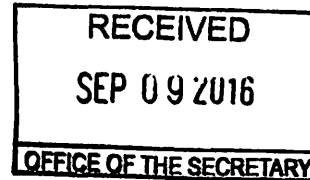


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Administrative Proceeding
File No. 3-17184



In the Matter of

CHRISTOPHER M. GIBSON,

Respondent.

**OPPOSITION OF RESPONDENT GIBSON TO DIVISION OF ENFORCEMENT'S
MOTION IN LIMINE REQUESTING THAT PORTIONS OF RESPONDENT'S PRIOR
TESTIMONY BE ADMITTED INTO EVIDENCE**

Respondent Christopher M. Gibson submits this opposition to the Division of Enforcement's Motion *In Limine* ("Motion"). The Motion requests that the Hearing Officer issue an order providing that designated portions of the transcripts of the sworn testimony of Respondent Gibson be admitted into evidence during the hearing in this matter.

The investigative testimony of Respondent Gibson should not be admitted into evidence because the Rules of Practice do not provide for the admission of prior sworn statements of parties. In the event that the Hearing Officer determines to enter the order requested by the Division of Enforcement, Respondent Gibson requests that such order provide for the introduction into evidence of portions of Respondent's investigative testimony attached to this opposition.

ARGUMENT

The purpose of *in limine* motions is to enable a court to rule on disputes over the admissibility of discrete items of evidence. *New America Marketing FSI LLC v. MGA Entertainment, Inc.*, No. 14-CV-4266, 2016 WL 3525302 (S.D.N.Y. May 20, 2016). In *New America Marketing*, the court added that “[a] court considering a motion *in limine* may reserve judgment until trial so that the motion is placed in the appropriate factual context.” *Id* at *3.

Neither the Entire Transcript nor Designations of Portions of the Transcripts of Respondent Gibson’s Investigative Testimony Should Be Admitted Into Evidence

Rule 235(a) governs the introduction of prior sworn statements of witnesses. The Rule provides that, at a hearing, any person wishing to introduce a prior, sworn statement of a witness, not a party, otherwise admissible in the proceeding, may make a motion setting forth the reasons therefor. The rule further provides that a motion to introduce a prior sworn statement may be granted if (i) the witness is dead; (ii) the witness is out of the country; (iii) the witness is unable to attend or testify because of age, sickness, infirmity, imprisonment, or other disability; or (iv) the party offering the prior sworn statement has been unable to procure the attendance of the witness by subpoena. The rule also provides that the Hearing Officer may grant a motion to introduce a prior sworn statement if it would be desirable in the interests of justice to allow the prior sworn statement; however, the Rule further provides that the presumption is that witnesses will testify orally in an open hearing.

The rule clearly excludes prior sworn statements of a party to a proceeding from the prior statements that may be admitted into evidence upon a motion made at the hearing. The Division of Enforcement, in its *in limine* motion, does not cite to another rule that permits the introduction into evidence of the prior sworn statement of a party. Thus, there is not a basis for admitting into

evidence the transcripts or designations of portions of the transcripts of Respondent Gibson's investigative testimony.

The Division of Enforcement makes several arguments in support of its Motion, but none overcome the specific exclusion from Rule 235(a) of prior sworn statements of parties. Initially, the Division of Enforcement asserts that portions of Respondent Gibson's "prior sworn testimony is indisputably relevant, which is the standard in this proceeding." However, Rule 320 provides that the Hearing Officer "may receive relevant evidence." Rule 320 clearly does not require the Hearing Officer to admit into evidence all evidence that may be relevant. Further, Rule 320 provides that the Hearing Officer "shall exclude all evidence that is irrelevant, immaterial or unduly repetitious." In that regard, it is important to note that the Division of Enforcement included Respondent Gibson on its list of potential witnesses. Further, the Division of Enforcement inquired whether Respondent Gibson would be present at the hearing through the conclusion of the Division of Enforcement's case and was advised that he would be present throughout the hearing. As Respondent Gibson will be present at the hearing and will testify, there is no basis for admitting portions of transcripts of his investigative testimony into evidence, as they would be unduly repetitious. Moreover, Rule 235(a) specifically provides that there is a presumption that witnesses will testify orally in an open hearing.

