

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Administrative Proceeding
File No. 3-16184

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In the Matter of :
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JORDAN PEIXOTO, :
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Respondent. :
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DECLARATION OF FILIP SZYMIK

I, Filip Szymik, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct:

1. I am over twenty-one years of age and reside in Stalowa Wola, Poland.

2. I provide this declaration for use in the above-captioned proceeding instituted by the United States Securities and Exchange Commission ("Commission"), In the Matter of Jordan Peixoto, Admin. Proc. File No. 3-16184 (the "Peixoto Proceeding"). I am the named respondent in the settled Commission proceeding captioned In the Matter of Filip Szymik, Admin. Proc. File No. 3-16183 (the "Szymik Proceeding").

3. Through my attorney, Paul Ryan of Serpe & Ryan, LLP, the Commission's Division of Enforcement ("Division") has requested that I appear and testify at trial in the Peixoto Proceeding.

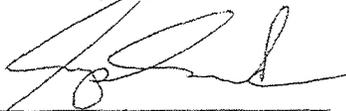
4. I have obtained advice from counsel of my choosing (Paul Ryan) with respect to the Division's request that I testify at the Peixoto Proceeding trial. After consulting with my counsel, I hereby state that, if I were to testify at any trial or other hearing in the Peixoto Proceeding, I would invoke my Fifth Amendment privilege against self-incrimination in response to any questions put to me concerning any aspect of the Peixoto Proceeding and the Szymik Proceeding, including, but not limited to, any questions concerning:

- a. the subject matter of the allegations asserted in the Order Instituting Cease and Desist Proceedings in the Peixoto Proceeding, dated September 30, 2014 (attached hereto as Exhibit A);

- b. the subject matter of the allegations asserted in the Order Instituting Cease and Desist Proceedings in the Szymik Proceeding, dated September 30, 2014 (attached hereto as Exhibit B);
- c. the subject matter of any testimony or interview statement that I made before the Division in the investigation leading up to this Proceeding, including, but not limited to, my testimony given before the Commission on November 18, 2013 (a transcription of which is attached as Exhibit C hereto), and any document shown to me during any such testimony or interview;
- d. Jordan Peixoto;
- e. Mariusz Adamski;
- f. Katherine Nave;
- g. Carlos Salmon;
- h. Kuba Kowalski;
- i. Christopher Jennings;
- j. Scott Lyman;
- k. Herbalife, Ltd.;
- l. William Ackman;
- m. Pershing Square Capital Management; and
- n. the Sohn Conference Foundation.

5. I understand that, by obtaining this Declaration from me, the Commission is not waiving its right to attempt to compel my appearance for testimony at any trial or hearing in the Peixoto Proceeding or any other proceeding arising from the subject matter alleged in the Peixoto Proceeding.

I declare under penalty of perjury under the laws of the United States of America  
that the foregoing is true and correct.

  
\_\_\_\_\_  
Filip Szymik

Dated: 11/3/2014

Approved as to form by:

  
\_\_\_\_\_  
Paul Ryan, Esq.  
Serpe and Ryan  
1115 Broadway  
New York, N.Y. 10010

Dated: 11/3/2014

# EXHIBIT A

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 73263 / September 30, 2014**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16184**

**In the Matter of**

**JORDAN PEIXOTO**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-  
DESIST PROCEEDINGS PURSUANT  
TO SECTION 21C OF THE  
SECURITIES EXCHANGE  
ACT OF 1934 AND NOTICE OF  
HEARING**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Jordan Peixoto (“Peixoto” or the “Respondent”).

**II.**

After an investigation, the Division of Enforcement alleges that:

**A. SUMMARY**

1. Peixoto engaged in insider trading in connection with securities of Herbalife Ltd. (“Herbalife”).

2. In 2012, Peixoto’s friend, Filip Szymik (“Szymik”), was a close friend and the roommate of an analyst employed at Pershing Square Management, L.P. (“Pershing”). Pershing was a hedge fund headed by well-known activist investor William Ackman (“Ackman”). Prior to December 19, 2012, Szymik’s roommate (“the Analyst”) informed Szymik of an upcoming Pershing public presentation regarding its negative view of Herbalife (the “Pershing Presentation”). The Analyst also told Szymik, and Szymik understood and agreed, that any information that Szymik might learn from the Analyst concerning Pershing (including concerning the Pershing Presentation) was highly confidential and that Szymik should not trade securities on the basis of any such information.

3. Nonetheless, in breach of his duty of trust or confidence with the Analyst, Szymik informed his friend Peixoto of the essential substance and date of the upcoming Pershing Presentation, which ultimately took place on December 20, 2012. Peixoto and Szymik knew or recklessly disregarded that that information was material and nonpublic, and both understood that, once publicized, Pershing's negative view of Herbalife likely would cause Herbalife's stock price to fall.

4. On December 19, 2012, prior to any such public announcement, Peixoto purchased a number of Herbalife put options. Later that day, CNBC reported Pershing would be announcing publicly a negative view of Herbalife in a presentation the following day. Immediately following both the CNBC announcement and the Pershing Presentation the following day, Herbalife's stock price dropped considerably, falling a total of 39% by the close of trading on December 24. The market value of Peixoto's Herbalife's put options increased by approximately \$339,421 (as of December 21, 2012), and he ultimately obtained \$47,100 in actual profits from Herbalife options that he purchased prior to the CNBC report.

5. By purchasing Herbalife put options while in possession of material nonpublic information -- when he knew or had reason to know that that information had been improperly obtained -- Peixoto violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

#### B. RESPONDENT

6. **Peixoto**, age 30 and a resident of Toronto, is a Canadian citizen. During December 2012, Peixoto was employed as a research analyst at Deloitte in New York, New York. Peixoto has never been registered with the Commission.

#### C. OTHER RELEVANT INDIVIDUALS AND ENTITIES

7. **Szymik**, age 28 and a resident of New York City, is a Polish citizen. Since 2008, Szymik has worked as a consultant or senior consultant at a consulting firm. Szymik has never been registered with the Commission.

8. **The Analyst**, age 28 and a resident of New York City, is a Polish citizen. The Analyst began working for Pershing in April 2010, as an intern, and later became a research analyst. The Analyst left Pershing in September 2013.

9. **Pershing**, a limited partnership, was formed in New York, New York. Pershing was founded by William Ackman in 2004 and operates as a hedge fund. Pershing is registered with the Commission as an investment adviser. As of December 2012, it had approximately \$11 billion in assets under management.

10. **Herbalife**, a Cayman Islands corporation, is headquartered in Los Angeles, California. Herbalife's common stock is registered with the Commission pursuant to

Section 12(b) of the Exchange Act and is traded on the New York Stock Exchange. Herbalife common stock options are traded on various exchanges.

#### D. BACKGROUND

11. The Analyst began working at Pershing as an intern in April 2010 and became a research analyst and full-time employee in March 2011. Pershing's employee compliance manual states in part that "[Pershing] generates, maintains and possesses information that we view as proprietary, and it must be kept confidential by our Employees"; and that such information includes "investment positions that have not otherwise been publicly disclosed; research analyses that have not otherwise been publicly disclosed ..." Pershing's written compliance policies further state: "Employees may not disclose proprietary information to anyone outside the Firm ..." Upon becoming a full-time Pershing employee, the Analyst acknowledged to Pershing in writing that he had received, read, and understood Pershing's compliance manual and confidentiality policy.

12. As a Pershing employee, the Analyst also attended routine mandatory training seminars hosted by Pershing, which included training concerning Pershing's compliance manual, code of ethics, and insider trading.

13. Beginning in the first quarter of 2012, through at least September 2013, the Analyst was a member of Pershing's investment team assigned to research Herbalife. In that capacity, prior to December 2012, the Analyst learned that Pershing had concluded that Herbalife was operating an illicit pyramid scheme and that Pershing had acquired a substantial short position in Herbalife stock. The Analyst also knew that Pershing intended to publicly disclose its Herbalife thesis through a presentation at the Sohn Conference Foundation (the Pershing Presentation) ultimately scheduled for, and which occurred on, December 20, 2012.

14. All information concerning Pershing's Herbalife research -- including its negative view of Herbalife, its thesis that Herbalife was operating as an illicit pyramid scheme, its short position in Herbalife stock, and the timing of its disclosure of that information -- constituted material nonpublic information. As a Pershing employee, the Analyst knew that such information was nonpublic and highly confidential.

#### E. THE ANALYST'S RELATIONSHIP WITH SZYMIK

15. In 2012, the Analyst and Szymik were very close friends who had grown up together in Poland. From 2008 to April 2013, they shared an apartment as roommates in New York, New York. The Analyst and Szymik had a relationship of mutual trust or confidence in which they shared both personal and professional confidences.

16. In 2012, Szymik knew that the Analyst was a Pershing research analyst and that his work there was highly confidential.

17. Prior to December 2012, the Analyst expressly cautioned Szymik, and Szymik understood, that all of the Analyst's work at Pershing was highly confidential; that Szymik should not disclose anything regarding Pershing that he might hear or learn from the Analyst to anybody else; and that Szymik should not trade securities using any such information. Prior to December 2012, Szymik explicitly promised the Analyst that he would neither trade on any information he learned from the Analyst concerning Pershing nor disclose such information to anyone else.

18. Prior to December 19, 2012, in violation of Pershing's confidentiality policy, the Analyst disclosed material nonpublic information about his work regarding Herbalife to Szymik. The Analyst told Szymik, at the least, that he was researching Herbalife for Pershing and that Pershing had a negative view of Herbalife. The Analyst also told Szymik that Pershing would present its thesis concerning Herbalife at the Pershing Presentation, and he informed Szymik of the date of the presentation. As described in the preceding paragraph, Szymik had agreed with the Analyst to maintain the confidentiality of such information. Furthermore, given Szymik's and the Analyst's history, pattern, and practice of sharing confidences, Szymik knew or reasonably should have known that the Analyst expected Szymik to maintain the confidentiality of such information.

F. SZYMIK TIPPED PEIXOTO

19. In 2012, Szymik and Peixoto were close friends who lived within a block of each other in New York, New York and spent time socializing together nearly every weekend.

20. Peixoto knew that Szymik and the Analyst were roommates and very close friends, having known each other since childhood. Peixoto also knew that the Analyst worked at Pershing as a research analyst, and Peixoto knew or had reason to know that the Analyst's work at Pershing was highly confidential.

21. In a series of communications prior to December 19, 2012, Szymik breached his duty of trust or confidence to the Analyst by telling Peixoto, at the least, that the Analyst was researching Herbalife for Pershing; that Pershing had a negative view of Herbalife; that Pershing would publicly disclose its Herbalife thesis; and the date that disclosure would occur. At the time of those communications, both Szymik and Peixoto either knew or recklessly disregarded that the information was material and non-public.

22. When Szymik gave Peixoto the confidential information concerning the Pershing Presentation described in paragraph 21 above, Szymik knew or recklessly disregarded both that he was violating his duty of trust or confidence to the Analyst and that Peixoto intended to trade Herbalife securities based on that information. Szymik received a personal benefit by gifting confidential information to his friend, Peixoto.

23. When Peixoto received the confidential information from Szymik described in paragraph 21 above, Peixoto knew or had reason to know that Szymik provided the information to him improperly, in breach of a duty of trust or confidence.

## G. PEIXOTO TRADED HERBALIFE OPTIONS

24. On the basis of the confidential information that Szymik had provided to him, Peixoto purchased Herbalife put options in advance of the Pershing Presentation. On December 19, 2012, from approximately 12:00 p.m. to 1:23 p.m. Peixoto purchased eight out-of-the-money Herbalife put options (the "Herbalife Options"). Peixoto previously had never traded options or Herbalife securities, and he sold several other securities to fund his purchase of the Herbalife Options. Szymik did not trade in Herbalife securities.

25. At 1:58 pm EST on December 19, 2012, after Peixoto had purchased the Herbalife Options, CNBC reported that Pershing had acquired a significant short position in Herbalife stock and that Pershing would present its thesis -- that Herbalife was operating an illegal pyramid scheme -- at a conference the next day (the "CNBC Report"). At 2:04 p.m. on December 19, the New York Stock Exchange temporarily halted Herbalife stock trading due to its high volatility in the wake of the CNBC Report.

26. At the December 20, 2012 Pershing Presentation -- a three-hour, 334-slide presentation entitled "Who wants to be a Millionaire?" -- Ackman publicly accused Herbalife of operating an illegal pyramid scheme and disclosed that Pershing held a \$1 billion short position in Herbalife stock.

27. Following the CNBC Report, the price of Herbalife stock decreased approximately 12%, from \$42.50 per share at the close on December 18, 2012, to \$37.34 per share at the close on December 19, 2012.

28. After the CNBC Report and the Pershing Presentation, Herbalife's stock price declined by approximately 39%, from \$42.50 per share at the close on December 18, 2012, to a low of \$26.06 per share at the close on December 24, 2012.

29. As of the market close on Friday, December 21, 2012, the market value of Peixoto's Herbalife Options had increased by approximately \$339,421, and he ultimately obtained \$47,100 in actual profits from his illicit trading in Herbalife Options. Peixoto requested that his brokerage firms permit a number of his profitable Herbalife Options to expire without exercising them. However, one of Peixoto's securities brokers refused his request, resulting in the exercise of certain of the Herbalife Options and his obtaining \$47,100 in illicit trading profits.

## H. VIOLATIONS

30. As a result of the conduct described above, Peixoto violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

### III.

In view of the allegations made by the Division of Enforcement, the Commission deems it appropriate that cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. Whether, pursuant to Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, whether Respondent should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act, and whether Respondent should be ordered to pay disgorgement pursuant to Sections 21B(e) and 21C(e) of the Exchange Act.

### IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it

is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields  
Secretary

# EXHIBIT B

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 73262 / September 30, 2014**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16183**

**In the Matter of**

**FILIP SZYMIK**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-  
DESIST PROCEEDINGS PURSUANT  
TO SECTION 21C OF THE  
SECURITIES EXCHANGE  
ACT OF 1934, MAKING FINDINGS,  
AND IMPOSING A CEASE-AND-  
DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Filip Szymik (“Szymik” or the “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and Desist Order (“Order”), as set forth below.

**III.**

On the basis of this Order and Respondent’s Offer, the Commission finds<sup>1</sup> that:

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

## SUMMARY

1. Szymik engaged in insider trading in connection with the securities of Herbalife, Ltd. ("Herbalife") by tipping confidential information to his friend, Jordan Peixoto ("Peixoto").

2. In 2012, Szymik's roommate was employed as an analyst at Pershing Square Management, L.P. ("Pershing"), a hedge fund headed by well-known activist investor William Ackman ("Ackman"). Prior to December 19, 2012, Szymik's roommate ("the Analyst") informed Szymik of an upcoming Pershing public presentation regarding its negative view of Herbalife (the "Pershing Presentation"). The Analyst also told Szymik, and Szymik understood and agreed, that any information that Szymik might learn from the Analyst concerning Pershing (including concerning the Pershing Presentation) was highly confidential and that Szymik should not trade securities on the basis of any such information.

3. Nonetheless, in breach of his duty of trust or confidence with the Analyst, Szymik informed his friend Peixoto of the essential substance, and date, of the upcoming Pershing Presentation, which ultimately took place on December 20, 2012. Peixoto and Szymik knew or recklessly disregarded that that information was material and nonpublic, and both understood that, once publicized, Pershing's negative view of Herbalife likely would cause Herbalife's stock price to fall.

