't given an opportunity to settle or weren't given a
25 heads up about the filing of the case?

1 A I read the press reports. Yes.

2 Q Okay. Did you take any -- make any efforts to
3 determine if that was accurate, whether they were given a
4 heads up or not?

5 A No. I didn't.

6 Q Okay. All right. Let me show you the next
7 document.

8 A And if I could just kind of maybe expound on that
9 answer.

10 Q Sure. Please.

11 A You know, we have very strict guidelines to only
12 discuss publicly available information, even after a case is
13 filed. So any interaction with a reporter asking questions
14 has to stay strictly within that realm.

15 Q Okay.

16 A So directing them to the complaint itself or the
17 press release, and that kind of thing.

18 Q All right. So you're talking about these two
19 e-mails where reporters are calling you, and you're saying
20 you would have only have given them information that was in
21 the complaint?

22 A That's exactly right.

23 Q Okay.

24 A Only publicly available information provided in the
25 complaint and the press release.

1 Q And is it also true that you really couldn't talk
2 about the vote with the reporter, because even though it was
3 released would the vote still be considered non-public
4 information?

5 A That's correct.

6 Q Okay. So even if the information is out there,
7 it's still non-public if it was kind of leaked improperly?

8 A That's correct.

9 MR. KOTZ: Okay. All right. Let me show you the
10 next document. I'm going to mark this Exhibit 13. It's an
11 SEC Administrative Regulation, Public Affairs, Press
12 Relations Policies and Procedures.

13 (Exhibit 13 was marked for
14 identification.)

15 BY MR. KOTZ:

16 Q Are you familiar, generally, with this document?

17 A Yes.

18 Q Okay. Turn your attention to page 6 of 12, under
19 15C, Notification of Defendants. It states, "Every effort
20 should be made to avoid the possibility that defendants in an
21 SEC enforcement action first learn of the action when they
22 read about it in the newspapers or when they are called by a
23 reporter for comment about the SEC's complaint. The
24 division, regional, or district office primarily responsible
25 for the filing of a particular complaint shall take all

1 necessary steps to see that the defendants and/or their
2 counsel are giving timely advice concerning the action." Are
3 you familiar with this particular provision?

4 A I had not been specifically familiar with it. No.

5 Q Okay. Were you generally familiar of the policy
6 that the SEC contacts the defendant prior to the case being
7 filed, to just let them know?

8 A In a general sense, yes.

9 Q Do you know if in the case of the Goldman Sachs
10 action whether that was done?

11 A I don't know.

12 Q Do you think it is good policy for the SEC to
13 notify a defendant that they're bringing an action against
14 prior to the action being brought, even if it's just a minute
15 before, just to let them know before they read about it in
16 the press?

17 A Again, I'm a non-attorney. I don't actually
18 investigate cases or bring cases to court.

19 Q Let's put aside any legal considerations or
20 investigative considerations.

21 A Right.

22 Q Let's talk about it simply from a communications or
23 press perspective. I mean this a press relations policy.
24 From that perspective, do you think it's a good idea?

25 A It's a part of the, you know, sheet, document here,

1 on the sheet. So they must have put it here for a good
2 reason is the only thing I can surmise.

3 Q And would it concern you if, in fact, in the case
4 of Goldman Sachs, with respect to the Abacus filing, that --
5 if it turned out that Goldman Sachs did learn about the
6 Abacus case from the press reports, and there wasn't an
7 effort made to notify Goldman Sachs that the SEC was bringing
8 an action until after they filed? Would that concern you?

9 A I don't know that I have a strong opinion to
10 express on that matter.

11 Q Would it surprise you if you learned that?

12 A I don't know that surprise would be the word that I
13 would use.

14 Q I mean do you think -- obviously it's in the
15 policy; there must have been a good reason. But what do you
16 think? Do you think that that's good policy, sort of a
17 courtesy to tell an entity like that? Or do you think, you
18 know, it doesn't matter either way?

19 A Like I said, I really don't have a strong opinion
20 on it, beyond seeing that it's here in this document.

21 Q Who do you understand role it to be to ensure that
22 that type of provision actually be done?

23 A The people working the case.

24 Q Okay. So even though you're communications for the
25 Division of Enforcement, you wouldn't be an individual who

1 would contact a defendant.

2 A Correct.

3 Q It would be one of the lawyers on the
4 investigation.

5 A Correct.

6 Q And likely one of the lawyers on the investigation
7 would know who to contact and have had some previous contact
8 with the lawyers for the entity anyway.

9 A Correct.

10 Q Okay. So it's kind of not something you would
11 necessarily be involved in.

12 A That's right.

13 Q Okay. And you don't remember any discussions about
14 whether to do that in this case, or if so when to do that?

15 A No. I don't remember those discussions.

16 MR. KOTZ: Okay. Okay. All right. Let's move on.
17 Exhibit 14 is an e-mail exchange that starts with an e-mail
18 from you to David Lieberman, 6/4/2010, 3:55 p.m.

19 (Exhibit No. 14 was marked for
20 identification.)

21 THE WITNESS: Okay.

22 BY MR. KOTZ:

23 Q Do you remember a conversation with David Lieberman
24 about Goldman settlement considerations?

25 A Not a specific conversation.

1 Q Do you remember kind of general conversations
2 during that time?

3 A Yes. I do.. I do. And again, it would be under
4 the purview of what I strictly hold to, which is not to
5 divulge anything that's not public.

6 Q So you wouldn't be able to comment on whether there
7 were settlement discussions or not?

8 A Correct. In fact, I don't recall not specific
9 conversations, but during this time -- again, reporters
10 continued to call in, asking for kind of basically any
11 information they could find out. And, you know, I would tell
12 them that, you know, I couldn't confirm or deny anything
13 along those lines.

14 Q And what about -- he says, "One additional thing
15 I'd like to check: I hear that Kenneth Lench is your point
16 person in talks with Goldman. True? If not, then who is? I
17 don't need to site you as a source on this -- I just want to
18 be sure I'm accurate." I mean is that something you can tell
19 him, whether Ken Lench is the point person? That doesn't
20 seem non-public.

21 A You know, you ask a very good question. I can't
22 remember the precise dates. At one point there was a filing
23 with the court that placed Lorin as the lead litigator in
24 this matter. And as I recall, there was at least press
25 report, probably more, kind of stating that, that the SEC has

1 made that filing. And so, you know, that would be the kind
2 of thing that I would be able to point out to a reporter,
3 once it is made public, that Lorin is the lead litigator.
4 But with regards to this specific question, no. I don't
5 believe I would be able to tell him that. Because, quite
6 frankly in the question here, "I hear that Kenneth Lench is
7 your point person in talks with Goldman," I wasn't able to
8 confirm with anyone that there were talks with Goldman.

9 Q I see.

10 A Because, again, it was a litigated matter.

11 Q Right. Now, he says, "Thanks for your help
12 yesterday. Much appreciated." Do you know what help you
13 provided? I mean if you can't tell him anything how can you
14 help him?

15 A Yeah. Maybe I just clarified something that was
16 publicly available. There was a lot of confusion, if I
17 could. A lot of reporters like had kind of just basic facts
18 incorrect, even on kind of plain face of, you know, looking
19 at the complaint or looking at our press release. And so,
20 you know, frequently I would kind of either get on the phone
21 with them and pull up the press release and walk through it
22 with them, kind of point by point.