The Division of Enforcement's other arguments are equally unpersuasive. While a Hearing Officer may determine that Respondent Gibson's investigative testimony is not hearsay, such a determination does not mandate that the testimony be admitted into evidence. Similarly, while Respondent Gibson's investigative testimony may be reliable and probative, his testimony at the hearing in this matter will be as well. And the introduction of Respondent Gibson's investigative testimony will not contribute to the efficiency of the hearing and the completeness


of the record, rather it will be largely duplicative of his testimony at the hearing. In that regard, it is important to note that the subjects addressed in the portions of Respondent's investigative testimony designated by the Division of Enforcement will be included in the subjects covered during the direct examination of Respondent Gibson. Motion at 2-3. Thus, if the Division of Enforcement's Motion is granted, all concerned-the Hearing Officer, Respondent Gibson and the Division of Enforcement- will be forced to review both the portions of Respondent's investigative testimony designated by the Division of Enforcement and the transcript of the hearing. If Respondent's request to introduce counter designations of portions of Respondent's investigative testimony is granted, additional duplicative material will be reviewed by the Hearing Officer and the parties.

Notably, the Division of Enforcement's Motion does not address the recent amendments to the SEC's Rules of Practice. Among other things, the amendments add section (b) to Rule 235, which provides, in relevant part, that "An adverse party may use for any purpose investigative testimony or other sworn statement of a party." The amendment of Rule 235 to specifically permit the admission into evidence of investigative testimony eviscerates the Division of Enforcement's argument that the admission of Respondent Gibson's investigative testimony is consistent with Rule 235 (as) it now exists and as it will exist throughout the hearing in this matter.

CONCLUSION

As demonstrated above, the Division of Enforcement has failed to provide a basis for its Motion. In the event that the Hearing Officer determines to admit the portions of the transcripts designated by the Division of Enforcement, Respondent Gibson requests that the order entered by the Hearing Officer provide for the admission of Respondent Gibson's counter designations

which are identified in Attachment A to this opposition and also identified by highlighting on the relevant pages of the transcripts in Attachments B and C.


Thomas A. Ferrigno
Brown Rudnick LLP
601 Thirteenth Street NW, Suite 600
Washington, DC 20005

Paul F. Enzinna
Law Offices of Paul F. Enzinna, LLC
5425 Wisconsin Avenue, Suite 600
Chevy Chase, MD 20815

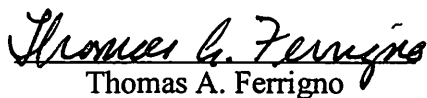
Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of September, 2016:

- (i) an original and three copies of the foregoing Opposition of Respondent Gibson to Division of Enforcement's Motion In Limine Requesting that Portions of Respondent's Prior Testimony be Admitted into Evidence were delivered by courier to the Office of the Secretary, Securities and Exchange Commission, 100 F Street, N.E. Washington, D.C. 20549;
- (ii) a copy of the foregoing Opposition of Respondent Gibson to Division of Enforcement's Motion In Limine Requesting that Portions of Respondent's Prior Testimony be Admitted into Evidence was sent by email to SemlerM@SEC.gov and sent by courier to the following:

H. Michael Semler
Assistant Chief Trial Attorney
Division of Enforcement
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
Counsel for Division of Enforcement
- (iii) a copy of the foregoing Opposition of Respondent Gibson to Division of Enforcement's Motion In Limine Requesting that Portions of Respondent's Prior Testimony be Admitted into Evidence was provided to Chief Administrative Law Judge Brenda P. Murray via email to ALJ@sec.gov.


Thomas A. Ferrigno

In the Matter of Christopher M. Gibson

September 8, 2016

No. 3-17184

**Respondent's Designations From The Investigative
Testimony of Christopher Gibson**

The Respondent objects to the introduction of any portions of prior testimony, but in the event the Division's designations are admitted, the Respondent designates the following portions of the transcripts of the investigative testimony of Christopher Gibson on March 19, 2015, and December 21, 2015, for admission into evidence at the hearing in this matter.