4. On December 19, 2012, prior to any such public announcement, Peixoto purchased a number of Herbalife put options. Later that day, CNBC reported Pershing would be announcing publicly a negative view of Herbalife in a presentation the following day. Immediately following both the CNBC announcement and the Pershing Presentation the following day, Herbalife's stock price dropped considerably, falling a total of 39% by the close of trading on December 24. The market value of Peixoto's Herbalife's put options increased by approximately \$339,421 (as of December 21, 2012), and he ultimately obtained \$47,100 in actual profits from Herbalife options that he purchased prior to the CNBC report.

5. By providing Peixoto material nonpublic information concerning the upcoming Pershing Presentation, in breach of his duty of trust or confidentiality to the Analyst, Szymik violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

## RESPONDENT

6. **Szymik**, age 28 and a resident of New York City, is a Polish citizen. Since 2008, Szymik has worked as a consultant or senior consultant at a consulting firm. Szymik has never been registered with the Commission.

## OTHER RELEVANT INDIVIDUALS AND ENTITIES

7. **Peixoto**, age 30 and a resident of Toronto, is a Canadian citizen. During December 2012, Peixoto was employed as a research analyst at Deloitte in New York, New York. Peixoto has never been registered with the Commission.

8. **The Analyst**, age 28 and a resident of New York City, is a Polish citizen. The Analyst began working for Pershing in April 2010, as an intern, and later became a research analyst. The Analyst left Pershing in September 2013.

9. **Pershing**, a limited partnership, was formed in New York, New York. Pershing was founded by William Ackman in 2004 and operates as a hedge fund. Pershing is registered with the Commission as an investment adviser. As of December 2012, it had approximately \$11 billion in assets under management.

10. **Herbalife**, a Cayman Islands corporation, is headquartered in Los Angeles, California. Herbalife's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on the New York Stock Exchange. Herbalife common stock options are traded on various exchanges.

## BACKGROUND

11. The Analyst began working at Pershing as an intern in April 2010 and became a research analyst and full-time employee in March 2011. Pershing's employee compliance manual states in part that "[Pershing] generates, maintains and possesses information that we view as proprietary, and it must be kept confidential by our Employees"; and that such information includes "investment positions that have not otherwise been publicly disclosed; research analyses that have not otherwise been publicly disclosed ..." Pershing's written compliance policies further state: "Employees may not disclose proprietary information to anyone outside the Firm ..." Upon becoming a full-time Pershing employee, the Analyst acknowledged to Pershing in writing that he had received, read, and understood Pershing's compliance manual and confidentiality policy.

12. As a Pershing employee, the Analyst also attended routine mandatory training seminars hosted by Pershing, which included training concerning Pershing's compliance manual, code of ethics, and insider trading.

13. Beginning in the first quarter of 2012, through at least September 2013, the Analyst was a member of Pershing's investment team assigned to research Herbalife. In that capacity, prior to December 2012, the Analyst learned that Pershing had concluded that Herbalife was operating an illicit pyramid scheme and that Pershing had acquired a substantial short position in Herbalife stock. The Analyst also knew that Pershing intended to publicly disclose its Herbalife thesis through a presentation at the Sohn Conference Foundation (the Pershing Presentation) ultimately scheduled for, and which occurred on, December 20, 2012.

14. All information concerning Pershing's Herbalife research -- including its negative view of Herbalife, its thesis that Herbalife was operating as an illicit pyramid scheme, its short position in Herbalife stock, and the timing of its disclosure of that information -- constituted material nonpublic information. As a Pershing employee, the Analyst knew that such information was nonpublic and highly confidential.

#### THE ANALYST'S RELATIONSHIP WITH SZYMIK

15. In 2012, the Analyst and Szymik were very close friends who had grown up together in Poland. From 2008 to April 2013, they shared an apartment as roommates in New York, New York. The Analyst and Szymik had a relationship of mutual trust or confidence in which they shared both personal and professional confidences.

16. In 2012, Szymik knew that the Analyst was a Pershing research analyst and that his work there was highly confidential.

17. Prior to December 2012, the Analyst expressly cautioned Szymik, and Szymik understood, that all of the Analyst's work at Pershing was highly confidential; that Szymik should not disclose anything regarding Pershing that he might hear or learn from the Analyst to anybody else; and that Szymik should not trade securities using any such information. Prior to December 2012, Szymik explicitly promised the Analyst that he would neither trade on any information he learned from the Analyst concerning Pershing nor disclose such information to anyone else.

18. Prior to December 19, 2012, in violation of Pershing's confidentiality policy, the Analyst disclosed material nonpublic information about his work regarding Herbalife to Szymik. The Analyst told Szymik, at the least, that he was researching Herbalife for Pershing and that Pershing had a negative view of Herbalife. The Analyst also told Szymik that Pershing would present its thesis concerning Herbalife at the Pershing Presentation, and he informed Szymik of the date of the presentation. As described in the preceding paragraph, Szymik had agreed with the Analyst to maintain the confidentiality of such information. Furthermore, given Szymik's and the Analyst's history, pattern, and practice of sharing confidences, Szymik knew or reasonably should have known that the Analyst expected Szymik to maintain the confidentiality of such information.

#### SZYMIK TIPPED PEIXOTO

19. In 2012, Szymik and Peixoto were close friends who lived within a block of each other in New York, New York and spent time socializing together nearly every weekend.

20. Peixoto knew that Szymik and the Analyst were roommates and very close friends, having known each other since childhood. Peixoto also knew that the Analyst worked at Pershing as a research analyst, and Peixoto knew or had reason to know that the Analyst's work at Pershing was highly confidential.

21. In a series of communications prior to December 19, 2012, Szymik breached his duty of trust or confidence to the Analyst by telling Peixoto, at the least, that the Analyst was researching Herbalife for Pershing; that Pershing had a negative view of Herbalife; that Pershing would publicly disclose its Herbalife thesis; and the date that disclosure would occur. At the time of those communications, both Szymik and Peixoto either knew or recklessly disregarded that the information was material and non-public.

22. When Szymik gave Peixoto the confidential information concerning the Pershing Presentation described in paragraph 21 above, Szymik knew or recklessly disregarded both that he was violating his duty of trust or confidence to the Analyst and that Peixoto intended to trade Herbalife securities based on that information. Szymik received a personal benefit by gifting confidential information to his friend, Peixoto.

23. When Peixoto received the confidential information from Szymik described in paragraph 21 above, Peixoto knew or had reason to know that Szymik provided the information to him improperly, in breach of a duty of trust or confidence.

#### PEIXOTO TRADED HERBALIFE OPTIONS

24. On the basis of the confidential information that Szymik had provided to him, Peixoto purchased Herbalife put options in advance of the Pershing Presentation. On December 19, 2012, from approximately 12:00 p.m. to 1:23 p.m. Peixoto purchased eight out-of-the-money Herbalife put options (the "Herbalife Options"). Peixoto previously had never traded options or Herbalife securities, and he sold several other securities to fund his purchase of the Herbalife Options. Szymik did not trade in Herbalife securities.

25. At 1:58 pm EST on December 19, 2012, after Peixoto had purchased the Herbalife Options, CNBC reported that Pershing had acquired a significant short position in Herbalife stock and that Pershing would present its thesis -- that Herbalife was operating an illegal pyramid scheme -- at a conference the next day (the "CNBC Report"). At 2:04 p.m. on December 19, the New York Stock Exchange temporarily halted Herbalife stock trading due to its high volatility in the wake of the CNBC Report.

26. At the December 20, 2012 Pershing Presentation -- a three-hour, 334-slide presentation entitled "Who wants to be a Millionaire?" -- Ackman publicly accused Herbalife of operating an illegal pyramid scheme and disclosed that Pershing held a \$1 billion short position in Herbalife stock.

27. Following the CNBC Report, the price of Herbalife stock decreased approximately 12%, from \$42.50 per share at the close on December 18, 2012, to \$37.34 per share at the close on December 19, 2012.

28. After the CNBC Report and the Pershing Presentation, Herbalife's stock price declined by approximately 39%, from \$42.50 per share at the close on December 18, 2012, to a low of \$26.06 per share at the close on December 24, 2012.

29. As of the market close on Friday, December 21, 2012, the market value of Peixoto's Herbalife Options had increased by approximately \$339,421, and he ultimately obtained \$47,100 in actual profits from his illicit trading in Herbalife Options. Peixoto requested that his brokerage firms permit a number of his profitable Herbalife Options to expire without exercising them. However, one of Peixoto's securities brokers refused his request, resulting in the exercise of certain of the Herbalife Options and his obtaining \$47,100 in illicit trading profits.

#### VIOLATIONS

30. As a result of the conduct described above, Szymik violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

#### UNDERTAKINGS

31. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Respondent (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice, including to give testimony at any deposition, trial or hearing in this matter; (ii) will accept service by mail, email or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials in this matter, or in connection with any related investigation by Commission staff; (iii) appoints Respondent's attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives any territorial limits on service contained in the Commission's Rules of Practice and Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Respondent's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Respondent in any United States District Court for purposes of enforcing any such subpoena. In determining whether to accept the Offer, the Commission has considered these undertakings.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Szymik's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Sections 21C of the Exchange Act, Respondent Szymik cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent shall pay a civil money penalty in the amount of \$47,100 to the Securities and Exchange Commission. Payment shall be made in the following

installments: \$25,000 within ten days of the entry of this Order, and the remaining \$22,100 to be paid in equal monthly installments of \$613.89 over 36 months, beginning thirty days after the entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance, plus any additional interest shall accrue pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Filip Szymik as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Sanjay Wadhwa, Division of Enforcement, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281.

By the Commission.

Brent J. Fields  
Secretary

# EXHIBIT C

Page 1

1 UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
 2  
 3 In the Matter of: )  
 4 )  
 5 HERBALIFE ) File No. NY-8869  
 6 )  
 7 WITNESS: FILIP SZYMIK  
 8  
 9 PAGES: 1 - 101  
 10  
 11 PLACE: Room 421  
 12 Securities and Exchange Commission  
 13 3 World Financial Center  
 14 New York, New York  
 15  
 16 DATE: November 18, 2013  
 17  
 18 The above-entitled matter came on for  
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 5 APPEARANCES:  
 6  
 7 On behalf of the Securities and Exchange Commission:  
 8 LIORA SUKHATME, ESQ.  
 9  
 10 SHELDON MUI, ESQ.  
 11  
 12 DIEGO BRUCCULERI, Examiner  
 13  
 14 Enforcement Division  
 15  
 16 Securities and Exchange Commission  
 17 3 World Financial Center  
 18 New York, New York 10281  
 19  
 20 On behalf of the Witness:  
 21 PAUL W. RYAN, ESQ.  
 22 SILVIA L. SERPE, ESQ.  
 23 Serpe & Ryan  
 24 1115 Broadway, 11th floor  
 25 New York, New York 10010  
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 12 MS. SUKHATME: We are on the record at  
 13 10:18 a.m. on November 18, 2013.  
 14 Please raise your right hand.  
 15 Do you swear to tell the truth, the  
 16 whole truth, so help you God?  
 17 THE WITNESS: I do.  
 18 Whereupon,  
 19 FILIP SZYMIK,  
 20 appeared as a witness herein and, having  
 21 been first duly sworn, was examined and  
 22 testified as follows:  
 23 EXAMINATION  
 24 BY MS. SUKHATME:  
 25 Q. Please state and spell your full name  
 26 for the record.  
 27 A. Filip Szymik, F.I.L.I.P., S.Z.Y.M.I.K.  
 28 Q. My name is Liora Sukhatme. With me are  
 29 Sheldon Mui and Diego Brucculeri. We are members of  
 30 the staff of the New York Regional Office of the U.S.  
 31 Securities and Exchange Commission and officers of  
 32 the Commission for the purposes of this proceeding.  
 33 Prior to the opening of the record, you  
 34 were provided with a copy of the Formal Order of  
 35 Investigation in this matter. It will be available  
 36 for your examination during the course of the  
 37 proceeding.  
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Page 4

1 Have you had an opportunity to review  
 2 the Formal Order?  
 3 A. Yes.  
 4 Q. Prior to the opening of the record, you  
 5 were also provided with a copy of the Commission's  
 6 Form 1662. It is the Commission's Supplemental  
 7 Information Form. A copy of that notice has been  
 8 marked as Exhibit Number 1.  
 9 Have you had an opportunity to read  
 10 Exhibit Number 1?  
 11 A. Yes.  
 12 Q. Do you have any questions concerning  
 13 this exhibit?  
 14 A. No.  
 15 Q. Mr. Szymik, am I pronouncing that right?  
 16 A. Szymik.  
 17 Q. Are you represented by counsel?  
 18 A. Yes.  
 19 MS. SUKHATME: Will counsel please  
 20 identify himself for the record.  
 21 MR. RYAN: Paul Ryan from the law firm  
 22 Serpe & Ryan LLP.  
 23 MS. SUKHATME: Are you representing  
 24 Mr. Szymik as his counsel today?  
 25 MR. RYAN: Yes, I am.  
 26 MS. SUKHATME: I have a copy of a  
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1 subpoena. I will ask that this be marked as Exhibit  
 2 30.  
 3 (NY-8869 Exhibit 30 was marked  
 4 for identification.)  
 5 Q. I am handing you what has been marked as  
 6 Exhibit Number 30. It is a subpoena with an  
 7 attachment of four pages.  
 8 Is this the subpoena that you are  
 9 appearing pursuant to here today?  
 10 A. Yes.  
 11 Q. This subpoena requires the production of  
 12 certain documents that you will see on page 4, it is  
 13 the last page of Exhibit 30.  
 14 I am going to go through these quickly  
 15 and ask you for the search that you conducted to  
 16 provide these documents.  
 17 For the first one, all documents to  
 18 identify on all your brokerage accounts, what did you  
 19 do to produce these documents?  
 20 A. I have one brokerage account, Scottrade,  
 21 and I pulled my statements from the account.  
 22 Q. So you have no other brokerage account?  
 23 A. No.  
 24 Q. That satisfies 1 and 2.  
 25 Number 3 asks for correspondence,

1 A. I did find some, yes.  
 2 Q. Were those produced as well?  
 3 A. They weren't because they were not my  
 4 e-mails. They are e-mails that belong to my company.  
 5 MR. RYAN: We can discuss that later.  
 6 MS. SUKHATME: So we will have an  
 7 off-line discussion about those later.  
 8 Q. But do you have these in your  
 9 possession?  
 10 A. Yes.  
 11 Q. Any other e-mail accounts or sources of  
 12 communications that you can think of for number 3?  
 13 A. Well, text messages.  
 14 Q. Did you provide those?  
 15 A. Yes.  
 16 Q. What is your cell phone number?  
 17 A. [REDACTED].  
 18 Q. That's your cell phone?  
 19 A. Yes.  
 20 Q. Do you use any other phone numbers?  
 21 A. No, this is the only phone that I use.  
 22 Q. This is your personal cell phone or work  
 23 cell phone?  
 24 A. It is a personal cell phone. I have a  
 25 work Blackberry I never use. I link my work e-mail

1 e-mails with certain individuals.  
 2 What process did you go through to  
 3 produce that?  
 4 A. I checked my e-mail account, and I did a  
 5 search for names: Jordan Peixoto, Mariusz Adamaski,  
 6 Carlos Salmon and Herbalife.  
 7 Q. Do you just have one personal e-mail  
 8 account?  
 9 A. Yes.  
 10 Q. That's your Gmail account?  
 11 A. Yes.  
 12 Q. What is the e-mail address for that  
 13 account?  
 14 A. It's [REDACTED], so the first  
 15 letter of my first name and last name.  
 16 Q. Do you use any other e-mail accounts?  
 17 A. No.  
 18 Q. What about work account?  
 19 A. Yes, for work.  
 20 Q. What is that?  
 21 A. [REDACTED]  
 22 Q. Did you search that account for  
 23 responsive documents?  
 24 A. I did.  
 25 Q. Did you find any?