23 Q I see.

24 A And that in and of itself would clarify points that
25 maybe they missed or that they misconstrued. Or, frankly

1 reporters would tell me -- you know, again there were so many
2 calls going back and forth, you know, about they're hearing
3 X, is that true. And so I would pull up the press release
4 and just direct them back to the press release or direct them
5 back to the complaint. So that could be what he's referring
6 to. That's the kind of things that occurs.

7 Q Were there general concerns during this timeframe
8 that stories about settlement discussions with Goldman were
9 getting out?

10 A I don't recall anyone being concerned per say.

11 Q Well, just for the same reason before, that, you
12 know, this is non-public information that is being released
13 and, you know, the SEC is still engaged in settlement
14 discussions and, you know, concern that the story kind of
15 gets before.

16 A Sure. I mean I would have -- I was concerned and
17 disappointed. But when there are multiple parties involved
18 in discussions, you know, there are a lot of ways that
19 information can become public.

20 MR. KOTZ: Right. All right. Let me show you the
21 next document, Exhibit 15, which starts with an e-mail from
22 Stephen Cohen to Myron Marlin, 7/14/2010, 9:58 p.m.

23 (Exhibit 15 was marked for
24 identification.)

25 BY MR. KOTZ:

1 Q And it looks like you're sending around a copy of
2 an article written in the Wall Street Journal, July 15th,
3 which was actually the day that the SEC announced its
4 settlement of the Goldman case, although obviously this
5 article came out earlier. Do you remember that there was an
6 article about the settlement right as you guys were about to
7 finalize and announce the settlement?

8 A Yes.

9 Q And Stephen Cohen says, "Guess they got first crack
10 at framing this story." What does he mean by framing the
11 story? Do you know?

12 A You'd have to ask him what he meant by that.

13 Q Right. But do you know what is this concept of
14 framing the story?

15 A In a general sense?

16 Q Yeah.

17 A In a general sense, if you're a reporter and you
18 kind of learn about information that hasn't been reported on
19 previously or whatever then you're the first one to kind of
20 break the new story, and so you're framing the story.

21 Q Do you recall any conversations about Goldman
22 perhaps framing the story of the settlement with the SEC to
23 spin it to make it look like it was -- I don't know -- either
24 something favorable to Goldman or not so unfavorable to
25 Goldman?

1 A No.

2 MR. KOTZ: All right. Let's go to the next e-mail,
3 Exhibit 16, which is an e-mail from John Nester to you and
4 several other folks, 7/15/2010, 9:55 a.m.

5 (Exhibit No. 16 was marked for
6 identification.)

7 BY MR. KOTZ:

8 Q Do you recall the day that the Goldman settlement
9 was announced?

10 A I do.

11 Q Okay. How long before that day -- this was a
12 Thursday -- were you aware that a settlement had been
13 reached?

14 A A very short timeframe. I don't remember the exact
15 day that I found out, but it was literally a day or two.

16 Q Were you aware prior to that that settlement
17 discussions had been ongoing and that they were kind of
18 making progress, but, you know, maybe they hadn't finalized
19 everything? Or was that the first you heard that there were
20 settlement discussions that were serious?

21 A Well, I read press reports about settlement talks.

22 Q Okay. But you wouldn't know if they were true.

23 A But that's right.

24 Q But in terms of information you got from the SEC,
25 when you learned a day or two before this Thursday that there

1 was going to be a settlement, was that the first time you had
2 heard there was going to be a settlement?

3 A Yes.

4 Q Okay. Do you remember any discussions about when
5 to announce -- when to file and announce the settlement with
6 Goldman?

7 A Yes.

8 Q Okay. What do you remember about that?

9 A There was a meeting that involved some, if not
10 most, of the folks on this e-mail discussing that issue.

11 Q And what was discussed, to your recollection?

12 A The discussion was, you know, that a settlement is
13 imminent and so, you know, if approved by the Commission then
14 it would need to be announced, and so how would we go about
15 doing that.

16 Q We heard that there was discussion about whether to
17 announce it that afternoon or almost into evening on Thursday
18 or to wait until Friday. Do you remember that?

19 A There was discussion about kind of when to announce
20 it, and those all kind of -- like in most discussions, there
21 were many options that were discussed.

22 Q And do you remember anything about pros and cons of
23 each option, filing it on Thursday or Friday?

24 A You know, I don't recall specifically, other than
25 to say that, you know, there were -- you know, there were

1 discussions about kind of finalizing things. Frankly, in
2 this meeting there was a mention that -- and I wasn't part of
3 the settlement talks, so I didn't know specifics, but there
4 was a mention that, you know, it's not finalized yet; it's
5 still not completely nailed down, and there are still details
6 that have to be worked out.

7 So it was a hypothetical situation as to when it
8 would be announced. But the discussion needed to take place,
9 because a settlement wasn't finalized yet. I was only
10 generally aware that the Congress was obviously working on
11 that legislation, but I wasn't specifically aware of the date
12 of a vote coming up.

13 Q Do you remember any conversations about the concern
14 that it would be perceived as somehow connected to financial
15 regulatory reform if the SEC filed its settlement with
16 Goldman the same day that the financial regulatory reform was
17 approved by the Senate?

18 A No.

19 Q So what was your role, in terms of just getting
20 things in order for this filing and announcement?

21 A The same as with other cases or with other
22 announcements, and that is to work with a team on kind of
23 editing the draft press release. Any remarks that may be
24 given by whoever's speaking at a press conference, I would
25 edit them. You know, maybe work on some of the details

1 surrounding, you know, announcing to the public a matter.

2 Q Were you aware that after the SEC filed its initial
3 action against Goldman Sachs there was some concern expressed
4 first by the New York Stock exchange that they didn't get a
5 heads up from the SEC that the SEC was going to file the
6 case?

7 A And this is in April?

8 Q Right.

9 A No. I was not aware of that.

10 Q Were you aware that there was some concern
11 expressed that it had a significant impact on Goldman Sachs's
12 stock and the market itself, the initial filing of the action
13 in April?

14 A I've read press reports about that issue, but
15 beyond that, no.

16 Q Do you remember any discussion in connection with
17 the filing in April of the action against Goldman Sachs about
18 whether to file it during trading hours?

19 A No.

20 Q And what about with respect to the filing of the
21 settlement in July of 2010? You see on this timeline that
22 there was a press advisory at 3:35, but the actual filing
23 occurred after the market closed.

24 A Yes.

25 Q Do you remember any discussions about that?

1 A Yes.

2 Q What were those discussions?

3 A I mean generally speaking, I don't remember like
4 specifically who said exactly what words.

5 Q Sure.

6 A But generally speaking, I think it was expressed at
7 this meeting that there was -- that it would be advisable to
8 make the announcement after the close of the market, so as
9 not to impact the market.

10 Q And was that impacting the market overall or
11 impacting Goldman Sachs's stock?

12 A I don't recall specifically. I believe impacting
13 the market overall, but again I don't remember specific words
14 from that discussion.

15 Q And did you agree with that thinking?

16 A I had no problem with it.

17 Q But do you recall that the press advisory was, as
18 indicated on this timeline, prior to the market close, and
19 that because there were all these news reports about the
20 settlement that, in fact, people figured out that this press
21 advisory related to announcement of the settlement, and
22 actually Goldman Sachs's stock was significantly effected in
23 the time period from the press advisory to before the market
24 closed?

25 A Well, I recall that the press advisory was not

1 supposed to state what the issue was about.

2 Q Right.

3 A Right. It was supposed to be a generic press
4 advisory that the SEC was going to be having a media
5 availability or press conference, or something along those
6 lines, about an action, but was not to state any specific
7 name of an entity.