Begin			End			
Page	Line	Word	To	Page	Line	Word
VOLUME I						
22	17	Okay		23	4	sir
24	14	Okay		25	2	correct
27	8	Who		27	19	sir
27	24	Sure		29	14	Fund
30	25	Understood		31	5	it
31	12	Okay		33	4	materialized
37	12	Okay		37	19	2012
43	23	Could		44	1	GISF
44	8	Okay		46	9	so
46	17	So		47	11	money
48	14	And		48	16	family
49	1	Okay		49	14	that
54	7	Okay		54	19	Correct
55	2	And		55	10	it
55	20	Why		57	15	out
60	2	Okay		62	20	sir
62	24	Okay		63	3	money
64	2	Okay		64	17	along
65	7	Was		66	1	off
66	6	No		66	17	No
73	11	What		73	18	Yes
79	2	Were		79	24	Hull
81	9	And		82	10	me
85	17	And		97	11	me
115	4	Why		116	2	cared
119	21	Okay		120	21	him
128	4	Okay		129	17	solvency
132	3	Okay		132	20	out
143	21	MR.		145	4	nature
160	21	When		161	22	TRX

Attachment A

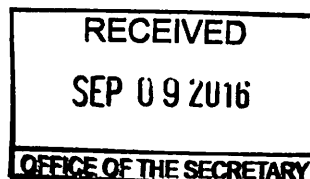
165	8	Mr.		165	9	32
165	24	Okay		166	23	speak
186	18	And		187	15	added
194	25	Do		196	9	him
204	10	Before		205	19	income
212	14	Okay		213	19	losses
249	20	Okay		250	5	broadly
258	25	We've		260	18	purpose
VOLUME II						
318	3	Okay		318	11	matter
318	19	Okay		319	8	same
342	24	You		343	12	sir
345	23	You		346	8	risk
360	2	Okay		360	25	determination
370	10	Okay		371	15	maintain
378	14	I		378	25	member
390	6	Okay		390	15	markets
400	24	Did		401	10	sir
407	13	What		408	6	services
459	3	Does		459	20	sir
478	23	Okay		478	25	clients
482	17	And		483	15	sir
510	16	Okay		510	20	And --
515	3	How		515	8	same
516	19	Okay		516	22	change
519	6	Okay		519	18	management
549	20	Okay		550	16	No
572	4	What		572	14	true
611	13	Okay		611	21	No
612	24	Okay		614	6	After
614	15	Why		614	18	clients
615	18	Okay		617	1	accessible
617	24	They're		618	5	Yes
618	17	So		619	9	going
620	4	Okay		621	11	client
639	14	Okay		639	17	them
657	22	Okay		658	24	shares
665	12	Why		665	18	parents
670	1	No		670	25	Yes
677	11	Okay		678	14	I --
680	20	Why		681	11	position
685	10	Okay		686	8	knows
686	22	Okay		689	18	it
689	25	What		691	22	I --

Attachment A

692	23	Okay		694	16	But --
724	12	Did		724	17	Gibson
726	13	We		727	10	Precisely
729	4	September		729	23	exposure
731	9	Well		732	7	risk
750	10	Tell		751	11	in
774	14	MR.		777	11	basis
779	22	MR.		780	13	degree

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. HO-12361-A
GEIER INTERNATIONAL)
STRATEGIES FUND)



WITNESS: Christopher Gibson

PAGES: 1 through 274

PLACE: Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C. 20549

DATE: Thursday, March 19, 2015

The above-entitled matter came on for hearing,
pursuant to notice, at 9:13 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:
2
3 On behalf of the Securities and Exchange Commission:
4 GEORGE BAGNALL, ESQ.
5 PAUL J. BOHR, ESQ.
6 RICKY SACHAR, ESQ.
7 Securities and Exchange Commission
8 Division of Enforcement
9 100 F Street, N.E.
10 Washington, D.C. 20549
11 (202) 551-4316
12
13 On behalf of the Witness:
14 THOMAS A. FERRIGNO, ESQ.
15 Brown Rudnick
16 601 13th Street, N.W.
17 Washington, D.C. 20005
18 (202) 536-1700
19
20 ALSO PRESENT:
21 Rich Walden, SEC Intern
22
23
24
25

1 CONTENTS		
2		
3 WITNESS:		EXAMINATION
4 Christopher Gibson		8
5 EXHIBITS:	DESCRIPTION	IDENTIFIED:
6 29	Subpoena	9
7 30	Subpoena <i>f</i> /documents	9
8 31	Subpoena <i>f</i> /documents to C. 9 Gibson, Custodian of Records	9
10 32	E-mail from J. Hull 11 To C. Gibson dtd 10/11/11	165
12 33	J. Hull Subscription Agreement	180
13 34	Confidential Private Offering 14 Memorandum of GISF dtd 1/2010	184
15 35	Operating Agreement for GISF	228
16 36	E-mail from J. Gibson to C. 17 Gibson dtd 11/28/11 w/attachments	241
18 37	E-mail from C. Gibson to 19 J. Hull dtd 12/9/11	253
20 38	State of Georgia Certificate 21 Of Voluntary Termination of 22 Geier Group dtd 3/29/11	261
23 39	State of Georgia Certificate 24 Of Voluntary Termination of 25 Geier Capital dtd 3/24/11	262