1 to my personal phone.  
 2 Q. So your work Blackberry, does that have  
 3 texts on it?  
 4 A. No, I never use it.  
 5 Q. So you didn't search it because?  
 6 A. No, it was never used.  
 7 Q. Number 4, all documents concerning  
 8 Herbalife, did you conduct a search?  
 9 A. Yes, I never researched Herbalife, so I  
 10 don't have any documents about Herbalife.  
 11 Q. So you didn't have anything responsive?  
 12 A. No.  
 13 Q. Number 5, accounts?  
 14 MR. RYAN: Just to be clear, there  
 15 are -- some e-mails are responsive to both number 3  
 16 and number 4.  
 17 MS. SUKHATME: We saw that there were  
 18 some documents that you produced as responsive to  
 19 number 4 that would have also been responsive to  
 20 number 3.  
 21 Q. Number 5, financial institutions?  
 22 A. So statements from my bank, right, yes.  
 23 Q. What bank is that?  
 24 A. Bank of America. I provided my  
 25 statements from Bank of America as well as my credit

1 card statements. I have two credit cards with  
 2 American Express.  
 3 Q. Do you have any other accounts at any  
 4 other financial institutions?  
 5 A. No.  
 6 Q. No other credit cards other than the  
 7 ones you provided to us?  
 8 A. Yes. Well, I do have a credit card, my  
 9 work credit card, which I never use, so for years it  
 10 is zero balance.  
 11 Q. If you had provided those statements,  
 12 there would be nothing?  
 13 A. Zero. I never use it.  
 14 Q. Number 7, phone numbers, you mentioned  
 15 your cell phone.  
 16 Do you have a home phone?  
 17 A. No, I don't.  
 18 Q. Give us your cell phone number again.  
 19 A. [REDACTED]  
 20 Q. And your work number as well?  
 21 A. You know what, I don't remember 646 -- I  
 22 don't remember.  
 23 MR. RYAN: We will get it for you.  
 24 A. I do have an a card [REDACTED].  
 25 Q. That covers number 8 as well.

1 You have provided to us all bills and  
 2 statements from your cell phone for this time period,  
 3 correct?  
 4 A. Yes.  
 5 Q. Did you review any documents in  
 6 preparation for your testimony today?  
 7 A. I reviewed everything that was produced.  
 8 Q. Any other documents?  
 9 A. No.  
 10 MR. RYAN: Just listen to the question.  
 11 She is asking you if you reviewed anything. It is  
 12 "yes" or "no".  
 13 A. Yes, I did.  
 14 Q. We will start with background questions.  
 15 Are you aware of any issue that might  
 16 effect your ability to testify today, such as any  
 17 medication you are taking?  
 18 A. No.  
 19 Q. Where and when were you born?  
 20 A. I was born in Stalowa Wola, Poland,  
 21 September 29, 1985.  
 22 Q. Could you spell the town?  
 23 A. Yes. It is S.T.A.L.O.W.A., another  
 24 word, W.O.L.A..  
 25 Q. What is your social security number?

1 A. [REDACTED], I think.  
 2 Q. Are you known by any other name?  
 3 A. No.  
 4 Q. What's your current address?  
 5 A. [REDACTED]  
 6 [REDACTED].  
 7 Q. How long have you lived at that address?  
 8 A. Since April.  
 9 Q. What was your address directly prior to  
 10 that one?  
 11 A. I lived on the upper east side, [REDACTED]  
 12 [REDACTED].  
 13 MR. RYAN: [REDACTED]?  
 14 THE WITNESS: Yes.  
 15 BY MS. SUKHATME:  
 16 Q. Other than the Scottrade account that  
 17 you provided to us, in the last five years, have you  
 18 maintained any accounts at brokerage firms?  
 19 A. No.  
 20 Q. Before today, have you ever testified  
 21 before the SEC?  
 22 A. No.  
 23 Q. Have you ever testified before any other  
 24 federal or state agency?  
 25 A. No.

1 Q. Any stock exchange or self-regulatory  
 2 organization?  
 3 A. No.  
 4 Q. Have you ever been a defendant or  
 5 respondent or witness in any civil proceeding?  
 6 A. No.  
 7 Q. Have you ever been indicted, convicted  
 8 or pled guilty to a crime?  
 9 A. No.  
 10 Q. Have you ever been otherwise involved in  
 11 any criminal proceeding?  
 12 A. No.  
 13 Q. Have you ever been an officer or  
 14 director of any public company?  
 15 A. No.  
 16 Q. When did you move to the United States?  
 17 A. I came here for college in 2004. August  
 18 of 2004.  
 19 Q. You came here to start school to be a  
 20 freshman in college?  
 21 A. Yes.  
 22 Q. What school was that?  
 23 A. Manhattan College in Riverdale.  
 24 Q. How long were you there?  
 25 A. For four years, just the normal course

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1 of college, you know.  
2 Q. So you graduated in 2008?  
3 A. I graduated in May 2008.  
4 Q. What did you study there?  
5 A. Accounting.  
6 Q. What degree did you finish with, a  
7 Bachelor of Science?  
8 A. Yes, I believe so.  
9 Q. Do you have any professional licenses or  
10 certifications?  
11 A. No.  
12 Q. So you graduated from college in 2008.  
13 What did you do next?  
14 A. While I was in college, I got a job  
15 offer from FTI Consulting when I was senior. I  
16 accepted it, and right after I graduated from  
17 college, I started working for FTI Consulting in the  
18 restructuring group.  
19 Q. What was your title when you started?  
20 A. Consultant.  
21 Q. You are still there; is that right?  
22 A. Yes.  
23 Q. Has your title changed since then?  
24 A. Yes, it is senior consultant now.  
25 Q. Can you give us your work address?

Page 14

1 A. It is 3 Times Square.  
2 Q. Can you describe your responsibilities  
3 at work?  
4 A. It depends on the client, but usually I  
5 do financial analysis of our clients. Our clients  
6 usually are underperforming companies that are about  
7 to file for bankruptcy or are in bankruptcy.  
8 We are also retained by the lenders of  
9 such companies, so depending on the client -- for  
10 example, now I run a recovery analysis, which is, in  
11 other words, a waterfall analysis which determines  
12 recoveries for different claimants.  
13 Q. Do you supervise anyone?  
14 A. Yes.  
15 Q. How many people?  
16 A. It depends, it depends on the project.  
17 I don't have a person that I supervise on a constant  
18 basis.  
19 Q. So you get a project team for a  
20 particular client and you may have the team under you  
21 for that client; is that right?  
22 A. Yes, a person or two, a younger  
23 consultant that needs to do legwork.  
24 Q. What is your salary currently?  
25 A. I believe it is 86,000 per year, 89

Page 15

1 maybe. I am not sure.  
2 Q. How do you know Mariusz Adamaski?  
3 A. I know Mariusz since we were very young  
4 kids. We met in Poland, we both played tennis, and  
5 we are from different towns but we met at different  
6 tournaments around the country. So we met when we  
7 were ten years old and we maintained a relationship  
8 over time until now.  
9 Q. How would you describe your friendship,  
10 is he one of your closest friends?  
11 A. Yes, he is one of my closest friends.  
12 Q. In 2012 you were living with  
13 Mr. Adamaski; is that right?  
14 A. Yes, 2012 we lived together.  
15 Q. When did you move in together?  
16 A. Right after graduation from college. We  
17 graduated the same year. We moved to New York City.  
18 We connected and decided to move in. So it was the  
19 summer of 2008.  
20 Q. So by 2012 you had been living together  
21 for quite a while?  
22 A. Yes.  
23 Q. So, you knew, I assume, that he was  
24 employed at Pershing Square; is that right?  
25 A. Yes, he was employed by Pershing Square.

Page 16

1 But I don't remember exactly when. When he came to  
2 New York City, he didn't work in finance. He was s  
3 tennis instructor for two years maybe, and then he  
4 got an internship with Pershing Square.  
5 Q. Do you know approximately when that was?  
6 A. I don't want to guess. I think he was  
7 there maybe two or three years.  
8 Q. What did you know about the nature of  
9 his employment at Pershing Square?  
10 A. He was a research analyst. So my  
11 understanding is he was a very junior person doing  
12 research on various companies, basically checking  
13 their 10-Qs, 10-Ks.  
14 Q. Did you have discussions about his work  
15 with him?  
16 A. Yes.  
17 Q. What type of discussions did you have?  
18 A. It was very brief, how is work, I am  
19 getting killed, you are getting killed, we don't see  
20 each other. Very brief in nature. More of how is it  
21 going, how is work, things like that.  
22 Q. Did he ever tell you about the companies  
23 he was researching or the work he was doing?  
24 A. Yes, he mentioned the companies he was  
25 working on.

1 Q. Did he say anything about the  
2 confidential nature of his work?

3 A. No, I don't remember any specific  
4 conversations about the confidential nature of his  
5 work. My understanding was that he is working on  
6 things that he doesn't want people to know about  
7 because the competition might learn about it. I  
8 didn't think it was anything confidential. He worked  
9 with 10-Ks and 10-Qs, which is public, so anyone can  
10 look it up.

11 Q. Did he ever tell you anything about not  
12 being able to talk about his work or asking you not  
13 to talk about his work? Anything of that nature?

14 A. No, I don't think we had that  
15 conversation. It was more an understanding. You  
16 know, I worked for clients that didn't want things to  
17 come out and he worked on companies that I understood  
18 his firm didn't want other people to know, so we  
19 didn't have a conversation about it. It was more of  
20 an understanding.

21 Q. Why did you think his company wouldn't  
22 want other people to know about the nature of the  
23 work?

24 A. My understanding was that it was more  
25 competition based, they wouldn't want other hedge

1 on Herbalife?

2 A. I don't remember. I don't think we had  
3 that conversation.

4 Q. Do you remember when we spoke with you  
5 on October 2, 2013, we called you at your work?

6 A. Yes.

7 Q. Do you remember when we asked you  
8 whether Mr. Adamaski told you that his work was  
9 confidential and should not be shared with anyone?

10 A. I don't remember. It was quite  
11 surprising when you guys called, so I tried to  
12 remember what the conversation was about, but I  
13 don't.

14 Q. So you don't remember saying to us that  
15 you believed his work was confidential and should not  
16 be shared with anyone?

17 A. If I said so, I did.

18 Q. When did you first hear about Herbalife?

19 A. I don't remember -- when did I first  
20 hear about Herbalife as a company?

21 Q. Yes.

22 A. I was very young, maybe ten years old,  
23 maybe younger. My grandma, who lived in the United  
24 States, came to visit us and she brought a bunch of  
25 supplements, pills from Herbalife, and my parents

1 funds to know what Pershing Square is working on.

2 Q. You mentioned that your work was  
3 sometimes confidential; is that right?

4 A. Yes, in many cases my clients don't want  
5 the public to know they are filing for bankruptcy or  
6 working on preparing to file for bankruptcy.

7 Q. Do you at work have a policy about  
8 confidentiality?

9 A. I am not sure. I think it depends on  
10 the client. If something is confidential, they will  
11 tell us that it is confidential.

12 Q. Was your understanding that  
13 Mr. Adamaski's work was similar?

14 A. No, it is a completely different  
15 industry. I didn't think his work was in any way  
16 confidential. He was working with publicly available  
17 information.

18 Q. In 2012, were you aware that he was  
19 working on Herbalife?

20 A. Yes.

21 Q. During that time, did you have any  
22 specific discussions about confidentiality?

23 A. I don't recall, no.

24 Q. Did he say anything to you about the  
25 need for confidentiality around specifically his work

1 used it. So that was the first time I learned about  
2 that brand, Herbalife.

3 Q. Since then, since that time, when did  
4 you hear about it again or did you hear about it in  
5 the interim?

6 A. I don't recall any -- other than from  
7 Mariusz, I don't think -- I just didn't care. I  
8 might have heard about it on the news something over  
9 time, over the span of 15 years, but I don't think I  
10 did.

11 Q. When did you first hear about Herbalife  
12 from Mariusz?

13 A. I don't remember a specific date, but it  
14 was at some point in first half of 2012.

15 Q. What did he say about it?

16 A. It came up in conversation like how is  
17 work, and he said he is working on this company  
18 Herbalife. And that's pretty much it.

19 Q. Did he say what he was working on  
20 regarding Herbalife?

21 A. No. I mean, he was researching the  
22 company, that was my understanding.

23 Q. Did he share any of his opinions on the  
24 company?

25 A. Yes, we had brief conversations about it

1 over the nine months or six months, I don't remember  
2 exactly, but we had conversations about his project,  
3 meaning how is work, I am killing myself, I am  
4 working on this company.

5 I don't remember any specific  
6 conversations about what he was working on.

7 Q. Did he ever say anything to you about  
8 whether he thought it was a good company or bad  
9 company?

10 A. Yes. From the conversations, I could  
11 tell that he didn't think it was a good company.

12 Q. Why not?

13 A. You know, the conversations we had, I  
14 could tell he was not praising the company, and I  
15 wish I could tell you the details about our  
16 conversations but I don't remember exactly what we  
17 talked about.

18 Q. But you felt he had a negative opinion  
19 of the company?

20 A. Yes.

21 Q. Do you know what that negative opinion  
22 was based on?

23 A. His research.

24 Q. Did he discuss at all what his research  
25 was?

1 A. No. But the conversations we had, they  
2 were about the company and they were never positive.

3 Q. Do you remember any examples of anything  
4 that he said about the company specifically?

5 A. One thing that stuck in my brain is a  
6 conversation about how Herbalife uses a formula for a  
7 Vitamin C or whatever supplement, I don't remember,  
8 and they use this 30-year old formula, but they  
9 charge much more than what the competition charges.

10 Q. Do you remember any other specific  
11 examples of anything he said about Herbalife?

12 A. No.

13 Q. Did you know anything about Pershing  
14 Square's position in Herbalife?

15 A. No.

16 Q. Did Mr. Adamaski mention anything about  
17 whether Pershing Square was considering taking a long  
18 position on the company or a short position?

19 A. No, we never spoke about stock price or  
20 any of these details with Mariusz, no.

21 Q. Did Mr. Adamaski ever work from home?

22 A. Yes.

23 MS. SUKHATME: Let's take a break for a  
24 minute.

25 We are off the record at 10:21.

1 (Recess taken.)