8 Q Right. And is that what the press advisory said?

9 A I don't recall. I think so, to the best of my
10 recollection, but I don't have it in front of me.

11 Q Were you aware that at least the market moved as a
12 result of the press advisory? So some people interpreted the
13 press advisory to mean that it was the Goldman settlement?

14 A I became aware the next day, because of press
15 reports.

16 Q Was that a concern, that while there were efforts
17 made to file and announce the settlement after the market
18 closed, because of the press advisory, it did impact the
19 market, or at least Goldman's stock?

20 A And your question for me was --

21 Q Was that a concern?

22 A Was it a concern?

23 Q Did you have a concern? I mean there was an effort
24 made --

25 A Again, I didn't have a problem with this timeline.

1 Q All right. But there was an effort made to file
2 the complaint after the market closed, as not to impact the
3 market. But in fact what happened was the press advisory
4 impacted the market. So do you think looking back that maybe
5 the press advisory should have been after the market closed?

6 A Potentially. I think that's a matter open for
7 discussion, in my opinion.

8 MR. KOTZ: Okay. All right. Let me show you the
9 last document, Exhibit 17, an e-mail exchange between you and
10 Maneet Ahuja, 7/15/2010, 4:27 p.m.

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

13 BY MR. KOTZ:

14 Q So do you know if this report that came out at 4:21
15 p.m. on Thursday, July 15th -- was that as a result of the
16 filing, or was that before the filing?

17 A I don't know.

18 Q How come you just said no comment?

19 A Because that's our practice.

20 Q What do you mean your practice? In what way?

21 A If someone would ask before a press conference or
22 before we sent out a press release if I can confirm
23 non-public information I would say no comment.

24 Q Okay. But this might have been after the filing.
25 So the information wouldn't necessarily have been non-public.

1 Right?

2 A I don't know when the filing took place.

3 Q Okay. But even if -- so if you know that the
4 filing occurred, but it's before the press release you still
5 wouldn't comment?

6 A As I said previously, we try to closely coordinate
7 those two, the filing and the release of a press release.
8 And so she --

9 Q It's better not to comment and let the press
10 release speak for it?

11 A That's right.

12 Q But if this was after the actual filing, would
13 there be anything improper about telling the news desk to try
14 to hold off until the conference call? Because then they
15 would hold off until they actually heard the press release.
16 I mean that's kind of what you want, no?

17 A As I recall, the safest thing for me -- I mean if
18 you say anything, hold off -- if you confirm, if you say
19 anything other than no comment -- again, with the pressure
20 surrounding, the pressure on the part of reporters to try to
21 find out information that's non-public, I was in possession
22 of non-public information at that point, and I wasn't going
23 to be the one to make that available to the public in any
24 way. And so no comment is the appropriate response.

25 Q So by saying hold off until the conference call you

1 may give the impression that it is what he thinks it is?

2 A Exactly.

3 Q Now, are you aware of the financial regulatory
4 reform legislation that advanced through Congress generally?

5 A Generally speaking, yes.

6 Q Okay. Did you have any involvement in working on
7 aspects of it?

8 A No.

9 Q Did you have any communications with anyone in
10 Congress, whether Congressional members or staff members
11 about financial regulatory reform?

12 A No.

13 Q Has anybody at the SEC ever mentioned this
14 legislation in connection with the Goldman Sachs
15 investigation or in connection with the filing of an action
16 against Goldman Sachs prior to being it filed?

17 A Could you repeat it just one more time?

18 Q Sure. Has anybody at the SEC ever mentioned the
19 financial regulatory reform legislation in connection with
20 the Goldman Sachs investigation or in connection with the
21 filing of an action against Goldman Sachs prior to being it
22 filed?

23 A No. Not in my presence.

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

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

3 A No.

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

8 A No.

9 Q Are you aware of any information indicating that
10 the SEC coordinated its action against Goldman Sachs with the
11 Executive Office of the President, the White House, or any of
12 its employees?

13 A No.

14 Q Have you had a conversation with anyone at the
15 White House in your time at the SEC, as part of your work for
16 the SEC?

17 A No.

18 Q Are you aware of any information indicating that
19 anyone at the SEC shared any information concerning its
20 Goldman Sachs investigation with the Executive Office of the
21 President, the White House, or any of its employees, prior to
22 the complaint being filed?

23 A No.

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

1 members of Congress or Congressional employees?

2 A No.

3 Q Are you aware of any information indicating that
4 anyone at the SEC shared any information concerning its
5 Goldman Sachs investigation with any members of Congress or
6 any Congressional employees prior to the complaint being
7 filed?

8 A No.

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

14 A No.

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

21 A No.

22 Q Have you ever had a conversation with anyone at the
23 Democratic National Committee, the Democratic Senate Campaign
24 Committee, the Democratic Congressional Campaign Committee
25 through your work with the SEC?

1 A No.

2 Q Are you aware of any information indicating that
3 anyone at the SEC shared any information concerning its
4 Goldman Sachs investigation with the news media or any
5 journalist prior to the complaint being filed?

6 A No.

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

14 A No.

15 Q Are you aware of any information indicating that
16 the SEC shared any information regarding its settlement with
17 Goldman prior to it being filed with the Executive Office of
18 the President, the White House, its employees, members of
19 Congress, Congressional employees, or the Democratic National
20 Committee, Democratic Senate Campaign Committee, Democratic
21 Congressional Campaign Committee or their employees?

22 A No.

23 Q Are you aware of any information indicating that
24 the SEC timed the filing of its initial complaint and action
25 against Goldman Sachs to advance financial regulatory reform?

1 A No.

2 Q Are you aware of any information indicating that
3 the SEC timed its settlement of its action with Goldman Sachs
4 with financial regulatory reform legislation?

5 A No.

6 Q Do you believe that it was just a coincidence that
7 the SEC announced and filed its Goldman Sachs settlement on
8 the same day that the Senate voted to approve financial
9 regulatory reform? Do you think it was a coincidence, or do
10 you think that the two are somehow related?

11 A I don't think there was a relation. I have no
12 reason to believe that there was any relation.

13 MR. KOTZ: All right. If you could just give us a
14 second, we're going to go off the record.

15 (A brief recess was taken.)

16 MR. KOTZ: Back on the record. We don't have any
17 further questions. The one thing I would ask -- and this is
18 significant -- is in order to preserve the integrity of our
19 investigation, that you not discuss the content of your
20 testimony with anyone.

21 THE WITNESS: Okay.

22 MR. KOTZ: All right. And we're off the record.

23 (Whereupon, at 3:57 p.m., the examination was
24 concluded.)

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REPORTER'S CERTIFICATE

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I, [REDACTED] reporter, hereby certify that the foregoing transcript of 67 pages is a complete, true and accurate transcript of the testimony indicated, held on August 12, 2010, at 2:31 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:

8/19/10

Official Reporter:

Diversified Reporting Services, Inc.

PROOFREADER'S CERTIFICATE

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In the Matter of: OIG-534

Witness: Witness 39

File Number: OIG-534

Date: Thursday, August 12, 2010

Location: Washington, D.C.

 This is to certify that I, [REDACTED] (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.

[REDACTED]

(Proofreader's Name)

8/19/10

(Date)

Chapter Break

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of

)

ORIGINAL

) File No. OIG-534

OIG-534

)

WITNESS: Number 41

PAGES: 1 through 20

PLACE: Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C.