1 PROCEEDINGS
2 MR. BAGNALL: We will go on the record at 9:13,
3 using the clock on the wall, here on March 19, 2015.
4 Mr. Gibson, can you please raise your right
5 hand.
6 Do you swear or affirm to tell the truth, the
7 whole truth and nothing but the truth?
8 THE WITNESS: Yes, sir.
9 Whereupon,
10 CHRISTOPHER GIBSON
11 was called as a witness and, having been first duly
12 sworn, was examined and testified as follows:
13 MR. BAGNALL: Can you please state and spell
14 your full name for the record?
15 THE WITNESS: Christopher Gibson,
16 C-h-r-i-s-t-o-p-h-e-r G-i-b-s-o-n.
17 MR. BAGNALL: Thanks. You can put your hand
18 down.
19 I am George Bagnall, and this is Ricky Sachar
20 and Paul Bohr, directly to my right. We are members of
21 the staff of the Enforcement Division of the U.S.
22 Securities and Exchange Commission.
23 Also with us today is our Honors intern, Rich
24 Walden.
25 This is an investigation by the U.S. SEC in the

1 Matter of Geier International Strategies Fund, SEC File
2 No. HO-12361, to determine whether there have been
3 violations of certain provisions of the federal
4 securities laws.
5 However, the facts developed in this
6 investigation might constitute violations of other
7 federal or state, civil or criminal laws.
8 Prior to the opening of the record, you were
9 provided with a copy of the Formal Order of Investigation
10 in this matter. It will available for your examination
11 during the course of this proceeding.
12 Mr. Gibson, have you had the opportunity to
13 review the Formal Order?
14 THE WITNESS: Yes, I have.
15 MR. BAGNALL: Okay. Prior to the opening of
16 the record, you were also provided with a copy of the
17 Commission's Supplemental Information Form, the Form
18 1662. A copy of that notice has been marked as SEC
19 Exhibit 1.
20 Also this form was attached to the subpoena you
21 received to appear here today and to the subpoenas for
22 documents you received last year.
23 Have you had an opportunity to read Exhibit No.
24 1?
25 THE WITNESS: Yes, sir.

1 MR. BAGNALL: Do you have any questions
2 concerning Exhibit No. 1?
3 THE WITNESS: No, sir.
4 MR. BAGNALL: Mr. Gibson, are you represented
5 by counsel today?
6 THE WITNESS: Yes, sir.
7 MR. BAGNALL: Would counsel please identify
8 themselves?
9 MR. FERRIGNO: Thomas A. Ferrigno, with the
10 law firm of Brown Rudnick in its Washington, D.C. office.
11 MR. BAGNALL: And to confirm, Mr. Ferrigno, are
12 you representing Mr. Gibson today?
13 MR. FERRIGNO: Yes.
14 MR. BAGNALL: Thank you.
15 Are you representing any other parties in this
16 matter?
17 MR. FERRIGNO: Not at this time. No other
18 parties have been contacted by the staff.
19 MR. BAGNALL: Okay.
20 Mr. Gibson, is there anything that can impair
21 your ability to testify truthfully today?
22 THE WITNESS: No, sir.
23 MR. BAGNALL: For example, are you taking any
24 medication or anything like that?
25 THE WITNESS: No, sir.

1 MR. BAGNALL: Have you ever given testimony
2 before?
3 THE WITNESS: No, sir.
4 MR. BAGNALL: Okay. For the purposes of SEC
5 testimony, the staff controls the record. If you'd like
6 to take a break, that's fine, and we can do that
7 throughout the day.
8 Please just ask us and we are happy to do that
9 so long as there isn't a question pending. If there's a
10 question pending, we'd like an answer before we go off
11 the record.
12 And for the purposes of SEC investigations,
13 there really is no "off the record." If we're off the
14 record and have a conversation of substance, when we come
15 back on the record, I'll summarize that conversation and
16 ask you whether it's a fair summary of the conversation
17 we had.
18 Also something to keep in mind during testimony
19 is in normal conversation we tend to anticipate a
20 question before it's finished, and begin answering before
21 the question is done. And that makes for a bad record.
22 So I guarantee we'll both run afoul of this today, but if
23 you can do your best to please wait until I'm done asking
24 the question before you start your answer, I'd appreciate
25 it.