2 MS. SUKHATME: Back on the record at  
3 10:44 a.m.

4 Q. While we were off the record, we had no  
5 conversations of substance; is that right?

6 A. Yes.

7 MS. SUKHATME: Also Silvia Serpe has  
8 joined us as well. She is also representing  
9 Mr. Szymik.

10 BY MS. SUKHATME:

11 Q. When we left off we were asking you  
12 whether Mr. Adamaski ever worked at home?

13 A. Yes.

14 Q. And you said he did?

15 A. Yes.

16 Q. When he worked at home, did he ever  
17 bring home work documents?

18 A. Yes. He had drafts of his materials  
19 with him, yes.

20 Q. Did you see any of those documents?

21 A. I saw the stack of papers next to him  
22 when he was working, but I never read them.

23 Q. Did you see whether any of those  
24 documents had captions on them that said  
25 confidential, private, or anything of that sort?

1 A. No.

2 Q. Let's move ahead to the last few months  
3 of 2012.

4 A. Yes.

5 Q. Did you know Mr. Adamaski was working on  
6 a presentation about Herbalife?

7 A. Yes. I learned about the presentation  
8 pretty early on. I think the presentation first was  
9 going to take place at some point in the summer or  
10 early fall, but it was moved, so he was working on  
11 the presentation for quite a while.

12 Q. So when did you -- as far as you can  
13 remember, when did you first hear about this  
14 presentation?

15 A. The first half of 2012. I can't tell  
16 you exactly. I don't remember exactly the date.

17 Q. Did you know what that presentation was  
18 about?

19 A. My understanding was that the  
20 presentation was about his research on Herbalife.

21 Q. Did you know what the substance of that  
22 research was?

23 A. No.

24 Q. Did you know what the thesis of that  
25 presentation was going to be?

1 A. No.

2 Q. Did Mr. Adamaski ever discuss the  
3 presentation with you?

4 A. He discussed working on the  
5 presentation, that he was killing himself day and  
6 night working on it, but nothing in detail, no.

7 Q. Did you know when the presentation was  
8 scheduled for?

9 A. No. I had general understanding of when  
10 it was going to happen. He said first it was going  
11 to happen at some point in the summer or early fall.  
12 And then it was postponed to sometime in December,  
13 but I never knew the exact date.

14 Q. Did Mr. Adamaski tell you why it was  
15 postponed?

16 A. No.

17 Q. Did you have any discussions at all  
18 about moving the presentation?

19 A. I don't remember the exact -- I don't  
20 remember if we had discussions about the moving of  
21 the presentation.

22 Q. But you knew it was scheduled for the  
23 summer?

24 A. Yes.

25 Q. And then you knew it had been postponed;

1 him. They play tennis all the time together. You

2 know, he really admired him, so he would always tell  
3 me what Bill Ackman was thinking, what he was doing,  
4 all this charity work he was doing.

5 We did have a lot of conversations about  
6 him.

7 Q. Did you know that Bill Ackman was  
8 considered what is called an activist investor?

9 A. Yes.

10 Q. What does that mean to you?

11 A. Activist investing is based on the idea  
12 that you can find a company that is a good company  
13 but just requires a little bit of changes and  
14 restructuring, you know, and you invest when the  
15 company is undervalued and then you fix it and the  
16 stock goes up.

17 Q. Have you ever heard of anyone saying  
18 that people follow Mr. Ackman?

19 A. Yes, that was my general understanding,  
20 yes.

21 Q. What did you understand that to mean?

22 A. Well, he is a renowned investor, and if  
23 he discloses that he invests in something, people  
24 might want to imitate it. Similarly to Berkshire  
25 Hathaway, oh my God, I can't remember his name.

1 is that right?

2 A. Yes.

3 Q. Was that based on Mr. Adamaski telling  
4 you?

5 A. Yes.

6 Q. So you had some discussions about the  
7 presentation and when it was going to happen?

8 A. Yes.

9 Q. Did you have any conversations with  
10 Mr. Adamaski about the likely effect of the  
11 presentation on Herbalife's stock price?

12 A. No, we never talked in such detail about  
13 what he was doing, what he was working on. We never  
14 had a conversation about Herbalife's stock price or  
15 what the effects of the presentation are going to be  
16 or what the purpose of the presentation was going to  
17 be.

18 Q. Did you have any discussions with  
19 Mr. Adamaski about Bill Ackman?

20 A. Yes, we did talk about Bill Ackman quite  
21 often.

22 Q. What did you talk about regarding Bill  
23 Ackman?

24 A. Mariusz really admires Bill Ackman. To  
25 me it almost seemed like it was a father figure for

1 MR. RYAN: Warren Buffet.

2 THE WITNESS: Yes.

3 BY MS. SUKHATME:

4 Q. Did you understand that Mr. Ackman's  
5 announcements effect stock price?

6 A. Are you asking hypothetical question  
7 now?

8 Q. No, I am asking your general  
9 understanding about Mr. Ackman, what he does and how  
10 the market reacts to it?

11 A. I didn't understand that his positions  
12 effect the market. But his decisions might be good,  
13 and that's why investors follow him because he knows  
14 what he is doing. So it is not about him saying  
15 something and the market follows it. It is about him  
16 saying something that is right and correct and  
17 investors following it.

18 Q. Do you understand that if other  
19 investors invest in something Mr. Ackman has  
20 announced or invested in, that the stock price may be  
21 affected by that?

22 A. I guess it is possible. I don't know.

23 Q. Did you have any conversations with  
24 Mr. Adamaski about Mr. Ackman's effect on companies'  
25 stock prices?

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1 A. No. Again, we never talked in such  
2 detail, Mariusz and I, about his job and his work and  
3 what Ackman is about to do.  
4 MS. SUKHATME: Mark this Exhibit 31.  
5 (NY-8869 Exhibit 31 was marked  
6 for identification.)  
7 Q. You have been handed what has been  
8 marked as Exhibit 31. It is a three-page document.  
9 It's a Gmail chat with Scott Lyman.  
10 A. Yes.  
11 Q. Do you recognize this document?  
12 A. Yes.  
13 Q. Who is Scott Lyman?  
14 A. He is my colleague. We used to work  
15 together at FTI.  
16 Q. What does he do now?  
17 A. He works for Mesirov Consulting.  
18 Q. Can you spell that?  
19 A. M.E.S.I.R.O.W., I believe, I am not  
20 sure.  
21 Q. Is he a good friend of yours?  
22 A. Yes, I consider him a very good friend.  
23 Q. So on page 2 of Exhibit 31, you will see  
24 at 2:55 p.m. where it says "me," is that you?  
25 A. Yes.

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1 Q. So you say, "Are you in the office?"  
2 Scott says, "I in FTW."  
3 A. Fort Washington.  
4 Q. And he says, "What's up?" And you say,  
5 "Oh, nothing, I got an investment opportunity."  
6 What were you referring to there?  
7 A. I was referring to Herbalife.  
8 Q. Why did you refer to it as an investment  
9 opportunity?  
10 A. At that point I learned about Ackman's  
11 position to short the stock from one of the websites  
12 and I saw that stock dropped by 12 percent, and I  
13 thought this news is just the beginning of the  
14 company dropping to zero.  
15 Q. So you said that you had just learned  
16 about Bill Ackman's position; is that right?  
17 A. Well, that was the official position  
18 Bill Ackman took, yes.  
19 Q. So prior to this chat where you say you  
20 have an investment opportunity, did you know that  
21 Mr. Ackman was going to make a presentation about  
22 Herbalife?  
23 A. I knew about the presentation, yes.  
24 Q. Did you know prior to 2:55 p.m. on  
25 December 19, 2012 that that presentation was going to

Page 31

1 announce a short position in Herbalife?  
2 A. I had my suspicions but I wasn't  
3 certain.  
4 I think it makes sense to go back and  
5 discuss why I told Scott Bill Ackman was going to  
6 take the short position.  
7 Q. Okay.  
8 A. I didn't think about him investing. It  
9 never occurred to me. I didn't care about what Bill  
10 Ackman or Pershing Square was going to do with that  
11 presentation up until the point where I told Jordan  
12 what Mariusz was working on, and it was an early in  
13 December.  
14 Jordan subsequently came back to me and  
15 said he did some research about Herbalife. He  
16 mentioned an analyst earlier that year, an analyst  
17 asking a question to the CEO, and I don't remember  
18 the question, but right after that the stock dropped  
19 by like 50 percent. And he said that there is a lot  
20 of negative chatter about Herbalife, and the  
21 presentation that was going to happen is probably  
22 going to be negative, a negative view about  
23 Herbalife.  
24 So that was the first moment, the  
25 beginning of December was really the first moment

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1 after Jordan told me his thoughts about it when I  
2 started thinking about, yes, this is probably going  
3 to happen.  
4 Q. So when you say further down, "My  
5 roommate has been working on this presentation about  
6 Herbalife."  
7 You later say, "They worked for months  
8 to prove that it's a scam. Ackman just announced  
9 that this was a short for next year. The stock went  
10 down by 12 percent and was halted. I want to buy put  
11 options. I think they are going to go down."  
12 When you say here "They worked for  
13 months to prove that it's a scam" --  
14 A. Well, it was after the fact, I heard  
15 about what Ackman said, or the news release said that  
16 day. Everything came together at that point to me.  
17 Q. So prior to December 19, 2012, you did  
18 not know that Mariusz was working on showing that  
19 Herbalife was a scam?  
20 A. No, I didn't know the details of the  
21 presentation at all.  
22 Q. So prior to December 19, 2012, did you  
23 know that Mariusz believed that Herbalife was a bad  
24 company?  
25 A. Yes. When we had conversations, Mariusz

1 and I about Herbalife, he never referred to this  
2 company as a great company. He always had a negative  
3 view about the company.

4 But, you know, it was very brief. We  
5 didn't speak about what the nature of the  
6 presentation was.

7 Q. But you must have realized the  
8 presentation was not going to be positive about  
9 Herbalife?

10 A. Yes.

11 Q. You realized it would be a negative  
12 presentation about Herbalife; is that right?

13 A. Yes, I suspected it was negative.

14 Q. Scott here says "You should have bought  
15 it before he announced it. Everyone copies Ackman."

16 And you said "I know. I was going to.  
17 I didn't know he was going to announce it today, it  
18 was going to be tomorrow."

19 What did you mean by that?

20 A. Well, at this point the news release  
21 stated he was going to have a presentation or he was  
22 going to show why he thinks this was a scam. So at  
23 this point I knew the date of the presentation.

24 Q. When you say "it was going to be  
25 tomorrow," what did you mean by that?

1 A. It was going to be tomorrow, yes,  
2 because that's what the news release said, that it  
3 was going to be on 20th.

4 Q. You say here, "I didn't know he was  
5 going to announce it today, it was going to be  
6 tomorrow."

7 Did you think the announcement was going  
8 to be the next day?

9 A. I don't remember exactly what I meant by  
10 this. But at this point I knew the exact date of the  
11 presentation.

12 Q. So prior to this conversation with  
13 Mr. Lyman, did you know when the presentation was  
14 going to be?

15 A. I wasn't sure, no, I knew it was going  
16 to happen sometime around this time period, but I  
17 wasn't sure about the exact date.

18 Q. When you say here that -- you said "I  
19 was going" to in response to Scott saying "you should  
20 have bought it before he announced it," what did you  
21 mean when you said I was going to?

22 A. I was thinking about investing in  
23 Herbalife stock.

24 Q. Why?

25 A. Well, after Jordan came back to me and

1 said he did some research and he thought that it  
2 makes sense to invest, knowing that there is so much  
3 negativity about the company right now and, you know,  
4 the presentation is most likely going to be negative,  
5 it made sense to bet to make an investment.

6 Q. Was it important to make an investment  
7 before the presentation?

8 A. Yes, according to Jordan it was  
9 important to invest before the presentation.

10 Q. Why?

11 A. If the presentation was negative, it is  
12 safe to assume that it is possible if someone  
13 presents some negative information about the company,  
14 it is possible to assume that it might affect the  
15 stock.

16 Q. How would it affect the stock?

17 A. Well, if the presentation is valid and  
18 if people believe what the presentation has to say,  
19 then it is possible that the stock will go down.

20 Q. Is that why you wanted to buy put  
21 options?

22 A. Yes, at this point I saw what is  
23 happening. The stock was in free fall and I thought  
24 that -- you know, I asked my friend if it still made  
25 sense to make another investment.

1 Q. Did you consider buying put options  
2 prior to the presentation?

3 A. Yes, I was thinking about buying put  
4 options prior to the presentation, but I didn't  
5 because I don't know how to trade options.

6 MS. SUKHATME: Do you have any  
7 questions?

8 MR. BRUCCULERI: No.

9 MR. MUI: No.

10 MS. SUKHATME: Mark this Exhibit 32.  
11 (NY-8869 Exhibit 32 was marked  
12 for identification.)

13 Q. I am handing you what has been marked  
14 Exhibit 32. It is a one-page document, a Gmail chat  
15 dated December 9, 2012 at 3:03 p.m. It says, "Chat  
16 with Chris Jennings."

17 Who is Chris Jennings?

18 A. It is my colleague, we used to work on  
19 the same engagement. He is from a different company,  
20 but we were co-advising the creditors at that point.

21 Q. Where does he work?

22 A. He used to work for Houlihan Lokey and  
23 now he works for another company. I am not sure what  
24 the name is.

25 Q. Do you remember having this chat with

1 him?

2 A. Yes.

3 Q. At 3:01 you wrote to him, "So my  
4 roommate has been working on Herbalife for months now  
5 and Ackman just came out with the news that he was  
6 shorting it. I was going to put options today but I  
7 thought they would announce it tomorrow."

8 Do you remember saying that?

9 A. Yes. I believe it was similar to -- the  
10 conversation is similar to the one I had with Scott  
11 Lyman.

12 I texted them both because they are  
13 savvier than me in investing and they are interested  
14 in this so I wanted their opinion.

15 Q. Were you planning to purchase the put  
16 options on December 19th so that you could purchase  
17 them before the announcement?

18 A. I was thinking about it, but it never  
19 materialized because -- many reasons. Number one, I  
20 didn't know -- I did some research how to trade  
21 options but it seemed way too complicated for me. It  
22 was too much risk. I didn't know what the outcome of  
23 the presentation is going to be. I didn't know what  
24 the thesis of the preparation was. So, to me, making  
25 -- doing all this stuff and putting this effort was

1 Then I checked the news and subsequently  
2 to that, following that, I texted my friends so  
3 Jordan and I did talk that day.

4 Q. Let's take a step back and get some  
5 background on your relationship with Mr. Peixoto.  
6 When did you first meet Jordan Peixoto?

7 A. We met in 2011 through our mutual  
8 friend, Anita Khar, K.H.A.R. It was a social event,  
9 and then we became good friends over time.

10 Q. At the time in 2012, was Mr. Peixoto one  
11 of your good friends, would you say?

12 A. Yes. I considered him one of my best  
13 friends.

14 Q. How often did you see him in 2012?

15 A. I would say every second weekend, every  
16 weekend, it depends. Every time we saw each other it  
17 was for social purposes, a drink, dinner, things like  
18 that.

19 Q. Did he live near you?

20 A. Yes, he lived on 88th between First and  
21 Second, so half a block away from me.

22 Q. Did he come to your apartment often?

23 A. I wouldn't say often, but, yes, he was  
24 at my apartment.

25 Q. About how often would he be at your

1 not worth it. And I was at that point very busy at  
2 work so I didn't think about it.