DATE: Tuesday, August 17, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 3:25 p.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

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5

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12 On behalf of the Witness:

13 LUIS AGUILAR, pro se

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C O N T E N T S

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WITNESS:

Luis Aguilar

EXAMINATION

5

EXHIBITS:

DESCRIPTION

IDENTIFIED

(None)

P R O C E E D I N G S

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MR. KOTZ: We are on the record at 3:25 p.m. on August 17, 2010, at the United States Securities and Exchange Commission.

I'm going to swear you in, if that's all right.
Would you please raise your right hand?

Whereupon,

LUIS A. AGUILAR

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

MR. KOTZ: Could you state and spell your full name for the record, please?

THE WITNESS: Luis Alberto Aguilar: L-u-i-s; A-l-b-e-r-t-o; A-g-u-i-l-a-r.

MR. KOTZ: 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, [REDACTED] This is an investigation by the Office of Inspector General, Case Number OIG-534.

I'm going to ask you certain questions, and you will be providing answers under oath. The court reporter will record and later transcribe everything that is said. Please therefore provide verbal answers to the questions, as a nod of the head or another non-verbal response won't be

1 picked up by the court reporter. Also, so the record will be
2 clear, please let me finish my question before you provide
3 your response, and I'll try to let you finish your response
4 before I ask that question.

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

11 THE WITNESS: Yes.

12 MR. KOTZ: Okay. Great. All right. We're going
13 to start with just a little bit of background.

14 EXAMINATION

15 BY MR. KOTZ:

16 Q If you could, just describe for me your education.

17 A [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 Q [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 A [REDACTED] I became a
2 staff attorney at the Atlanta Regional Office with the
3 Securities and Exchange Commission, roughly April '79 until
4 January 1982, [REDACTED]

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 commissioner at the SEC during breakfast time on July 31,
25 2008.

1 Q Okay. And what would you say your general duties
2 are as an SEC Commissioner?

3 A My general duties is really policy, you know,
4 developing policies for the SEC and the markets. I think my
5 general duties coincide quite well with our mission is to
6 protect investors, you know, try to have effective and
7 orderly markets in capital formation.

8 Q Okay. And who do you report to in your view?

9 A American public.

10 Q Okay. All right. Did there come a time when you
11 became aware of the existence of an investigation by the SEC
12 into a sale of collateralized debt obligations by Goldman
13 Sachs known as the Abacus investigation?

14 A Yes.

15 Q Okay. Do you remember when you first learned of
16 this investigation?

17 A No.

18 Q Okay. Now, the Abacus investigation was first
19 placed on the closed commission calendar in December of 2009,
20 and that was December 17th. Do you recall, now, it was then
21 removed? Were you aware do you think that the Abacus's case
22 was placed on the calendar back then?

23 A Yes.

24 Q Okay. Now, there were just to give you the
25 context. There were two points in time. It was placed on

1 the calendar, December, removed, and it was placed on the
2 calendar again at the end of January and removed. So I'm
3 asking about that December timeframe. Were you aware of why
4 it was removed from the calendar in December?

5 A No.

6 Q Okay.

7 A Or, if I was, I don't remember, presently. But I
8 don't think I was.

9 Q Did you understand, if you remember, did you
10 understand generally that that was the decision of the
11 Enforcement Division and not necessarily related to any
12 information or feedback from commissioners?

13 A That would be my assumption as oftentimes cases go
14 on the calendar and they're pulled for a variety of reasons.

15 Q Okay. And then in January, late January of 2010,
16 the Abacus case was again placed on the calendar and then
17 again removed. Do you recall that?

18 A Yes.

19 Q Okay. What do you recall about that?

20 A Just as you indicated, that it had been put back on
21 the calendar and again shortly before the closed meeting it
22 was again pulled.

23 Q Okay. So what we've heard from a variety of folks
24 was that there was concerns expressed by some of the
25 commissioners, not necessarily you, but that there were

1 concerns expressed by commissioners at that point about
2 whether the case should be brought together. There was, I
3 guess, two options at that point. One option was to bring
4 the case-in-chief that they already had and then make
5 decisions on another potential defendant named [REDACTED]

6 And then the other option would be to wait, take
7 the testimony of [REDACTED] and potentially make a
8 decision with respect to the entire case at one time. Do you
9 remember or did you participate in that debate at all?

10 A No.

11 Q Do you remember anybody talking about that issue?

12 A No.

13 Q Okay. So you're not aware specifically of why the
14 Abacus case was pulled in January either?

15 A No.

16 Q Okay. And when a case is put on the calendar, but
17 pulled, you wouldn't have really reviewed anything related to
18 it because --

19 A It depends when they pulled it.

20 Q Okay.

21 A If they pulled it, you know, an hour before the
22 closed meeting, probably have read the action memo debriefs
23 by my counsels. If it's pulled, you know, for the five to
24 six days before, it depends. Sometimes, I've already read
25 it; sometimes, as I triage what to read for a particular

1 closed meeting, yeah.

2 Q And do you have a recollection today of having
3 reviewed or read any materials relating to Abacus either in
4 the December or January timeframe?

5 A No specific recollection, but I wouldn't be
6 surprised if I had.

7 Q Okay. All right. And then the Abacus case was put
8 back on the calendar in April. Do you recall that?

9 A Not the specific timeframe, but I do recall it was
10 put back in Aprilish.

11 Q Okay. All right.

12 A Yeah, sounds about right.

13 Q And you recall at that point in time reviewing
14 materials related to the Abacus case?

15 A Yes.

16 Q Okay. And then of course you voted on the
17 recommendation?

18 A Yes.

19 Q Okay. Now that was a Wednesday. Do you recall any
20 discussion about when the Abacus case would actually be filed
21 subsequent to the commissioners, including yourself,
22 approving the recommendation to go forward?

23 A Generally, yes; specifically, no. Oftentimes, they
24 talk about cases being coordinated with attorney generals'
25 offices for filing and the like; but I don't recall with

1 specificity what the timeframe would have been or the
2 specific nature of those discussions.

3 Q Okay. And as a commissioner, would you be involved
4 in the decision on when to file a case after you and your
5 fellow commissioners have approved it for going forward?

6 A No.

7 Q Okay. And, so, just to be clear, the decision was
8 then made to file the Abacus case that Friday, two days
9 later. Did you participate or have any role in the decision
10 made to file the case on a Friday?

11 A No.

12 Q Now, were you aware that there has been claim made
13 by Goldman Sachs that they did not get advanced notice of the
14 fact that the SEC was filing its action against it? Are you
15 aware of that generally was made in the press?

16 A I read about it in the newspapers.

17 Q Are you aware of whether that claim is accurate or
18 not?

19 A I never personally received to my knowledge any
20 written document from Goldman Sachs or any oral statements
21 from anyone representing Goldman Sachs making those same
22 statements.

23 Q Okay. And you don't know from the enforcement
24 perspective whether they gave them a heads-up or not?

25 A No.

1 Q And you were obviously not involved in any
2 decisions related to them?

3 A No.

4 Q Okay. Do you know if it is the SEC's regular
5 practice to give advance notice to a publicly traded company
6 that the SEC plans to file an action against that company?

7 A There is a process called Wells process. On
8 occasion, I believe we do give potential attendance notice
9 that there is an action being contemplated against him and
10 they're given an opportunity to submit a Wells.

11 Q But other than the Wells process, are you aware of
12 any policy or practice that the SEC has after the Commission
13 approves the recommendation to go forward with an action; to
14 go back to a company and say, you know, the Commission
15 approved it. Here's one last opportunity to resolve the
16 matter?

17 A I'm not aware of any such policy.

18 Q Okay. Were you involved at all in any decisions
19 with respect to filing the complaint against Goldman Sachs
20 during New York Stock Exchange trading hours?