1 Is that okay?
2 THE WITNESS: Yes, sir.
3 MR. BAGNALL: Okay. And on that same line,
4 it's important that you give us verbal responses. The
5 court reporter won't be able to pick up head nods or
6 gesticulation and also we need "yes's" and "no's. Not
7 "uh-uh's" and "uh-huh's." Okay?
8 THE WITNESS: Yes, sir.
9 MR. BAGNALL: I also guarantee you that today I
10 am going to ask you a question that's not clear. If you
11 don't understand the question, please let me know and
12 I'll ask it in a way that is more clear hopefully.
13 If you don't do that and you give us an answer,
14 we'll think that you understand the question, okay?
15 THE WITNESS: Yes, sir.
16 MR. BAGNALL: Thank you.
17 And later today we're going to show you some
18 documents that will be entered as exhibits for testimony
19 here today. Please don't write on them. Okay.
20 Would you please mark this as the next exhibit.
21 (SEC Exhibit No. 29 was marked
22 for identification.)
23 EXAMINATION
24 BY MR. BAGNALL:
25 **Q Mr. Gibson, I am handing you what's just been**

1 **marked as Exhibit 29.**
2 **Do you recognize that document?**
3 A Yes, sir.
4 **Q What is it?**
5 A The subpoena to appear today.
6 **Q Okay. I'll take that back.**
7 MR. BAGNALL: Please mark this one next in
8 line. We'll mark these simultaneously if that's okay.
9 (SEC Exhibits Nos. 30 & 31
10 marked for identification.)
11 BY MR. BAGNALL:
12 **Q Mr. Gibson, I am handing you now what have been**
13 **marked as Exhibit 30 and Exhibit 31.**
14 **Do you recognize those documents? And feel**
15 **free to leaf through them and read them.**
16 A Yes, sir.
17 **Q And what are they?**
18 A These are the requests to produce documents
19 relating to this matter.
20 **Q And I will represent to you that I believe the**
21 **requests are identical, but one is addressed to you**
22 **personally and one is addressed to you as care of the**
23 **Custodian of Records for Geier Capital LLC.**
24 **Does that seem accurate to you?**
25 A Yes, sir.

1 Q Okay. Have you provided to the staff of the
2 SEC all documents called for by the subpoena in Exhibit
3 30?

4 A Yes, sir.

5 Q Can you describe for us what search you did to
6 comply with that subpoena? What search for documents.

7 A I worked with my counsel to identify any
8 relevant documents from the two primary sources of
9 documents for me personally of which I was aware, or my
10 e-mail accounts, my personal e-mail account, @gmail, and
11 my Geier Fund e-mail account.

12 Q Uh-huh.

13 A And I provided access to those into the server
14 so that my counsel could ascertain and provide them.

15 And then with regard to any additional
16 documents, the only others that we identified as relevant
17 to this matter are all the physical documents that were
18 produced during this time that were delivered to Augusta,
19 Georgia, and were housed there, and at the time of the
20 subpoena, those were delivered to a document production
21 company and then turned over.

22 Q Okay. And is that answer true for the subpoena
23 that is included as Exhibit 31 as well?

24 A Yes, sir.

25 Q Okay. Was the search really one search for

1 both subpoenas or were there unique searches for each
2 subpoena?

3 A I understood the distinction that you're making
4 in that any communications with regard to me and relating
5 to the Fund should be turned over.

6 Q Okay.

7 A And so I understand the distinction I think
8 that you're making.

9 Q Okay. And so did you do two searches or one
10 search?

11 Do you want me to ask the question a different
12 say?

13 A I'm not sure I understand the distinction.

14 Q Okay. So the subpoena that's in Exhibit 30 is
15 addressed to you personally.

16 A Yes, sir.

17 Q The subpoena that's addressed to you in Exhibit
18 31 is addressed to the Custodian of Records for Geier
19 Capital.

20 A I see.

21 Q Did you do a search for the subpoena in 30,
22 produce documents, and then begin anew for the subpoena
23 in 31 and produce documents?

24 A No. I believe we did them at the same time,
25 one search.

1 Q Okay.

2 BY MR. BOHR:

3 Q You said "we." I'm just wondering who else is
4 in the "we"?

5 A My counsel. So my first step upon receiving
6 the subpoena was to alert counsel, and I followed their
7 directives as far as how to comply with this.