3 At this point I felt like I missed out  
4 on an opportunity.

5 Q. Why did you feel that?

6 A. Because, you know, stock went down by 12  
7 percent.

8 Q. You felt you missed the opportunity  
9 because had you purchased earlier you could have  
10 profited from the 12 percent drop?

11 A. Yes. After this happened, it was clear  
12 the stock was affected by everything that happened.  
13 But before then I didn't think it was going to  
14 happen. I wasn't sure, it was too many unknowns to  
15 deal with.

16 Q. Did you have conversations with  
17 Mr. Peixoto around that time?

18 A. Do you mean on the 19th?

19 Q. Yes, I'm sorry.

20 Specifically on December 19th, did you  
21 discuss with him trading in Herbalife?

22 A. Jordan called me when I was at work  
23 telling me about the news, I didn't know. I learned  
24 it from Jordan about the news of Herbalife, you know,  
25 Ackman's short position.

1 apartment?

2 A. I don't know. It is hard to say. I  
3 know him for three years.

4 Q. So in 2012, was he at your apartment  
5 more than once a month?

6 A. Yes, once or twice a month maybe.

7 Q. Once a week?

8 A. No, it wouldn't be once a week.

9 Q. So a couple of times?

10 A. Yes.

11 Q. Did Mr. Peixoto know Mariusz Adamaski?

12 A. Yes, he met Mariusz through me.

13 Q. How often would he see Mr. Adamaski?

14 A. Not often. I would call them  
15 acquaintances. They met always when I was going out  
16 with Jordan and Mariusz would be out and we would  
17 meet for drinks. It was more of a social  
18 interaction, pretty sporadic.

19 Q. Do you know whether Mr. Peixoto had any  
20 conversations with Mr. Adamaski about Mr. Adamaski's  
21 work?

22 A. I don't know.

23 Q. Did you ever hear any such  
24 conversations?

25 A. No.

1 Q. Did Mr. Peixoto ever ask you about  
2 anything related to Mr. Adamaski's work?  
3 A. I don't remember him specifically asking  
4 about Mariusz's work. We did have conversations,  
5 Jordan and I, about Mariusz a couple of times, but it  
6 was more of a jealousy talk. We were like wow, this  
7 guy is so lucky, he has this great position, great  
8 hedge fund, how did he get it, things like that.  
9 I did mention to Jordan at some point at  
10 the end of November, maybe early December about what  
11 Mariusz was working on, and the conversation was more  
12 like hey, where is Mariusz? Mariusz at that point  
13 was working all the time and so where is Mariusz? I  
14 would tell him he is killing himself right now, he  
15 was working on Herbalife. He thinks Herbalife is a  
16 bad company. That's the conversation we had.  
17 Q. When was that?  
18 A. I don't remember specifically what the  
19 date was, but beginning of December, maybe end of  
20 November of 2012.  
21 Q. Did Mr. Peixoto ask you any other  
22 questions about Herbalife or Mr. Adamaski's work?  
23 A. Yes. So after our first conversation  
24 about it, Jordan came back subsequently to that  
25 conversation, and he said he did research on

1 Herbalife and that Herbalife is in trouble right now,  
2 there is a lot of negativity about it in the news.  
3 And he thought that -- knowing that Pershing Square  
4 is working on this presentation and knowing that  
5 there is so much negative P.R. around Herbalife right  
6 now, it is a good idea to invest.  
7 Q. Did Mr. Peixoto state to you anything  
8 about the presentation being negative about  
9 Herbalife?  
10 A. No, he didn't. I told him what my  
11 thoughts were on Herbalife based on my conversations  
12 with Mariusz about it. So I told him from what I  
13 heard from Mariusz this company is terrible and so  
14 that's how I guess he redacted from that.  
15 Q. So your understanding was that he  
16 believed the presentation would be negative?  
17 A. Yes.  
18 Q. Did you have any discussion about the  
19 confidentiality of that information?  
20 A. No.  
21 Q. Did you have any discussions at all  
22 about Mr. Adamaski's work being confidential?  
23 A. No.  
24 Q. Did you have any conversations with  
25 Mr. Peixoto about Pershing Square?

1 A. Can you be more specific?  
2 Q. Sure. The type of work Pershing Square  
3 does or Mr. Ackman specifically?  
4 A. I don't recall conversations about what  
5 Pershing Square did, no.  
6 Q. Did you have conversations about people  
7 following Mr. Ackman?  
8 A. No, I don't think so.  
9 Q. Any conversations about this  
10 presentation, if it's negative, the effect that that  
11 will have on the stock price?  
12 A. Yes, we did talk about the presentation  
13 and about the possibility of the impact of that  
14 presentation.  
15 Q. What would that impact be?  
16 A. Depending what the presentation is about  
17 and if the presentation is valid, it was possible --  
18 it was safe to assume that the stock could be  
19 effected.  
20 Q. By "effected" you mean the price would  
21 go down?  
22 A. Yes.  
23 Q. Did you tell Mr. Peixoto the date you  
24 believed the presentation was going to be?  
25 A. I told Jordan that I didn't know when

1 the presentation is going to happen. I told him it  
2 was going to happen sometime in December, and Jordan  
3 asked me to figure it out.  
4 Q. Did he say why?  
5 A. He said that it was important to know  
6 when the presentation is going to happen.  
7 Q. Did he say why it would be important to  
8 know?  
9 A. I don't recall exactly why he said it  
10 was important, no. Knowing that the presentation was  
11 going to happen and assuming that the presentation  
12 would be valid, it was possible that this stock would  
13 go down.  
14 Q. Why did you believe it would be  
15 important to find out date of the presentation?  
16 A. Again, I thought I answered that  
17 question.  
18 MS. SERPE: I think that was a  
19 misstatement. I think he said that Jordan thought it  
20 is important.  
21 MS. SUKHATME: Let's clarify.  
22 Q. Please correct me if I am wrong, did  
23 Jordan tell you he thought it was important to know  
24 the date of presentation?  
25 A. Yes.

1 Q. Why did you believe he thought it was  
2 important to know the date of the presentation?

3 A. Given the fact that there is a lot of  
4 negativity about Herbalife, and if the presentation  
5 is, in fact, negative and if the presentation is  
6 valid, then it is possible that the stock might go  
7 down.

8 Q. So was it your understanding that he  
9 wanted to know the date because he wanted to trade  
10 before the announcement or before the presentation  
11 took place?

12 A. Yes.

13 BY MR. MUI:

14 Q. What did you do after Jordan asked you  
15 to figure out the date of the presentation?

16 A. I tried to reach out to Mariusz to ask  
17 him when the presentation is going to happen.

18 Q. When you say "tried to reach out," can  
19 you expand on that?

20 A. At this point, I didn't see Mariusz  
21 personally. He was either at work all the time or  
22 spending his time at his girlfriend's apartment,  
23 because his girlfriend lives like two blocks away  
24 from his office, so I didn't see Mariusz in December  
25 at all.

1 Q. So I am looking at FS-00042.

2 These are copies of texts between you  
3 and Mr. Peixoto; is that right?

4 A. Yes.

5 Q. You will see a text on December 8, 2012  
6 at 8:16 by Jordan to you where Jordan says, "What  
7 will be key is to find out when the presentation will  
8 be made public."

9 And your is a response is, "In 10 days?"  
10 Do you see that?

11 A. Yes.

12 Q. Why did you say it would be in 10 days?

13 A. I don't know. It was a guess, I think.  
14 I was annoyed by Jordan asking me about this, so I  
15 just said 10 days, whatever, you know.

16 Q. And later he says, "I hear your timing  
17 is tight, think we should just place our bets."

18 You say, "I haven't seen him, not spoken  
19 to him since Sunday. He hasn't responded?"

20 MR. RYAN: When you say "later," just  
21 so it is clear, it is five days later?

22 MS. SUKHATME: Sure.

23 Q. That's on December 13th at 8:18.

24 A. So as the text states, "I did make  
25 attempts to find Mariusz to get a hold of him, I just

1 So I did try to make an attempt to ask  
2 Mariusz when the presentation was going to happen,  
3 but I couldn't reach him. I also did e-mail him  
4 about the date of the presentation, but he never  
5 answered.

6 Q. What is the time frame where Jordan  
7 asked you to figure this out?

8 A. I don't remember the exact date, but  
9 Jordan -- it wasn't only one time. Jordan followed  
10 up on the date of the presentation a couple of times.  
11 I don't know, maybe three or four times he would call  
12 me and ask if I knew when the presentation was going  
13 to happen. Every time I told him okay, I will try to  
14 figure it out. But I couldn't.

15 MS. SUKHATME: We will mark this  
16 Exhibit 33.

17 (NY-8869 Exhibit 33 was marked  
18 for identification.)

19 BY MS. SUKHATME:

20 Q. I am handing you what has been marked as  
21 Exhibit 33. It is three-page document. Part of the  
22 document presented to us is Bates number FS-00041?

23 A. 41? Sorry.

24 Q. Did I give you something different?

25 MR. RYAN: 41 is the first page.

1 can't," and I told Jordan that he hasn't responded.

2 Q. At this time when you are texting with  
3 Jordan, did you believe that he was going to try to  
4 trade in Herbalife?

5 A. Yes.

6 Q. What did you think he was planning?

7 A. We had a conversation about investing  
8 and we had a conversation about how much money we  
9 would potentially invest. That was a conversation at  
10 a bar drinking, and my understanding was that he was  
11 going to trade 4 or \$5,000.

12 Q. He told you that?

13 A. Yes.

14 Q. And what type of trade was he planning  
15 to do?

16 A. Options.

17 Q. So he told you specifically that he  
18 wanted to trade about 4 to \$5,000 worth of options?

19 A. Yes.

20 Q. What did you respond to that?

21 A. I was -- at this point, I thought it was  
22 a good idea. I was thinking about investing also. I  
23 told him how much I was thinking about investing.  
24 And that's pretty much it. We didn't discuss any  
25 specifics on trading, when to trade, how to trade.

1 We didn't have that conversation.  
 2 Q. You said you told him how much you were  
 3 thinking about.  
 4 What was that amount?  
 5 A. 1 to \$2,000.  
 6 Q. Do you know approximately how much  
 7 Jordan makes at work?  
 8 A. How much Jordan makes?  
 9 Q. What his salary is approximately?  
 10 A. Probably similar to my salary.  
 11 Q. What does he do?  
 12 A. Now he is a student, but he used to work  
 13 for Deloitte Consulting.  
 14 Q. At the time in 2012?  
 15 A. Yes, he was working for Deloitte  
 16 Consulting.  
 17 Q. What type of consulting did he do?  
 18 A. Healthcare.  
 19 Q. Did Mr. Adamaski invite you to the  
 20 presentation?  
 21 A. I don't recall being invited to the  
 22 presentation.  
 23 Q. Do you know if he invited anybody else?  
 24 A. No.  
 25 BY MR. MUI:

1 with him later.  
 2 THE WITNESS: First he told me a couple  
 3 of thousand dollars, that's what he invested. And  
 4 then after you called in October, I called or he  
 5 called me the next day in the morning and I asked him  
 6 how much he made, and he told me he made \$20,000.  
 7 BY MS. SUKHATME:  
 8 Q. Did he tell you anything else?  
 9 A. He told me that he already retained  
 10 lawyers and he told me his lawyers are going to call  
 11 me.  
 12 Q. When he told you that he made \$20,000,  
 13 did he tell how much he actually invested?  
 14 A. No, I didn't ask. I just wanted to know  
 15 -- I mean, given the fact that you guys called, it  
 16 was just to me hard to understand why this is  
 17 happening given the fact that he invested a couple of  
 18 thousand dollars, so I asked him how much he made,  
 19 and he told me \$20,000.  
 20 BY MR. MUI:  
 21 Q. That was through options?  
 22 A. We didn't discuss details. I just asked  
 23 him.  
 24 BY MS. SUKHATME:  
 25 Q. Did he mention anything to you about

1 Q. Did you know if Mr. Peixoto actually  
 2 purchased options in Herbalife stock?  
 3 A. I learned about it after the  
 4 announcement, but I don't remember exactly when it  
 5 happened.  
 6 Q. How did you learn about it?  
 7 A. From Jordan.  
 8 Q. What did he say to you?  
 9 A. I don't remember exactly.  
 10 Q. Do you recall the amount?  
 11 A. Yes. I asked him how much he invested,  
 12 and he said a couple of thousand.  
 13 BY MS. SUKHATME:  
 14 Q. When was that?  
 15 A. I don't remember exactly when I learned  
 16 about it. I would say shortly after the  
 17 announcement, but I can't speculate on a date.  
 18 MR. RYAN: What was your first  
 19 question?  
 20 MR. MUI: Did there come a time that  
 21 you learned Mr. Peixoto traded in Herbalife,  
 22 Herbalife options.  
 23 MR. RYAN: And you wanted to know how  
 24 much.  
 25 MR. RYAN: You had another discussion

1 attempting to not exercised his options?  
 2 A. No.  
 3 Q. In the period following the  
 4 announcement, so back in December 2012, you said that  
 5 he told that you had purchased some options?  
 6 A. Can you repeat the question?  
 7 Q. We were discussing a conversation that  
 8 you had after we called, but the conversation you had  
 9 was back in December 2012 after Bill Ackman's  
 10 announcement?  
 11 A. I am not sure it was December. It was  
 12 after the announcement, but I don't remember exactly  
 13 when it happened.  
 14 Q. So it may have been sometime after that.  
 15 But during that conversation, did he ask  
 16 you whether you purchased any Herbalife stock?  
 17 A. I don't remember, but I did tell Jordan  
 18 that I wasn't going to invest.  
 19 Q. When did you tell him that?  
 20 A. Prior to announcement.  
 21 Q. The announcement was on December 19th.  
 22 Did you tell him December 19th?  
 23 A. No, I think it would be much earlier  
 24 than that.  
 25 Q. So you told Mr. Peixoto prior to

1 December 19th that you were not going to invest?  
 2 A. Yes, I just didn't think it was  
 3 worthwhile.  
 4 Q. But you were still considering investing  
 5 on December 19th; is that right?  
 6 A. After I learned about the stock drop and  
 7 after the news announcement, I thought maybe there is  
 8 still a possibility to invest and make money.  
 9 Q. What was his reaction to you telling him  
 10 that you weren't going to invest?  
 11 A. I don't remember. I honestly didn't  
 12 think he was going to invest either. It was just a  
 13 brief conversation. We never really planned  
 14 anything, so when the announcement happened, I didn't  
 15 know that he invested.  
 16 Q. When you told him that you hadn't, was  
 17 he upset?  
 18 A. I don't remember.  
 19 Q. Prior to our phone call to you, did you  
 20 have any other conversations with him about Herbalife  
 21 or his investment or your investment?  
 22 A. Prior to your phone call in October  
 23 2012?  
 24 Q. 2013.  
 25 A. I'm sorry, 2013.