21 A No.

22 Q Okay. Do you recall becoming aware that the
23 Goldman Sachs case was being brought to your attention for
24 possible settlement?

25 A Could you repeat that?

1 Q Do you recall becoming aware that the SEC was going
2 to try to settle its case with Goldman Sachs?

3 A Yes.

4 Q Okay. And do you recall there was a Thursday
5 closed Commission meeting and executive session where you and
6 other commissioners reviewed and voted on the Goldman
7 Settlement?

8 A Yes.

9 Q Okay. Were you aware as to whether that was a
10 special session just for Goldman or was that part of the
11 regular sessions that happened kind of on a consistent basis?

12 A In the last few months at really close meetings we
13 started having a more expensive executive session, usually
14 near the end of a meeting.

15 Q Okay.

16 A And I can't recall whether there were other cases
17 or just Goldman. To the best of my recollection, there were
18 actually other cases, as well.

19 Q Do you recall that Rob Khuzami and Lauren Reisner
20 made themselves available prior to the meeting to brief you
21 and others on the proposed settlement with Goldman?

22 A Yes.

23 Q Okay. And did you understand that that was because
24 there wasn't a lot of time or notice that you were given
25 before the meeting where you would have an opportunity to

1 **kind of analyze the materials related to the settlement?**

2 A I don't recall all the specific reasons why, but I
3 know there was the effort made to give an opportunity to the
4 commissioners to discuss with the attorneys bringing the
5 case, and Rob and Lauren to have more of a Q and A about the
6 case.

7 Q **Okay. Was it a relatively short timeframe in which**
8 **you had an opportunity to review the information and prepare**
9 **for the meeting?**

10 A Not a seemingly short amount of time; we had --
11 sometimes you actually have documents in your possessions for
12 weeks leading up to a closed meeting. This was more
13 truncated than that.

14 Q **Okay. But it was not totally unusual that there**
15 **would be a truncated time period?**

16 A No.

17 MR. KOTZ: Okay .

18 [REDACTED]: Do you believe that you had an
19 adequate amount of time to review Goldman's settlement offer
20 before voting whether he will accept it or not?

21 THE WITNESS: Yes.

22 BY MR. KOTZ:

23 Q **Did you have any understanding as to why the review**
24 **was truncated, why there was a need to go forward in that**
25 **swift vein?**

1 A To the best of my recollection, Goldman had a
2 scheduled earnings of filing/public statement; and, I
3 believe, there was an opportunity the staff thought to get a
4 settlement done to allow less, you know, grayness in the
5 market.

6 Q All right. You are, I assume, aware of the
7 financial regulatory reform legislation that was recently
8 passed by congress?

9 A Yes.

10 Q Okay. Has anybody at the SEC ever mentioned
11 financial regulatory reform legislation in connection with
12 the Goldman Sachs investigation or in connection with the
13 filing of an action against Goldman Sachs prior to the case
14 being filed?

15 A No.

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

20 A No.

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

25 A No.

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

5 A No.

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

11 A No.

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

15 A No.

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

20 A No.

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

1 A No.

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

8 A No.

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

17 A No.

18 Q You were aware that the actual votes that you as
19 one of the commissioners had with respect to both the initial
20 action against Goldman Sachs and the settlement against
21 Goldman Sachs were provided in the newspaper. Were you aware
22 of that?

23 A I read it in the newspapers.

24 Q Okay. All right. Do you have any idea of who
25 might have leaked that information?

1 A No.

2 Q Okay. And you and your staff would not -- didn't
3 participate in any improper leaking?

4 A No. Not to my knowledge.

5 Q Okay. All right. And are you aware of any
6 information indicating that the timing of the settlement with
7 Goldman Sachs was related to the possibility or the concern
8 about leaks in the media?

9 A No.

10 MR. KOTZ: Okay.

11 [REDACTED]: I don't have any questions.

12 MR. KOTZ: Okay. That's all the questions I have.
13 The only thing I would ask is in order to preserve the
14 integrity of our investigation that you not discuss the
15 content of your testimony with anyone until we finish the
16 investigation.

17 THE WITNESS: Yes, I would do as you instruct.

18 MR. KOTZ: Okay. All right. And with that we're
19 off the record.

20 (Whereupon, at 3:46 p.m., the examination was
21 concluded.)

22 * * * * *

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REPORTER'S CERTIFICATE

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I, [REDACTED] reporter, hereby certify that the foregoing transcript of 18 pages is a complete, true and accurate transcript of the testimony indicated, held on August 17, 2010, at 3:25 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:

8/20/10

Official Reporter:

Diversified Reporting Services, Inc.

PROOFREADER'S CERTIFICATE

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In the Matter of: OIG-534
Witness: Number 41
File Number: OIG-534
Date: Tuesday, August 17, 2010
Location: Washington, D.C.

This is to certify that I, [REDACTED] (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.

[REDACTED]

(Proofreader's Name)

8/20/10

(Date)

Chapter Break

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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

ORIGINAL

WITNESS: Number 42

PAGES: 1 through 20

PLACE: Securities and Exchange Commission

100 F Street, N.E., Room 2465

Washington, D.C.

DATE: Thursday, August 19, 2010

The above-entitled matter came on for hearing, pursuant
to notice, at 2:56 p.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, ESQ., Inspector General

5

6 Securities and Exchange Commission

7 100 F Street, N.E.

8 Washington, D.C. 20549

9

10 On behalf of the Witness:

11 TROY ALLAN PAREDES, pro se

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C O N T E N T S

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WITNESS

EXAMINATION

Troy Allan Paredes

4

EXHIBITS:

DESCRIPTION

IDENTIFIED

(None)

1 PROCEEDINGS

2 MR. KOTZ: Okay we are on the record at 2:56 p.m.
3 on August 19, 2010 at the United States Securities and
4 Exchange Commission.

5 I am going to swear you in.

6 Would you please raise your right hand?

7 Whereupon,

8 TROY ALLAN PAREDES

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

11 EXAMINATION

12 BY MR. KOTZ:

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

15 A Sure. Troy, T-r-o-y, Allan, A-l-l-a-n, Paredes,
16 P-a-r-e-d-e-s.

17 Q My name is David Kotz. I am the Inspector General
18 of the United States Securities and Exchange Commission. I
19 have with me my colleague from the Office of Inspector
20 General, [REDACTED]

21 This is an investigation by the Office of Inspector
22 General, case number OIG-534.

23 I am going to be asking you certain questions, and
24 you will be providing answers under oath. The court reporter
25 will record and later transcribe everything that is said.

1 Please, therefore, provide verbal answers to the questions,
2 as the nod of the head, or another non-verbal response, won't
3 be picked up by the court reporter.

4 Also, so the record will be clear, please let me
5 finish my question before you provide your response, and I
6 will try to let you finish your response before I ask the
7 next question.

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

14 A Yes.

15 Q Great. All right, let's start with a little bit of
16 background, if we could. Could you describe for me your
17 education, beginning with college?

18 A [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 Q [REDACTED]

22 [REDACTED]

23 A [REDACTED]

24 [REDACTED]

25 Q [REDACTED]

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Q When did you begin your position as SEC

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commissioner?

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A I was sworn in on August 1, 2008.

24

Q And who, in your view, do you report to, if anyone?

25

A Who do I report to? I think, as a member of the

1 Commission, and in an independent agency, there is not a
2 direct reporting obligation in that structure to anybody in
3 particular.

4 Q Okay. All right. Did there come a time when you
5 became aware of the existence of an investigation by the SEC
6 into the sale of collateralized debt obligations by Goldman
7 Sachs known as the ABACUS investigation?