8 Q And at the time that was Rita Glavin?

9 A Yes, sir. Well, the first days of this matter,
10 it may have been another attorney other than Rita Glavin.

11 Q At Seward & Kissel?

12 A Yes, sir.

13 Q You mentioned a server. I'm just wondering
14 where that server is and who controls it, the e-mail
15 server.

16 A I am referring to the fact that e-mails don't
17 go away today and they are stored on some server no
18 matter what you do on your personal device, and so the
19 two servers in question would both be at Google. Gmail
20 was my personal e-mail account and Geier Fund's e-mail
21 was hosted through Google, so both were housed – both of
22 those servers were at Google.

23 Q So you did not actually have physical access to
24 the Google server.

25 A No, sir.

1 Q But you still have some sort of remote access
2 to check the e-mails that are stored on those servers?

3 A I do not, no. My counsel, he gained access to
4 the full inventory of those e-mails.

5 BY MR. BAGNALL:

6 Q Mr. Gibson, did you withhold any documents that
7 were called for by the subpoena in Exhibit 30 on the
8 basis of a claim of privilege?

9 A I do not believe so.

10 Q Okay. Did you withhold any documents that were
11 called for by the subpoena in Exhibit 31 on any claim of
12 privilege?

13 A I do not believe so.

14 Q Mr. Gibson, did you ever use an e-mail address
15 C.Gibson@Bloomberg.net?

16 A I was assigned that e-mail address from
17 Bloomberg while I used that server, yes. And that was
18 turned over, to my knowledge, inclusive of this. But in
19 terms of materially using that, no. I don't believe I
20 did.

21 Q Okay. So to the extent that you did use it,
22 those documents have been produced?

23 A Yes, sir.

24 Q Are you aware of any documents responsive to
25 the subpoena in Exhibit 30 that were not produced to us?

1 A No, sir.

2 Q Perhaps because they were lost, destroyed or
3 disposed of?

4 A No, sir.

5 Q Are you aware of any documents that are
6 responsive to the subpoena in Exhibit 31 that were not
7 produced to us?

8 A No, sir.

9 Q Okay. I am going to take back Exhibit 30 and
10 31.

11 Mr. Gibson, have you ever been named as a
12 defendant or a respondent in any action or proceeding
13 brought by the SEC?

14 A No, sir.

15 Q Have you ever been named as a defendant or a
16 respondent in any action or proceeding brought by any
17 other federal agency?

18 A No, sir.

19 Q Have you ever been named as a defendant or
20 respondent in any action or proceeding brought by a state
21 securities agency?

22 A No, sir.

23 Q Have you ever been named as a defendant or a
24 respondent in any action or proceeding brought by FINRA?

25 A No, sir.

1 Q Okay. Have you been named as a defendant or a
2 respondent in any action or proceeding brought by any
3 stock exchange?

4 A No, sir.

5 Q Have you ever been a defendant in any criminal
6 proceeding other than one involving a minor traffic
7 offense?

8 A No, sir.

9 Q Could you please describe for us your
10 educational background starting with your time in
11 college?

12 A I graduated from Williams College in
13 Massachusetts with a degree in economics and art history.

14 Q In what year did you graduate?

15 A 2006.

16 Q Okay. Do you have any graduate school
17 experience?

18 A I do not.

19 Q Did you go straight from college in 2006 into
20 the work force?

21 A Yes, sir.

22 Q Could you please describe for us your work
23 history beginning with your first job after college?

24 A I worked at Deutsche Bank in New York. I
25 worked in their securitization group focusing initially

1 on auto loan securitizations, and then on residential
2 mortgage securitizations before managing a book of
3 securities in their special situations group before
4 departing and resigned.

5 Q And during what time period did you work at
6 Deutsche Bank?

7 A From -- well, I was a summer intern during the
8 summer of 2005, and I began in June of 2006, and I
9 resigned in February of 2009.