1 Other than conversations with your  
 2 lawyers, did your understanding ever change?  
 3 THE WITNESS: No.  
 4 BY MR. BRUCCULERI:  
 5 Q. Earlier you mentioned that Jordan on the  
 6 19th was the one who told you about the news coming  
 7 out?  
 8 A. Yes.  
 9 Q. At that time he didn't mention that he  
 10 had invested?  
 11 A. I don't remember.  
 12 Q. He didn't ask you as he was sending you  
 13 information if you had invested?  
 14 A. I think it was a phone call, and I don't  
 15 remember specifically. I just don't remember.  
 16 MS. SUKHATME: I am going to mark some  
 17 exhibits. This will be Exhibit 34  
 18 (NY-8869 Exhibit 34 was marked  
 19 for identification.)  
 20 BY MS. SUKHATME:  
 21 Q. I am handing you what has been marked  
 22 Exhibit 34. It is a Bates stamped FS-00124. It's an  
 23 e-mail exchange between you and Mariusz Adamaski. It  
 24 is in Polish so I will ask you to translate it.  
 25 Let's start at the top, the e-mail from

1 Yes, we did. I learned after the  
 2 announcement, I eventually learned about his  
 3 investment, so we did talk about it, yes.  
 4 Q. And we discussed that conversation when  
 5 you told him you hadn't invested, right?  
 6 A. After the announcement, he told me he  
 7 made an investment, and we did talk about it, yes.  
 8 And we had some subsequent conversations about it  
 9 over time.  
 10 Q. When were those?  
 11 A. Again, I don't remember the exact date.  
 12 Q. Do you remember what you discussed?  
 13 A. Nothing in detail. No, I don't  
 14 remember.  
 15 Q. Prior to calling him in 2013 after our  
 16 conversation, did you know how much he had made?  
 17 A. No. My understanding was that before he  
 18 told me he made \$20,000, the only thing I knew from  
 19 him was that he invested a couple of thousand  
 20 dollars.  
 21 BY MR. MUI:  
 22 Q. Has your understanding changed, as you  
 23 sit here today, as to how much he made?  
 24 MR. RYAN: Don't reveal anything you  
 25 learned from us.

1 you to Mariusz Adamaski on December 13th at 8:21 p.m.  
 2 A. The subject of this e-mail is, "Are you  
 3 alive?" And then in the body of the e-mail, I ask  
 4 Mariusz, "When is the presentation?" Literally, when  
 5 is the presentation.  
 6 And Mariusz replies, "I am very alive.  
 7 I live in the office."  
 8 And then I follow up and ask again,  
 9 "When is the presentation?"  
 10 Q. Why did you ask him when the  
 11 presentation was?  
 12 A. Jordan kept asking me when the  
 13 presentation was going to happen, so I followed up  
 14 and asked Mariusz.  
 15 Q. This timing of the text with Jordan when  
 16 he asked you about it, if you go back to Exhibit 33?  
 17 A. Yes.  
 18 Q. So when in Exhibit 33 when you say, "I  
 19 asked him. He hasn't responded," are you referring  
 20 to this e-mail?  
 21 A. I don't know. I can't speculate if it  
 22 is related to the e-mail, but looking at the time, it  
 23 is possible.  
 24 Q. But your recollection is that  
 25 Mr. Peixoto asked you to find out about the time of

1 the presentation more than once; is that right?

2 A. Yes.

3 MR. RYAN: Could we get the times of  
4 all these communications.

5 MS. SUKHATME: Sure.

6 BY MS. SUKHATME:

7 Q. So Exhibit 33 of the text, the timing,  
8 December 13, 2012 at 8:18 is when Jordan asked you,  
9 "Timing is tight, we should place our bets." That

10 same day at 8:19, you say, "I have seen not seen him  
11 or spoken to him since Sunday, he hasn't responded."

12 And the e-mail is at 8:21 on December 13th, so the  
13 same day, it seems basically two minutes later you  
14 then e-mail Mr. Adamaski and say, "When is the  
15 presentation?"

16 When you say "he hasn't responded," were  
17 you referring to a different question that you asked  
18 him?

19 A. I am not sure. I don't remember at this  
20 point.

21 Q. Do you remember whether you sent this  
22 e-mail because of the text with Jordan?

23 A. I don't remember exactly why I sent this  
24 e-mail, but looking at my conversations with Jordan,  
25 it is possible.

1 subject is, "Filip just called me."

2 You will see from this exhibit that  
3 there is an e-mail from Kathryn on Tuesday, December  
4 18, 2012, at 10:27 p.m. The subject is, "Filip just  
5 called me." And she says, "He needs you call him, I  
6 just tried to call you to let you know but you didn't  
7 answer, so hopefully you will get this."

8 Do you remember calling Kathryn Nave on  
9 December 18th?

10 A. I don't. I know the call happened  
11 because I reviewed my billing records, but I don't  
12 remember that phone call.

13 Q. You don't remember the substance of that  
14 conversation at all?

15 A. No.

16 Q. Do you remember why you may have wanted  
17 to reach Mariusz on December 18th?

18 A. I don't remember why I would want to  
19 call Mariusz at that time, no.

20 Q. Just for clarification, who is Kathryn  
21 Nave?

22 A. At that point, she was his girlfriend.

23 Q. So in 2012, let's say in December,  
24 around this time, did you call her office?

25 A. No. I honestly -- when I saw the phone

1 BY MR. MUI:

2 Q. Did Mr. Adamaski respond in any way to  
3 your inquiry?

4 A. Other than saying he is still alive and  
5 that he lives in the office, no.

6 BY MS. SUKHATME:

7 Q. Do you remember whether you asked him  
8 about the date of the presentation again after this  
9 December 13th e-mail?

10 A. I don't remember specifically a date,  
11 but Jordan did follow up a couple of times and I did  
12 follow up with Mariusz, I tried to get a hold of  
13 Mariusz a couple of times.

14 Q. Do you believe any of those were after  
15 this December 13th e-mail?

16 A. It is hard, I don't know, I don't  
17 remember.

18 MS. SUKHATME: I would like to have  
19 this marked as Exhibit 35.

20 (NY-8869 Exhibit 35 was marked  
21 for identification.)

22 Q. I am handing you what has been  
23 previously marked as Exhibit 35. It is a one-page  
24 e-mail. The Bates stamp is MA SEC 0001564. It's an  
25 e-mail from Mariusz Adamaski to Kathryn Nave. The

1 records I was surprised that I even called her.

2 Q. So is it fair to say that since you  
3 called her it was likely important?

4 A. Yes.

5 Q. But you don't remember why?

6 A. No. As I said, I don't remember that  
7 conversation at all. The only recollection I have is  
8 that because I looked at the billing records and I  
9 saw that the phone call was made, but I don't  
10 remember the substance.

11 Q. Have you spoken to Ms. Nave in the last  
12 few months?

13 A. I saw Kathryn one time in October.

14 Q. What was the substance of that meeting?

15 A. I was at Mariusz's apartment and we were  
16 drinking and Kathryn came to see him late at night.  
17 She just received a phone call from you, so she was  
18 furious and she was yelling at Mariusz.

19 Q. Why was she yelling?

20 A. Well, because of the phone call she got  
21 and because of the questions she got.

22 Q. What did she say to him?

23 A. She said that she didn't tell the whole  
24 truth to you guys and she was freaking out about it.

25 Q. Did she explain what she didn't tell?

1 A. I don't remember. At that point it was  
 2 like 1:00 a.m. and I was not sober. At this point I  
 3 don't remember, sorry. I just don't remember  
 4 specifics.  
 5 Q. Do you remember what Mariusz's reaction  
 6 was?  
 7 A. He was actually very unresponsive, he  
 8 was just staring at his laptop. That's why they had  
 9 the whole argument because he was not responding to  
 10 her at all and she was just yelling at him.  
 11 Q. Did she say why she didn't tell the  
 12 whole truth or she felt she didn't tell whole truth?  
 13 A. She said she was very nervous, she  
 14 didn't know what to say. Again, I don't remember any  
 15 details.  
 16 Q. So you don't remember what she said she  
 17 didn't say?  
 18 A. I remember her mentioning packages that  
 19 she was getting to her apartment from Herbalife. I  
 20 don't remember exactly why she was telling that, why  
 21 she was saying that. So the packages -- I'm sorry, I  
 22 don't remember.  
 23 Q. Were you involved in this conversation  
 24 at all?  
 25 A. I was at their place, at Mariusz's place

1 for a couple of minutes, and then I got a phone call  
 2 from my friend and I stopped out to speak with her.  
 3 Q. So did you say anything to Ms. Nave?  
 4 A. Maybe. I just don't remember exactly  
 5 what I said.  
 6 MR. RYAN: Can we go off the record for  
 7 a minute?  
 8 MS. SUKHATME: Sure. This is a good  
 9 time to take a break.  
 10 We are off the record at 11:41.  
 11 (Recess taken.)  
 12 MS. SUKHATME: We are back on the  
 13 record at 12:02 p.m.  
 14 BY MS. SUKHATME:  
 15 Q. We want to clarify something from  
 16 before.  
 17 Following the announcement by Mr. Ackman  
 18 on December 19th that he was going to present this  
 19 short position on Herbalife, did you have a  
 20 conversation with Mr. Peixoto about his trading?  
 21 A. You are asking following that  
 22 announcement?  
 23 Q. Yes.  
 24 A. Yes, I did.  
 25 Q. Did you also tell him that you hadn't

1 traded?  
 2 A. I think. I don't remember specifically  
 3 the conversation, but I do remember mentioning to  
 4 Jordan that I wasn't going to trade, and I believe it  
 5 was prior to the announcement.  
 6 Q. So you don't remember whether you told  
 7 him after the announcement?  
 8 A. No.  
 9 Q. So when he told you that he had traded,  
 10 what did you say to him? What was your response?  
 11 A. Again, I don't specifically what we  
 12 talked about. I do remember that he told me about it  
 13 and he told me -- after I asked him how much he  
 14 invested, he told me a couple of thousand.  
 15 MS. SUKHATME: Let's mark this Exhibit  
 16 36.  
 17 (NY-8869 Exhibit 36 was marked  
 18 for identification.)  
 19 Q. I am handing you what has been marked  
 20 Exhibit 36. It is a two-page document. The first  
 21 page is Bates stamped FS-000602, and these are AT&T  
 22 phone records for the phone number [REDACTED]  
 23 Are these your phone records?  
 24 A. Yes.  
 25 Q. The second page is Bates stamped

1 FS-000603.  
 2 Let's look at the calls on December  
 3 18th, so the call at 8:41 p.m., the phone number is  
 4 [REDACTED].  
 5 Do you know who that is?  
 6 A. No. It is probably somewhere in my  
 7 phone, but I don't recognize the number.  
 8 Q. The next call is at 10:15 p.m. and the  
 9 phone number is [REDACTED].  
 10 Do you recognize that number?  
 11 A. No, I'm sorry. I don't think I would  
 12 recognize any numbers.  
 13 Q. Do you recognize the next number,  
 14 [REDACTED]?  
 15 A. No.  
 16 Q. Do you remember having conversations on  
 17 December 18th in the evening, this would have been  
 18 the day before Mr. Ackman's announcement?  
 19 A. I do know that I had conversations on  
 20 that evening because I did check my billing records.  
 21 MR. RYAN: We can stipulate, and you  
 22 can confirm this, but my understanding is the  
 23 [REDACTED] number is Jordan's phone.  
 24 A. Can I write on this?  
 25 Q. I'm sorry, no.

1 MS. SUKHATME: Here is an extra copy  
2 you can write on. If it helps you, that's fine.

3 MR. RYAN: I believe the 315 number,  
4 [REDACTED], is Kathryn Nave's number.

5 MS. SUKHATME: I will just note for the  
6 record you made some marks on Exhibit 36.

7 A. On the record, sorry about that.

8 Q. It's okay.

9 That's just for later in case someone  
10 asks why there are marks on the exhibit.

11 Do you remember speaking to Mr. Peixoto  
12 on December 18th?

13 A. I don't remember the details of our  
14 conversations. Looking at the phone billings, yes,  
15 we did have conversations on that day, but I don't  
16 remember what we talked about.

17 Q. Do you remember speaking to Ms. Nave on  
18 December 18th?

19 A. Again, I don't remember specifics.

20 MR. RYAN: Was Jordan calling to ask  
21 you the time period of the timing of the  
22 presentation?

23 THE WITNESS: I can't say for sure that  
24 we talked about it. But during that time period, he  
25 kept calling me about and reaching out to me about

1 the presentation. So yes, it is possible.

2 Q. If you look back on Exhibit 36 you will  
3 see at 10:15 there is a call from Mr. Peixoto and at  
4 10:19 you text him saying, "I am going straight to  
5 voicemail." And he responds, "No worries?"

6 A. Yes.

7 Q. Do you remember if he asked about the  
8 date of the presentation and you followed up by  
9 attempting to contact Mr. Adamaski to get that date?

10 A. Again, I can't say for sure that  
11 happened, but it is possible. Something like this  
12 occurred a couple of times during that time period.

13 Q. Still on Exhibit 36, the phone record,  
14 if you keep going down on December 19th at 2:49 p.m.,  
15 there is an incoming call from [REDACTED], which we  
16 have identified as Mr. Peixoto.

17 Do you remember him calling you December  
18 19th at 2:49 p.m.?

19 A. Yes, that was the phone call, he called  
20 me at work and told me about the news release  
21 regarding Herbalife.

22 Q. So prior to that call from him, did you  
23 know anything about the Herbalife announcement,  
24 Mr. Ackman's announcement on 18th?

25 A. No.

1 the presentation, so it is possible that he asked  
2 about the date of the presentation at that point.  
3 And I couldn't reach Mariusz, so I called his  
4 girlfriend to ask where Mariusz was.

5 BY MS. SUKHATME:

6 Q. If you look at Exhibit 33, that one is  
7 the text with Mr. Peixoto?

8 A. Okay.

9 Q. If you look at December 18th, there is a  
10 text at 2219?

11 A. Going straight to voicemail?

12 Q. At 10:19?

13 A. Yes.

14 Q. It states, "I am going straight to  
15 voicemail."

16 That's the text from to Mr. Peixoto?

17 A. Yes.

18 Q. Do you remember what you meant when you  
19 said, "I am going straight to voicemail"?

20 A. I don't.

21 Q. Do you believe it is possible that you  
22 meant you were calling Mr. Adamaski and it was going  
23 straight to voicemail?

24 A. It is possible. Again, as I said, at  
25 that point Jordan kept bugging me about the date of

1 Q. That was the first you heard of it?

2 A. Yes.

3 Q. If you keep going down that evening,  
4 December 19th, 2012, at 11:03 p.m. there was another  
5 incoming call from Mr. Peixoto from the [REDACTED]  
6 number?

7 A. I'm sorry?

8 Q. December 19th, 11:03 he called you  
9 again.

10 Do you remember speaking to him again  
11 that evening?

12 A. No, I don't.

13 Q. Did Mr. Peixoto ever show you any  
14 research that he had done on Herbalife?

15 A. No, he didn't.

16 Q. When was the last time you spoke with  
17 Mr. Peixoto?

18 A. It was on October 3rd of this year.

19 Q. What did you talk about?

20 A. The phone call happened right after you  
21 called me on October 2nd. I left Jordan a voicemail  
22 that evening, and I don't remember if I called him or  
23 he called me back, but it happened in the morning of  
24 October 3rd. We talked about the call. He told me  
25 you called him as well and he didn't talk to you and

1 he retained lawyers and his lawyers will reach out to  
2 me.