8 A I became aware when it was -- so, yes, there was a
9 time when I became aware.

10 Q Okay. When do you think you first heard about this
11 investigation?

12 A I don't recall when it was, exactly. It was some
13 point when it was starting to be up for consideration for an
14 open -- excuse me, a closed meeting. But I don't recall
15 exactly -

16 Q Okay. And so, our records show that in December of
17 2009 it was first placed on the closed Commission calendar,
18 and then taken off the calendar. Then, subsequent, it was
19 placed on the closed Commission calendar in late January of
20 2010, taken off the calendar, and then eventually filed in
21 April.

22 Do you think you were aware of it the first time in
23 December?

24 A I don't recall if it was December when I was aware
25 of it for the first time, or if it was January. I remember

1 it being on the calendar and then removed. I don't recall if
2 that was only once or twice.

3 Q Okay. Now, we have records that show you asked to
4 meet with the investigative team on the ABACUS matter while
5 it was pending on the calendar in January. Do you recall
6 that?

7 A I recall there was a time when I -

8 Q Okay.

9 A -- asked to meet with them.

10 Q Okay. And do you recall what occurred in that
11 meeting?

12 A We discussed the matter and questions asked -- I
13 asked of the matter.

14 Q Okay. One of the issues that we understand was an
15 issue at that time -- and I want to see if this refreshes
16 your recollection -- was there was a discussion about how to
17 proceed in the case.

18 There was the talk of potentially another defendant
19 being looked at, (b)(6),(b)(7)(C) and there was some discussion
20 about whether the case should be all brought at the same
21 time, after a determination was made as to whether there was
22 a case against (b)(6),(b)(7)(C) or whether the case in chief
23 against Goldman would be brought initially, and then they
24 would continue to investigate with respect to (b)(6),(b)(7)(C) Do you
25 remember that issue?

1 A I do.

2 Q Okay. And do you remember whether you or other
3 commissioners had an opinion on that?

4 A I can't speak for -

5 Q Sure.

6 A -- the views of other commissioners. My questions,
7 as best as I can recall, were speaking to just the case
8 itself, the merits of the case, and what the theory of the
9 case was, and how that would play out, depending upon who was
10 charged, and how that ultimately all came together.

11 Q Okay. Did you -- do you -- did you learn why the
12 case was then taken off the calendar in January?

13 A I don't have a specific recollection of being told
14 what the exact reasoning was. Obviously, I saw that it had
15 been removed, but I don't have a recollection as to the
16 specific explanation.

17 Q Did you understand that it was at least partially
18 related to some of the comments that you and other
19 commissioners had, or did you understand it to be an
20 enforcement decision that was separate and apart from -

21 A I'm not sure what -- separate and apart, in the
22 sense that there were those conversations, which is to say a
23 meeting with the staff. I don't know what others were doing
24 in the nature of any other meetings others would have had
25 some point after that. There was a determination that was

1 made to remove it. Who made that determination, who was part
2 of that process, what the reasons, I don't recall having
3 specific knowledge after the fact as to what led to the
4 ultimate decision.

5 Q And then do you recall that later, in April, the
6 Goldman case was put on the calendar again?

7 A I recall it was put on the calendar again.

8 Q And so, just to refresh your recollection,
9 Wednesday, April 14th, was the date of the closed Commission
10 meeting where the commissioners voted on whether to bring the
11 Goldman case. Do you recall, generally, that meeting?

12 A Generally.

13 Q Okay. And the case was then filed 2 days later, on
14 Friday, April 16th. Were you aware as to why the case was
15 filed two days after the Commission approved it?

16 A I don't know as to what specifically went into the
17 decision as to the timing of the filing.

18 Q Okay. And you didn't have any involvement in that,
19 as a commissioner?

20 A Not as to the specifics of the timing of the
21 filing.

22 Q Okay. Was there anything that was conveyed by you
23 or your office about whether it should be filed quickly, or
24 anything general about it?

25 A I don't have any recollection as to conveying

1 anything on the time.

2 Q All right. Now, are you aware that there was a
3 claim made by Goldman Sachs -- I think through the media --
4 that they didn't feel they were given an opportunity to
5 settle the case against them by being given a heads-up before
6 the action was filed?

7 A I understand that through the media reports.

8 Q Okay. Do you have any particular view or opinion
9 on whether it would be appropriate for the SEC to give that
10 kind of heads-up to a company?

11 A I don't. I presume it's the case that every case
12 has its own idiosyncracies and particularities and dynamics.
13 So, as to this particular case, I don't have a view.

14 Q Okay. Were you aware of the decision made by the
15 SEC to file the Goldman action during market hours?

16 A I was aware in the sense that I saw that it was
17 filed, and the reports to that effect.

18 Q But you didn't have any involvement in that
19 decision?

20 A I don't recall any involvement in the decision on
21 that.

22 Q And so, the action against Goldman was filed during
23 market hours and, if you recall, had a significant impact,
24 both on Goldman Sachs and somewhat on the market itself. And
25 then, the settlement was filed after the market closed. Do

1 you have any opinion on whether it's better for the SEC to
2 file an action after the market closed, if that action may
3 have an impact on the market, so that there aren't market
4 fluctuations or volatility because of an SEC action?

5 A Having not participated, that I can recall, in the
6 specifics of determinations on timing in this case or
7 generally, I have no doubt there is a range of
8 considerations, including impact on the market.

9 But I would imagine there are other considerations,
10 as well. And it's difficult, without being party to those
11 conversations, to express a view as to how those would --
12 generally, or any particular instance.

13 Q Okay. And with respect to the settlement, do you
14 recall generally the meeting that occurred on July 19th,
15 wherein there was a vote on the settlement of the Goldman --
16 a vote on the Goldman settlement?

17 A I don't recall the exact date, but I remember the
18 meeting where there was a vote on the settlement.

19 Q Okay. I'm sorry. It was actually the 15th, July
20 15th.

21 And do you -- did you have any involvement in the
22 decision in that case to file the settlement and announce it
23 that same day, after the Commission voted?

24 A I don't recall being part of any specific
25 discussion as to the timing of the announcement.

1 Q Okay. Did you feel that you had sufficient time in
2 that case to review the information and properly prepare for
3 the Commission meeting that occurred in July, with respect to
4 the settlement? Because it was somewhat, I guess, of a
5 rushed process.

6 A I do feel as though I had adequate time.

7 Q Okay. Did you feel like it was a particularly
8 rushed process, do you remember?

9 A I don't feel as though it was -- I don't recall it
10 being particularly rushed.

11 Q Okay. You, I assume, are aware of the financial
12 regulatory reform legislation that was passed by Congress?

13 A Correct.

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

18 A I don't have any recollection of any such mentions.

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

23 A I have no basis for such a belief. Speculation as
24 to lots of other folks and their involvement in a whole range
25 of considerations, but I don't have any factual basis for any

1 belief along those lines.

2 Q Okay. Are you aware of any information indicating
3 that the SEC's action against Goldman Sachs or the timing of
4 the action was related to, or was specifically to advance -

5 A Please repeat -

6 Q Yes, it's similar, but are you aware of any
7 information indicating that the SEC's action against Goldman
8 Sachs, or the timing of the action, may have been related to
9 financial regulatory reform?

10 A I don't have any facts to reach a conclusion that
11 financial reform drove the timing.

12 Q Okay. Are you aware of any information indicating
13 that the SEC coordinated its action against Goldman Sachs
14 with the Executive Office of the President, the White House,
15 or any of its employees?