3 Q. Did you ask him any other questions?

4 A. I did ask him about how much he made,  
5 that was the call, and he told me \$20,000.

6 That's it. I mean, we were talking  
7 about how is this possible? Why are you calling us?  
8 We were quite nervous about the whole thing. And I  
9 did tell him I don't know why I am involved in this  
10 because I didn't invest any money.

11 Q. Well, when was the first time you spoke  
12 with Mr. Adamaski about Mr. Peixoto's trading?

13 A. I told Mariusz about Jordan trading  
14 sometime in October. I was first reluctant to tell  
15 Mariusz that I knew Jordan traded, so at first I said  
16 I was surprised by it. But then I told Mariusz that  
17 I learned -- I knew about Jordan trading before.

18 Q. Why were you reluctant to tell him?

19 A. I don't know. I felt bad that Mariusz  
20 is even involved in the situation because he  
21 shouldn't have been. He had no involvement in this.

22 Q. Why didn't you tell Mr. Adamaski that  
23 Jordan was interested in trading Herbalife back in  
24 2012 when you knew about it?

25 A. I didn't think it was relevant.

1 Q. When you asked him about the date of the  
2 presentation, did you ever tell him why you were  
3 asking?

4 A. We never -- I never got the date of the  
5 presentation from Mariusz, and I was not able to  
6 reach him at this point.

7 MR. RYAN: You need to answer the  
8 question. It is a good question.

9 When you communicated to Mariusz that  
10 you wanted to know the date of the presentation, did  
11 you tell Mariusz you wanted to know the date of the  
12 presentation because Jordan or you wanted to trade?

13 THE WITNESS: No, I didn't.

14 BY MS. SUKHATME:

15 Q. Why not?

16 A. I don't think it was relevant.

17 Q. What did you think his reaction would be  
18 if you told him?

19 A. I don't know.

20 Q. What was his reaction when you told him  
21 in October 2013 that you knew about Jordan's trading?

22 A. At that point both Mariusz and I agreed  
23 that Jordan was an idiot doing it given the situation  
24 and given your call and what was happening.

25 Q. Why did you agree that he was an idiot?

1 A. If we are getting a phone call from the  
2 SEC, that means that something is wrong and  
3 suspicious.

4 Q. So back in December of 2012, prior to  
5 the presentation and the announcement, did you  
6 believe that there was anything wrong with  
7 Mr. Peixoto trading?

8 A. No.

9 Q. Did you believe there would be anything  
10 wrong with you trading back in December 2012?

11 A. No.

12 Q. Then why would you think Mr. Peixoto was  
13 an idiot for doing it?

14 A. Again, we received a phone call from you  
15 guys asking about Jordan and asking about Mariusz and  
16 asking about Herbalife, it was clear that something  
17 is not right.

18 Q. Do you believe now that Mr. Peixoto did  
19 something wrong?

20 A. I don't know.

21 MS. SERPE: I really don't think he  
22 should answer like that.

23 MS. SUKHATME: I only asked if he  
24 believes what Mr. Peixoto did was wrong, not illegal,  
25 but wrong. He can say "yes" or "no".

1 A. I honestly don't think we did anything  
2 wrong. We didn't have any information. It was a  
3 guessing game, and, to me, guessing was not  
4 sufficient.

5 MR. RYAN: Why did you think it would  
6 be okay to trade on the stock price of Herbalife?  
7 What was it about Mariusz's work that  
8 made you think it was okay?

9 THE WITNESS: He reviews publicly  
10 available information. There is nothing actually  
11 from the company that he obtained. It was all --  
12 hedge funds don't have information from companies.  
13 They operate based on information  
14 available to the public.

15 MR. RYAN: So you believed that he was  
16 finding public information.

17 Did Mariusz ever tell you he had insider  
18 information about Herbalife?

19 THE WITNESS: No, we never had those  
20 discussions.

21 BY MS. SUKHATME:

22 Q. Did you believe the date of the  
23 presentation was public information?

24 A. I didn't think about it, no. Someone  
25 was receiving the presentation, so I guess it wasn't

1 like it was a secret.

2 BY MR. BRUCCULERI:

3 Q. Why couldn't Jordan get it from any  
4 source?

5 A. I don't know. Maybe he thought -- I  
6 don't know.

7 BY MS. SUKHATME:

8 Q. To be clear, did you believe that the  
9 fact that Pershing Square was shorting or planning a  
10 short position on Herbalife was public information?

11 MR. RYAN: Wait a minute. He never  
12 testified ever at any time today that he knew that  
13 Pershing Square was going to short.

14 MS. SUKHATME: I didn't ask him if he  
15 knew.

16 MR. RYAN: You said, "Did you believe?"

17 MS. SUKHATME: No, no. I didn't ask if  
18 he if knew they were shorting it. I asked if you  
19 believe that the fact that they were shorting it was  
20 public information.

21 MR. RYAN: That's even worse. That  
22 assumes that he did know it.

23 MS. SUKHATME: No, no, no.

24 MR. RYAN: Your question entirely  
25 assumes that --

1 A. Yes.

2 Q. Did you know at the time or believe at  
3 the time that the fact that Pershing Square was  
4 researching Herbalife was public information?

5 A. No, I didn't really think about it, no.

6 I think it was not public because Pershing Square  
7 wouldn't want the competition to know that they are  
8 working on Herbalife. That was my understanding.

9 Q. So your understanding was Pershing  
10 Square wanted that information to not be public; is  
11 that correct?

12 A. Yes.

13 MR. RYAN: At what time period?

14 MS. SUKHATME: December 2012 prior to  
15 the presentation.

16 MR. RYAN: Prior to presentation.

17 BY MS. SUKHATME:

18 Q. Prior to Mr. Ackman announcing that  
19 Pershing Square was taking a short position on  
20 Herbalife on December 19th, prior to December 19th,  
21 did you believe that Pershing Square wanted that  
22 information that they were working on Herbalife or  
23 were going to announce anything about Herbalife? Did  
24 you believe that they wanted that to be nonpublic?

25 A. I believed that they didn't want other

1 BY MS. SUKHATME:

2 Q. I am not assuming that you knew it or  
3 didn't know it.

4 I am just asking whether you believe now  
5 that that was public information?

6 MS. SERPE: Does he even know?

7 You assume multiple facts in that  
8 question.

9 A. Can you repeat that? That's a lot of  
10 questions.

11 MS. SERPE: You are assuming he knows  
12 that Pershing Square is going to do X, Y or Z.

13 MR. RYAN: Let's read back the  
14 question. We can get into tit for tat.

15 MS. SUKHATME: Let's start over.

16 BY MS. SUKHATME:

17 Q. You knew Mariusz was working on  
18 Herbalife?

19 A. Yes.

20 Q. You knew Pershing Square was doing  
21 research on Herbalife; correct?

22 A. Yes.

23 Q. And you knew that Pershing Square was  
24 going to make a presentation about Herbalife,  
25 correct?

1 people, other funds to know about what they are  
2 working on.

3 Q. Did you prior to December 19th, 2012,  
4 did you believe that Pershing Square wanted to keep  
5 the date of the their Herbalife presentation  
6 non-public?

7 A. I didn't really think about it, no.

8 BY MR. BRUCCULERI:

9 Q. Did you think prior to December 19th,  
10 did you believe there was another source for the  
11 presentation date rather than -- basically Jordan's  
12 trying to ask you the presentation date. You kept  
13 asking Mariusz for it.

14 Was there another source where you could  
15 have gotten that information?

16 A. I didn't look at other sources to find  
17 out when the presentation was going to happen.

18 MS. SERPE: I think the question is  
19 about asking believe are getting confusing. I don't  
20 understand what you mean by believe.

21 Q. Did you know of another source that had  
22 this information?

23 MS. SERPE: Right, he either knows the  
24 fact or doesn't know fact. I don't think he is here  
25 to opine. It will keep it cleaner.

1 MS. SUKHATME: Okay.  
 2 BY MS. SUKHATME:  
 3 Q. In the past two years, have you  
 4 exchanged any money or gifts of any value with  
 5 Mr. Peixoto?  
 6 A. No. I would buy him a drink, he would  
 7 buy me another drink in a social setting.  
 8 Q. Have you exchanged any money or gifts of  
 9 more than \$50 in the last two years with Mr. Peixoto?  
 10 A. No.  
 11 Q. Did you have any conversations with  
 12 anyone else regarding Herbalife in 2012?  
 13 A. Yes.  
 14 Q. With who?  
 15 A. With people who knew Mariusz. So his  
 16 girlfriend, Kathryn; Carlos, our mutual friend. I am  
 17 not sure about Scott Lyman, I might have mentioned it  
 18 during a social event. I can't think of any others.  
 19 Q. What conversations did you have with  
 20 Kathryn?  
 21 A. Conversations with Kathryn would be  
 22 Kathryn would be in the room together with Mariusz  
 23 and Mariusz and I would sometimes talk about what he  
 24 was doing, so Kathryn was present. But we would not  
 25 have face-to-face private conversations, Kathryn and

1 point was not living in New York City, so he would  
 2 sometimes come visit us and stay for weekends on our  
 3 couch.  
 4 Q. While he visited there were  
 5 conversations about Herbalife?  
 6 A. Again, very brief conversations. I  
 7 can't put a date on it. I don't remember any  
 8 details.  
 9 Q. Based on those conversations, do you  
 10 have reason to believe that Mr. Salmon knew  
 11 Mr. Adamaski was working on Herbalife?  
 12 MS. SERPE: Don't guess.  
 13 A. I don't know. I would say yes, he knew.  
 14 MS. SERPE: Are you guessing? Do not  
 15 guess.  
 16 You don't want him to guess, why don't  
 17 you ask him what the basis was.  
 18 MS. SUKHATME: He testified there was  
 19 conversation about Herbalife with Mr. Salmon and  
 20 Mr. Adamaski.  
 21 BY MS. SUKHATME:  
 22 Q. Is that correct?  
 23 A. Yes.  
 24 Q. Based on those conversations, I am ask  
 25 whether he had reason to believe Mr. Salmon knew

1 I about it.  
 2 BY MR. MUI:  
 3 Q. Do you know if Mr. Adamaski traded  
 4 Herbalife securities?  
 5 A. No, I don't.  
 6 If he traded?  
 7 Q. Right.  
 8 A. No, I don't know.  
 9 BY MS. SUKHATME:  
 10 Q. Mr. Salmon, what conversations did you  
 11 have with Mr. Salmon about Herbalife?  
 12 A. I don't remember any details about the  
 13 conversations. They happened also when Mariusz was  
 14 in the room. Carlos and I, if the conversations --  
 15 when the conversations happened, they were very brief  
 16 in nature. Again, where is Mariusz, how is he doing?  
 17 Things like that.  
 18 Q. Just to get some background, how do you  
 19 know Mr. Salmon?  
 20 A. I know Carlos through Mariusz, and they  
 21 went to college together. They are very good friends  
 22 and I developed a friendly relationship with Carlos.  
 23 Q. In 2012, how often would you see  
 24 Mr. Salmon about?  
 25 A. 2012, once a month maybe. He at that

1 Mr. Adamaski was working on Herbalife?  
 2 A. Yes.  
 3 Q. Did you have any conversations just with  
 4 Mr. Salmon without Mr. Adamaski present about  
 5 Herbalife?  
 6 A. I don't recall any conversations like  
 7 that.  
 8 Q. Did you talk to -- I think we covered  
 9 Kathryn Nave and Carlos Salmon.  
 10 Did you discuss Herbalife with anyone  
 11 else other than those two and Jordan Peixoto and  
 12 Mr. Adamaski in 2012?  
 13 A. I don't want to guess.  
 14 Q. Just if you remember.  
 15 A. I don't remember, no.  
 16 Q. Do you have knowledge of anyone else  
 17 other than Mr. Peixoto trading in Herbalife in 2012?  
 18 A. No.  
 19 Q. Mr. Adamaski, does he work for Pershing  
 20 Square currently?  
 21 A. No.  
 22 Q. When did he leave Pershing Square?  
 23 A. He left Pershing Square at the end of  
 24 September 2013.  
 25 Q. Do you know why he left Pershing Square?

1 A. Yes. Pershing Square did a due  
2 diligence on his e-mails and text messages, private  
3 and work, and they found some embarrassing events and  
4 they decided to let him go.

5 Q. Did he tell you what they found  
6 specifically?

7 A. Yes.

8 Q. What did they find?

9 A. They found a message from Mariusz to a  
10 friend about Adderall. Mariusz had a prescribed  
11 Adderall, but he run out and he asked a friend if his  
12 friend had extra Adderall he could use.

13 And then there was an e-mail about  
14 Mariusz and his wife at that time, an angry e-mail.  
15 I don't remember the details about the e-mail, but it  
16 just looked like a green card was involved there.  
17 And the company or Pershing Square determined that  
18 things like this, say that he is cutting corners and  
19 they have to let him go.

20 Q. When did they find these e-mails, as far  
21 as you remember?

22 A. I don't know.

23 BY MR. MUI:

24 Q. You mentioned earlier in testimony that  
25 Jordan knew about the presentation?

1 it was?

2 THE WITNESS: I don't know.

3 MR. RYAN: Did he tell you the date of  
4 the presentation?

5 THE WITNESS: No.

6 MS. SUKHATME: Let's mark this Exhibit  
7 37.

8 (NY-8869 Exhibit 37 was marked  
9 for identification.)

10 BY MR. MUI:

11 Q. Can you just go back to Exhibit 32, the  
12 Gmail chat with Chris Jennings. I just want to look  
13 at the conversation that occurred at 3:01 p.m.,  
14 specifically the last sentence, "I was gonna buy put  
15 options today but I thought they would announce it  
16 TMR."

17 I assume TMR is tomorrow?

18 A. Yes.

19 Q. What is your basis for stating that they  
20 would announce it tomorrow?

21 A. At that point I knew the date. It was  
22 in the news release that it was going to happen on  
23 20th.

24 Q. But you thought it was going to be  
25 announced tomorrow?

1 A. Yes.

2 Q. I wasn't clear, how did he know about  
3 the presentation?

4 A. I told him about the presentation. The  
5 first time I mentioned to Jordan what Mariusz was  
6 working on, I mentioned he was working on a  
7 presentation.

8 Q. Did Mr. Adamaski mention the  
9 presentation to Jordan?

10 A. No.

11 Q. Did Mr. Adamaski have any conversations  
12 with Mr. Peixoto about Herbalife?

13 A. Not to my knowledge, no.

14 MR. RYAN: Can I ask question about the  
15 presentation?

16 MS. SUKHATME: Sure.

17 MR. RYAN: How did you come to learn  
18 about the date of the presentation or the rough time  
19 period? Why did you think Mariusz told you that?  
20 How did you learn it?

21 THE WITNESS: It came up in a  
22 conversation, what are you up to, what are you  
23 working on, what's going on? He said he was working  
24 on this big presentation.

25 MR. RYAN: Why would he tell you when

1 A. That's a figure of speech, I think. At  
2 that point I knew it was going to happen the next day  
3 because it was announced. So I don't -- I didn't  
4 ever know about the exact date of the presentation up  
5 until it was announced.

6 MS. SERPE: Before you move on, before  
7 you said you knew that the date of the presentation  
8 generally had changed.

9 THE WITNESS: Yes.

10 MS. SERPE: What was your basis for  
11 that knowledge?

12 THE WITNESS: I knew from conversations  
13 with Mariusz that the presentation was going to  
14 happen earlier than December. I think it was either  
15 at the end of the summer or the beginning of the fall  
16 of 2012. But then it was pushed, and I remember  
17 Mariusz was just very upset about the fact that it  
18 was pushed because that meant he was literally going  
19 to spend another three months at his desk. So I  
20 don't know the reason why it was pushed.

21 MS. SERPE: Did you have any basis to  
22 believe in December that the presentation was going  
23 to be happening in the short term?

24 THE WITNESS: Yes, I did have an  
25 understanding that the presentation was going to

1 happen at the end, sometime in December.  
 2 MS. SERPE: What was basis of that  
 3 understanding?  
 4 THE WITNESS: Conversations with  
 5 Mariusz.  
 6 MS. SERPE: Anything other than  
 7 conversations with Mariusz that led you to believe  
 8 that the presentation was going to happen at some  
 9 point in December?  
 10 THE WITNESS: No, I don't recall  
 11 anything else.  
 12 BY MS. SUKHATME:  
 13 Q. I am handing you what has been marked as  
 14 Exhibit 37. This is a one-page document. I believe  
 15 the Bates stamp is FS-000145. It's an e-mail. The  
 16 subject is "Tomorrow World." It is an e-mail  
 17 between you and Mariusz Adamaski. It is also in  
 18 Polish, so I will ask you if you could translate.  
 19 Starting at the top, there is an e-mail  
 20 from Mariusz to you on Thursday, September 26, 2013  
 21 at 9:14 a.m.  
 22 Can you read that?  
 23 A. Yes. "Filip, I can't go to Atlanta this  
 24 weekend. Ackman wants me to meet with the attorneys  
 25 on Monday, last day of my work at Pershing. He also

1 wants to meet with me this weekend to talk about our  
 2 split. I told him about my plans but he said that it  
 3 is very important and we have to meet before  
 4 September 30th. Take my tickets and ask if someone  
 5 wants them. I have a plane ticket booked for  
 6 tomorrow morning, coming back on Monday.  
 7 Unfortunately, this ticket is not transferable,"  
 8 curse words in Polish.  
 9 Q. And is this your response to him the  
 10 same day at 10:12 a.m.?  
 11 A. Yes, curse words, "Terrible. I am going  
 12 to ask my friends but it might be pretty hard to find  
 13 anyone. I am going to let you know. Wow," curse  
 14 word, "Whatever. There are more important things  
 15 than Tomorrow Land. Good luck."  
 16 Mariusz responds, "I am wondering what  
 17 they want to talk about. I hope it is only the  
 18 formal stuff."  
 19 Q. Did Mr. Adamaski end up not going to  
 20 Atlanta?  
 21 A. He didn't go.  
 22 Q. So did he talk to you about anything  
 23 about his meeting with Mr. Ackman and the lawyers  
 24 after this e-mail?  
 25 A. No.

1 Q. After this e-mail, have you had any  
 2 conversations with Mr. Adamaski at all about what  
 3 happened during this weekend?  
 4 A. No. We didn't talk about the meeting he  
 5 had with Ackman and whoever at Pershing.  
 6 MS. SUKHATME: Mark this Exhibit 38,  
 7 please.  
 8 (NY-8869 Exhibit 38 was marked  
 9 for identification.)  
 10 Q. I am handing you what has been marked as  
 11 Exhibit Number 38. It's a one-page document. The  
 12 Bates stamp I believe is FS-00099. It is a Gmail  
 13 chat between you and Mr. Adamaski dated September 10,  
 14 2012, 5:18 p.m., where you say, "Hey, do you have  
 15 access to some kind of database on different funds?"  
 16 The response is in Polish.  
 17 Can you translate that?  
 18 A. "Maybe. Let's talk about it at home."  
 19 And I say "Okay."  
 20 Q. Why did you ask him this question?  
 21 A. At that time, I was doing research for  
 22 work on a small church fund in Boston that was just  
 23 in preparation for a pitch to their business and it  
 24 was a tiny fund and I wanted to see if Mariusz has  
 25 some kind of access. You know, he is a research

1 analyst. I thought he might have access to different  
 2 databases where I can get some information about that  
 3 fund.  
 4 Q. Did you discuss it at home later on?  
 5 A. Yes.  
 6 Q. What did he say?  
 7 A. I described the fund. And he said he  
 8 didn't have any information. It was a tiny fund,  
 9 thousands of dollars. There was literally no  
 10 information about it, so that was it.  
 11 MS. SUKHATME: Mark this Exhibit 39,  
 12 please.  
 13 (NY-8869 Exhibit 39 was marked  
 14 for identification.)  
 15 Q. I am handing you what has been marked as  
 16 Exhibit 39, a one-page e-mail, Bates stamped  
 17 FS-000127, also in Polish, an e-mail from you to  
 18 Mr. Adamaski, dated Friday, January 18, 2013.  
 19 Can you translate the subject?  
 20 A. It is really hard to reach you.  
 21 Q. And e-mail itself?  
 22 A. "We have to talk about the apartment."  
 23 Q. What was this about?  
 24 A. At the beginning of 2013 we discussed  
 25 moving to another place and we initially thought

1 about moving in together again, into an another  
2 building. So we did have discussions about the  
3 possibility of moving out for quite a while in 2013.

4 Q. Did you end up moving?

5 A. Yes.

6 Q. When did you move?

7 A. In April of 2013 -- yes, I think it was  
8 April.

9 Q. And you decided not to live together,  
10 right?

11 A. We decided not to live together but we  
12 ended up living in the same building.

13 Q. Was that purposeful?

14 A. Mariusz found a place while I was on  
15 vacation in Poland. I came back and I had very  
16 little time to find it, and he suggested that I  
17 should look into the building he moved into. And I  
18 did.

19 Q. I want to ask you question about  
20 Mr. Salmon.

21 A. Yes.

22 Q. Did you or Mariusz make any payments to  
23 Mr. Salmon in 2012? When I say payments, more than  
24 \$50?

25 MS. SERPE: Can you break it up into

1 messages that includes you, Mariusz Adamaski and  
2 Carlos Salmon, the Bates stamp is 000775.

3 You will see towards the bottom of the  
4 page on November 3, 2012 at 10:24 there is a received  
5 text that says, "Can you get me the access today? I  
6 really need it, bro. You know what I am talking  
7 about"?

8 A. Yes.

9 Q. Do you know what that text is about?

10 A. No.

11 Q. Was that text sent by Mr. Adamaski?

12 A. It is -- from here, I mean it is hard to  
13 say from here. I received this message so it was  
14 either from Mariusz or Carlos.

15 Q. Do you know if it was from Mariusz or  
16 Carlos?

17 A. I don't know.

18 Q. Do you know who it was intended for?

19 A. No.

20 Q. Was it intended for you?

21 A. It's possible. I don't know what it is  
22 about and who it was to, whoever sent it, it was  
23 either to me or the third person in that  
24 conversation.

25 Q. But you don't remember?

1 two questions?

2 MS. SUKHATME: Sure.

3 Q. I will ask about you first.

4 Did you personally make any payments to  
5 Mr. Salmon in 2012?

6 A. I don't believe I did.

7 Q. Do you know if Mr. Adamaski made any  
8 payments to Mr. Salmon in 2012?

9 A. I don't know.

10 Q. But you don't know of any?

11 A. I don't know of any.

12 Q. Did Mr. Salmon ever provide any drugs  
13 for you in 2012?

14 MS. SERPE: I don't want him answering  
15 any questions about drugs. I advise him not to  
16 answer that.

17 You should not answer that question.

18 If you would please move on.

19 MS. SUKHATME: Okay.

20 MS. SUKHATME: We will mark this  
21 Exhibit 40.

22 (NY-8869 Exhibit 40 was marked  
23 for identification.)

24 Q. I am handing you what has been marked  
25 Exhibit Number 40. It is a one-page list of text

1 A. I don't.

2 MS. SUKHATME: Do you have any more  
3 questions before we take a break?

4 MR. MUI: No.

5 MS. SUKHATME: Let's go off the record  
6 at 12:46.

7 (Luncheon recess taken.)

8 MS. SUKHATME: We are back on the  
9 record at 2:11 p.m.

10 While we were off the record, we did  
11 have discussions of substance. We had some  
12 discussion about follow-up questions and your  
13 assertion or possible assertion of the Fifth.

14 If you want to add to that, you can.

15 MR. RYAN: That's fine.

16 My only clarifying question is: You  
17 spoke earlier in your testimony that when you spoke  
18 with Jordan you were extremely nervous in October  
19 after the SEC contacted you.

20 THE WITNESS: Yes.

21 MR. RYAN: Can you tell us why you were  
22 so nervous?

23 THE WITNESS: My primary concern at that  
24 point, and still is, is my visa situation. Currently  
25 I am on an H1B visa sponsored by my company. And I

1 was very concerned that if my company learns anything  
2 about the SEC calling me or investigating anything, I  
3 will be laid off and then I will have a month to just  
4 basically pack my bags and go home.

5 So that's my primary concern.

6 MR. RYAN: Okay.

7 BY MR. MUI:

8 Q. When did you first become aware of the  
9 SEC's investigation of Herbalife?

10 A. On the advice of counsel, I invoke my  
11 rights under the Fifth Amendment and decline to  
12 answer.

13 Q. Did you read any publications indicating  
14 that the SEC had an investigation of Herbalife.

15 MR. RYAN: For purposes of the  
16 transcript, can he say he will take the Fifth and you  
17 will insert this statement?

18 MS. SUKHATME: We can do that.

19 MR. RYAN: Just say I will take the  
20 Fifth.

21 A. On the advice of counsel, I invoke my  
22 rights under the Fifth Amendment and decline to  
23 answer.

24 Q. A document previously marked Exhibit  
25 Number 30 in this matter is a subpoena to you which

1 concerning your communications with Mariusz Adamaski.

2 Did you destroy or dispose of any  
3 documents that are responsive to the SEC's request?

4 A. On the advice of counsel, I invoke my  
5 rights under the Fifth Amendment and decline to  
6 answer.

7 Q. This document request calls for  
8 documents, texts and communications between yourself  
9 and Mr. Carlos Salmon.

10 Did you dispose of or destroy any  
11 documents that are responsive to that request?

12 A. On the advice of counsel, I invoke my  
13 rights under the Fifth Amendment and decline to  
14 answer.

15 Q. Did you receive any communications or  
16 correspondence between yourself and Mr. Jordan  
17 Peixoto in the time frame of October, November and  
18 December of 2012?

19 A. On the advice of counsel, I invoke my  
20 rights under the Fifth Amendment and decline to  
21 answer.

22 Q. Can you tell us approximately how many  
23 e-mails you received from Mr. Peixoto during that  
24 time period?

25 A. On the advice of counsel, I invoke my

1 calls for the production of documents.

2 Did you produce all documents that were  
3 called for in this document request?

4 A. On the advice of counsel, I invoke my  
5 rights under the Fifth Amendment and decline to  
6 answer.

7 Q. Are you aware of any documents that are  
8 responsive to the subpoena that were not provided?

9 A. On the advice of counsel, I invoke my  
10 rights under the Fifth Amendment and decline to  
11 answer.

12 Q. Did you destroy or dispose of any  
13 documents responsive to the subpoena?

14 A. On the advice of counsel, I invoke my  
15 rights under the Fifth Amendment and decline to  
16 answer.

17 Q. The subpoena calls for documents,  
18 e-mails, texts and communication between yourself and  
19 Mr. Jordan Peixoto.

20 Did you destroy any documents related to  
21 that request?

22 A. On the advice of counsel, I invoke my  
23 rights under the Fifth Amendment and decline to  
24 answer.

25 Q. This document request requests documents

1 rights under the Fifth Amendment and decline to  
2 answer.

3 Q. Were there in excess of 50 e-mails?

4 A. On the advice of counsel, I invoke my  
5 rights under the Fifth Amendment and decline to  
6 answer.

7 Q. Did you have a reason for disposing of  
8 e-mails in your e-mail account that were responsive  
9 to the subpoena?

10 A. On the advice of counsel, I invoke my  
11 rights under the Fifth Amendment and decline to  
12 answer.

13 MR. RYAN: I know there is no objection  
14 here, but that certainly assumes facts not in  
15 evidence, did you have reason for disposing of  
16 e-mails.

17 Q. Do you know if Mr. Peixoto disposed of  
18 any documents?

19 A. On the advice of counsel, I invoke my  
20 rights under the Fifth Amendment and decline to  
21 answer.

22 Q. Do you know if Mr. Peixoto destroyed any  
23 documents concerning Herbalife?

24 A. On the advice of counsel, I invoke my  
25 rights under the Fifth Amendment and decline to

1 answer.  
 2 Q. Do you know if Mr. Peixoto destroyed any  
 3 documents concerning your communications with him?  
 4 A. On the advice of counsel, I invoke my  
 5 rights under the Fifth Amendment and decline to  
 6 answer.  
 7 Q. I have no further questions at this  
 8 time. We may, however, call you again to testify in  
 9 this investigation. Should that be necessary, we  
 10 will contact your counsel.  
 11 Mr. Szymik, do you have any statements  
 12 you want to add to your testimony today?  
 13 A. No.  
 14 MR. MUI: Counsel?  
 15 MR. RYAN: No, thank you.  
 16 MS. SUKHATME: Okay. Thank you for  
 17 your testimony today.  
 18 And we are off the record at 2:19 p.m.  
 19 on November 18, 2013.  
 20 (Time noted: 2:19 p.m.)  
 21  
 22  
 23  
 24  
 25

1  
 2  
 3  
 4  
 5  
 6  
 7  
 8 I, INA SCHLEIMER, hereby certify that  
 9 the foregoing transcript consisting of 101 pages is a  
 10 complete, true and accurate transcript of the  
 11 investigative hearing, held on Monday, November 18,  
 12 2013, at 3 World Financial Center, New York, New  
 13 York, in the matter of HERBALIFE.  
 14 I, further certify that this proceeding  
 15 was reported by Margaret Eustace and that the  
 16 foregoing transcript has been scoped by me.  
 17  
 18  
 19 \_\_\_\_\_  
 20 Ina Schleimer Date  
 21  
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 25

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 4 UNITED STATES  
 5 SECURITIES AND EXCHANGE COMMISSION  
 6 REPORTER'S CERTIFICATE  
 7  
 8 I, Margaret Eustace, reporter, hereby  
 9 certify that the foregoing transcript of 101 pages is  
 10 a complete, true and accurate transcript of the  
 11 testimony indicated, held on November 18, 2013 at 3  
 12 World Financial Center, New York, New York, in the  
 13 Matter of HERBALIFE.  
 14 I further certify that this proceeding  
 15 was reported by me and that the foregoing transcript  
 16 was prepared under my direction.  
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 20 Margaret Eustace Date  
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PROOFREADER'S CERTIFICATE

In the Matter of: HERBALIFE

Witness: FILIP SZYMIK

File Number: NY-8869

Date: November 18, 2013

Location: 3 World Financial Center,  
New York, New York

This is to certify that I, Margaret Eustace, 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.

\_\_\_\_\_  
Margaret Eustace                      Date