16 A No, I don't have any information to suggest that
17 there was such a coordination.

18 Q Are you aware of any information that anyone at the
19 SEC shared any information concerning its Goldman Sachs
20 investigation with the Executive Office of the President, the
21 White House, or any of its employees, prior to the complaint
22 being filed?

23 A I don't have any information suggesting there was
24 any such sharing.

25 Q Okay. Are you aware of any information that the

1 SEC coordinated its action against Goldman Sachs with any
2 Members of Congress or any congressional employees?

3 A Again, I don't have any information to suggest any
4 such coordination.

5 Q Are you aware of any information indicating anyone
6 at the SEC shared any information concerning its Goldman
7 Sachs investigation with any Members of Congress or any
8 congressional employees prior to the complaint being filed?

9 A Again, I don't have any information to suggest that
10 sort of sharing.

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

16 A Yes, no information to that effect, either.

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

23 A Again, I don't have any information to that effect,
24 either.

25 Q Okay. You were aware that the Commission votes for

1 both the meeting where the Commission voted to approve the
2 action against Goldman Sachs, and the meeting where the
3 Commission voted to approve the settlement were leaked to the
4 media -- you were aware of that?

5 A I know there were media reports as to what happened
6 at the meetings, or was believed to have happened at the
7 meetings, but I don't have any specific information as to
8 leaks, as such.

9 Q Okay. Do you have any information about who might
10 have leaked that information, assuming it was leaked?

11 A Assuming information were leaked, I don't have any
12 knowledge or information or facts as to who may have been a
13 source.

14 Q And I assume that you didn't provide any non-public
15 information about the Commission votes. And, to your
16 knowledge, no one on your staff did?

17 A Correct.

18 Q All right. With respect to the settlement that the
19 SEC entered into with Goldman, do you have any reason to
20 believe that the SEC settlement against Goldman, or the
21 timing of that action, was related to financial regulatory
22 reform?

23 A I don't have a basis for believing that to be the
24 case.

25 Q And are you aware of any information indicating

1 that the SEC coordinated its settlement with Goldman Sachs
2 with the Executive Office of the President, the White House,
3 its employees, Members of Congress, or congressional
4 employees, or the Democratic National Committee, Democratic
5 Senate Campaign Committee, the Democratic Congressional
6 Campaign Committee, or any of their employees?

7 A I don't have any information suggesting that.

8 Q Okay. And then, are you aware of any information
9 that anyone at the SEC shared any information concerning the
10 Goldman Sachs settlement with the Executive Office of the
11 President, the White House, any of its employees, any Members
12 of Congress or congressional employees, or the Democratic
13 National Committee, Democratic Senate Campaign Committee, the
14 Democratic Congressional Campaign Committee, or any of their
15 employees?

16 A Yes, I don't have any information to that effect,
17 either.

18 Q Okay. Are you aware of any information that the
19 timing of the SEC settlement with Goldman Sachs was triggered
20 by concerns about leaks in the media?

21 A One more time? That question, please?

22 Q There was an allegation that the timing of the SEC
23 settlement with Goldman Sachs was driven by concern about a
24 potential article in the newspaper.

25 A I don't have any information to suggest that was

1 the case.

2 Q All right. Is there anything else that you would
3 like to add that you have information about that might relate
4 to our investigation?

5 A No.

6 MR. KOTZ: All right. I have no further questions.
7 And the only thing I would ask is, in order to preserve the
8 integrity of the investigation, that you not discuss the
9 content of your testimony with anyone.

10 THE WITNESS: Okay.

11 MR. KOTZ: All right. With that, we're off the
12 record.

13 (Whereupon, at 3:14 p.m., the examination was
14 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 18 pages is a complete, true and accurate transcript of the testimony indicated, held on August 19, 2010, at 2:56 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:

8/26/10

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 42
File Number: OIG-534
Date: Thursday, August 19, 2010
Location: Washington, D.C.

This is to certify that I, [REDACTED] (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.

[REDACTED]

(Proofreader's Name)

8/26/10

(Date)

Chapter Break

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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

WITNESS: Number 43

PAGES: 1 through 17

PLACE: Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C.

DATE: Friday, August 27, 2010

 COPY

The above-entitled matter came on for hearing, pursuant
to notice, at 3:00 p.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2
3 On behalf of the Securities and Exchange Commission:

4 H. DAVID KOTZ, ESQ.

5 

6 Securities and Exchange Commission

7 Headquarters Office

8 100 F Street, N.E.

9 Washington, D.C. 20549

10 

C O N T E N T S

EXAMINATION

WITNESS:

Elisse B. Walter

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P R O C E E D I N G S

MR. KOTZ: We are on the record at 3:00 p.m. on August 27, 2010 at the United States Securities and Exchange Commission.

I'm going to swear you in.

Would you please raise your right hand?

Whereupon,

ELISSE B. WALTER

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

EXAMINATION

BY MR. KOTZ:

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

A Elisse, E-l-i-s-s-e, Barbara, B-a-r-b-a-r-a, Walter, W-a-l-t-e-r.

Q Okay. My name is David Kotz. I am the Inspector General of the United States Securities and Exchange Commission. I have with me my colleague from the Office of the Inspector General, [REDACTED]

This is an investigation by the Office of the Inspector General, case number OIG-534. I am going to ask you certain questions and you will be providing answers under oath. The court reporter will record and later transcribe everything that is said. Please therefore provide verbal

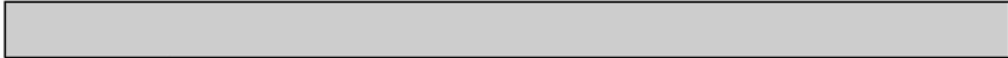
1 answers to the questions, as a nod of the head or an
2 inaudible response won't be picked up by the court reporter.
3 Also, so the record will be clear, please let me finish my
4 question before you provide your response.

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

11 A Yes, I do.

12 Q All right. Why don't we start with a little bit of
13 background? If you could, just describe your education for
14 me, beginning with college.

15 A

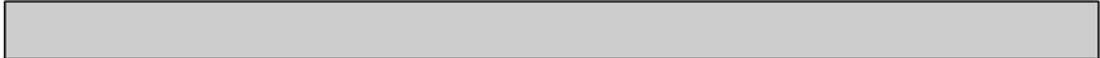


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22 Q



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25 A



1 Q [REDACTED]

2 A [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 November or -- October or November of 1977. At that point, I
7 came to work at the SEC, at the Securities and Exchange
8 Commission as a staff lawyer in the Office of General
9 Counsel. I was then promoted the following year, in 1978 to
10 be special counsel, and in 1979 to be an assistant general
11 counsel. In 1984, I became an associate general counsel.

12 And in 1986, I transferred from the Office of
13 General Counsel to the Division of Corporation Finance for a
14 few months as associate director of legal, and then I became
15 deputy director of that division. And I served in that
16 capacity from 19 -- where are we? '86 to '94.

17 In October of 1994 [REDACTED]

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 Q [REDACTED]

23 A [REDACTED]

24 [REDACTED]
25 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED] and on July 9, 2009 I was
5 sworn in as a commissioner of the Securities and Exchange
6 Commission.

7 Q Okay. Great.

8 All right. Did there come a time when you became
9 aware of the existence of an investigation by the SEC into
10 the sale of collateralized debt obligations by Goldman Sachs,
11 known as the Abacus investigation?

12 A Yes.

13 Q When do you think you first became aware of that
14 investigation?

15 A I believe it was maybe a couple of months before
16 the case was brought. At some point we received, as I
17 recall, a briefing from the staff in general about cases in
18 this area, including this case. But I don't remember
19 specifically.

20 Q All right. So just to reflect your recollection,
21 the Abacus case was first put on the closed Commission
22 calendar in December of 2009. Then it was taken off the
23 calendar. And I'm not sure you were necessarily aware of
24 this, but I just want to let you know. And then it was put
25 on the calendar again in January, late January, and then

1 taken off the calendar again. And then it was eventually
2 filed in April.

3 Do you think you were aware of it either the first
4 two times it was placed on the calendar?

5 A I believe I was aware of one of the two times, but
6 I'm not certain that I was aware of it both. That's to the
7 best of my recollection.

8 Q Did you have an understanding of why it was taken
9 off the calendar either of those two times?

10 A I don't recall.

11 Q Okay. And so when it was then placed back on the
12 calendar in April, what do you recall about how long before
13 it was actually voted on? Did you get a briefing or did you
14 get information about the case?

15 A I believe it was several days before the meeting.
16 Traditionally, this is partly recollection, but also partly
17 our sort of standard practice, which is when things are
18 placed on the calendar I review them and the counsel who's
19 assigned to the case reviews it. We then sit down in a group
20 in the office and we go over all the cases that are on the
21 calendar and discuss whether either of us or perhaps someone
22 else in the office as they hear the description of the issues
23 has an issue with the case. And then, if it's either
24 controversial or complicated or if the staff wants to do it,
25 we will either have an oral conversation with the staff on

1 the phone, generally not including me when it's on the phone,
2 although sometimes it does, or in person.

3 And there was a briefing in person as to this case,
4 and I believe it was several days before the case was
5 brought.

6 Q Okay. And so again, to refresh your recollection,
7 the Commission meeting about the bringing of the Goldman case
8 was on Wednesday, April 14, and then the case was eventually
9 brought on Friday, April 16.

10 Did you have any involvement in when the case would
11 be brought subsequent to you voting on whether to go forward
12 with it?

13 A No, I did not. At times, I ask when the case is
14 going to be brought because we -- you want to know, but I
15 don't recall whether that happened in this case.

16 Q And in a normal instance, the commissioner wouldn't
17 necessarily have a role in when a case is brought, right?

18 A No. Normally, that would not be the case.

19 Q And you don't recall any specific role in this
20 instance?

21 A No.

22 Q All right. Were you aware that there was an issue
23 raised by Goldman Sachs that they weren't given sort of a
24 heads up about this case being brought after the Commission
25 had approved the recommendation for going forward but prior

1 to the case being filed?

2 A Yes, I was aware of that.

3 Q Okay. Did you have any involvement in any
4 decisions regarding whether to give Goldman a heads up?

5 A I don't believe so. I do believe that we were
6 informed of both the claim and the response to the claim at
7 some point, but I don't recall when.

8 Q Okay. But in terms of a decision, after the
9 Commission approved going forward with the matter, whether
10 Goldman would be called and sort of given a last chance
11 opportunity to settle, you didn't have any involvement in
12 that decision?

13 A No, I did not.

14 Q What about the issue to file the complaint during
15 trading hours? Did you have any role in that?

16 A No. No, I did not.

17 Q And then, so if we fast forward now to the
18 settlement, do you recall learning that there was a
19 settlement between the SEC and Goldman Sachs? That was in
20 July 2010.

21 A Yes, I do.

22 Q And do you recall in that instance how long before
23 the actual meeting to discuss the settlement and to vote on
24 it, were you given information about the matter?

25 A No, I don't recall.

1 Q Okay. We found it was a relatively truncated
2 period of time, but that then necessarily is not so unusual.
3 Do you feel that you had both with the respect to the actual
4 being filed and the settlement, adequate time to understand
5 the issues prior to voting on it?

6 A Absolutely. I was given sufficient time to
7 understand and to discuss.

8 Q Are you aware that details of the specific
9 Commission votes with respect to both the action being
10 brought against Goldman Sachs and the settlement were
11 revealed in the media?

12 A Yes.

13 Q Okay. Do you have any idea who might have leaked
14 that information?

15 A No, I do not.

16 Q And I assume that no one -- that you didn't provide
17 that information and to your knowledge no one in your office
18 did?

19 A That is correct.

20 Q All right. You were aware generally of the
21 financial regulatory reform legislation recently passed by
22 Congress, correct?

23 A Absolutely.

24 Q Okay. Did you have any communications with any
25 congressional officials about financial regulatory reform?

1 A I'm trying to recall whether it ever -- it came up.
2 Well, certainly I did in the sense that I testified before
3 the Senate Agriculture Committee and -- I think it was the
4 Senate, and I had conversations with respect to that. I
5 don't recall any other conversations about the statute
6 directly.

7 Q Did you have any conversations with anyone at the
8 White House about financial regulatory reform?

9 A No, I did not.

10 Q Has anybody at the SEC ever mentioned financial
11 regulatory reform in connection with the Goldman Sachs
12 investigation or in connection with the filing of an action
13 against Goldman Sachs prior to the case being filed?

14 A No, not to me.

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

19 A No, I do not.

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

23 A No.

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

1 Executive Office of the President, the White House or any of
2 its employees?

3 A No.

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

9 A No.

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

13 A No.

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

19 A No.

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

25 A No.

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

7 A No.

8 Q Are you aware of any information indicating that
9 the SEC coordinated the settlement of its action with the
10 Executive Office of the President, the White House, its
11 employees, members of Congress or congressional employees,
12 the Democratic National Committee, Democratic Senate Campaign
13 Committee, Democratic Congressional Campaign Committee or any
14 of their employees?

15 A No.

16 Q And are you aware of any information that anyone
17 from the SEC shared any information concerning the Goldman
18 Sachs settlement with the Executive Office of the President,
19 the White House, any of its employees, the members of
20 Congress or congressional employees, the Democratic National
21 Committee, Democratic Senate Campaign Committee, Democratic
22 Congressional Campaign Committee or any of their employees or
23 any other agencies prior to this settlement being announced?

24 A No.

25 Q Do you have any knowledge with respect to the

1 settlement as to why the decision was made to file and
2 announce the settlement the same day that the Commission
3 approved the settlement going forward?

4 A No.

5 Q And were you aware that the day that the SEC
6 announced the settlement was also the day where there was a
7 critical vote on financial regulatory reform?

8 A I am aware that that is what happened.

9 Q Okay. But you weren't aware that -- you aren't
10 aware of any connection between the two?

11 A No, I am not aware of any connection between the
12 two.

13 MR. KOTZ: All right. All right. I don't have any
14 other further questions. The one thing I would ask is in
15 order to preserve the integrity of our investigation that you
16 not discuss the content of your testimony with anyone.

17 THE WITNESS: Okay.

18 MR. KOTZ: All right. With that, we're off the
19 record.

20 (Whereupon, at 3:13 a.m., the examination was
21 concluded.)

22 * * * * *

REPORTER'S CERTIFICATE

I, [REDACTED] reporter, hereby certify that the foregoing transcript of 15 pages is a complete, true and accurate transcript of the testimony indicated, held on August 27, 2010, at 3:00 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:

9/3/10

Official Reporter:

Diversified Reporting Services, Inc.

PROOFREADER'S CERTIFICATE

In the Matter of: OIG-534
Witness: Number 43
File Number: OIG-534
Date: Friday, August 27, 2010
Location: Washington, D.C.

This is to certify that I, [REDACTED] (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.

[REDACTED]

(Proofreader's Name)

9/3/10

(Date)