10 Q And what was your title when you worked at
11 Deutsche Bank?

12 A I was an analyst and an associate. I was
13 promoted to associate in January of 2009. So at the very
14 end.

15 Q Okay. Do you have any work experience after
16 Deutsche Bank?

17 A No, sir. I mean outside of this fund, no, sir.

18 Q Okay. Were you ever employed at Hull Storey
19 Gibson?

20 A Yes, sir. I was employed at Hull Storey Gibson
21 in connection with this matter.

22 Q Can you describe that for me please?

23 A When I resigned from Deutsche Bank, I was
24 summoned by Jim Hull to Augusta to discuss my experiences
25 there. He had questions about markets in general, and I

1 had an experience in that regard and shared that with
2 him. And he proposed hiring me to figure out what we
3 could do together. And he initially hired me at
4 relatively I would say de minimis salary of -- I believe
5 it was -- I think it was \$24,000 a year, if I recall.
6 And that was the basis of what would become ultimately
7 Geier.

8 Q And what time were you hired? When
9 chronologically were you hired by Mr. Hull?

10 A If I recall correctly, I was hired around April
11 of 2009.

12 Q Okay. And just for the record, who is Mr.
13 Hull?

14 A James Hull is a real estate owner who resides
15 in Augusta, Georgia, and at this time in 2009, had been
16 business partners with my father, John Gibson, for
17 approximately 10 years.

18 Q Okay. And what's the nature of their real
19 estate business?

20 A They engage in the acquisition and operation of
21 small inclosed malls in the United States.

22 Q Okay. Did they run them?

23 A Yes, sir.

24 Q And when you -- and correct me if I'm wrong --
25 I think you said that you had a meeting with Mr. Hull to

1 determine what businesses you could engage in together,
2 is that right?

3 A When I first went down to Augusta, it was not
4 in the context of being hired. It was to have a
5 conversation.

6 Q Okay.

7 A I did not anticipate being hired. My
8 anticipation was to move in a direction entirely
9 unrelated to what did materialize.

10 Q And so what did materialize?

11 A Mr. Hull had recently lost a sum of money by
12 investing in Bear Stearns and was irritated with that,
13 and asked me my view on the matter. And based upon my
14 experience at Deutsche Bank, I believed that the risk to
15 the currency was meaningful based upon the regulatory
16 response to the actions I observed at Deutsche Bank.

17 Q When you say "a risk to the currency," any
18 currency in particular?

19 A The United States dollar.

20 Q And was that the substance of the conversation
21 you had with Mr. Hull?

22 A It was in further detail noting that in the six
23 to nine months preceding my resignation at Deutsche Bank,
24 I had, up until June of 2008, I had very positive reviews
25 at Deutsche Bank and was given the highest bonuses of my

1 class, and was given a significant responsibility to
2 manage, or at least mark on a daily basis, at \$900
3 million book of securities.

4 And as the market deteriorated, they brought in
5 a new team to oversee us, and I was pressured
6 significantly to mark those securities to levels that I
7 did not believe were reflective of the market.

8 And I was additionally pressured, and this is
9 complicated, but I think the only way to get through this
10 is to explain it. The way that the accounting treatment
11 worked, of the securities that I marked, part were in a
12 loan book and part were in a banking book. The loan book
13 assets were held to maturity, and not subject to mark to
14 market. And the trading book was held for sale and
15 subject to mark to market.

16 I was pressured to take hedges from the loan
17 book and put them in the trading book and leave the asset
18 in the banking book in order to create a gain on the
19 hedge whilst keeping the asset marked at par. Thereby
20 creating an inherently illusory gain, which constituted a
21 dishonest act in my view and I refused to do it.

22 And I was subsequently taken off of my
23 responsibilities and then given a zero bonus at the next
24 bonus cycle, after which I resigned. And I explained
25 that occurrence to Jim and I think that created a

1 skepticism about what was occurring at that time in our
2 financial markets.

3 Q And how did that conversation lead to your
4 employment – at the time I believe it was called Hull
5 Storey Gibson, is that correct?

6 A I don't think that's correct. I believe it was
7 Hull Storey Retail Group at the time.

8 Q Okay.

9 A It may have been.

10 Q So in April of 2009, it was called Hull Storey
11 Retail Group?

12 A Yes, sir. I believe that my father's name was
13 added subsequent to my – subsequent to this period.

14 Q Okay. And so how did that conversation that
15 you just described with Mr. Hull lead to your employment
16 with Hull Storey Retail Group?

17 A So I had that conversation. There was a period
18 of several weeks when I was staying with my parents at
19 home and coming into the office and just meeting with Jim
20 when he was available to discuss various matters

21 At this time, my anticipation was if there was
22 a partnership, it would be in the real estate business
23 based upon where he has expertise.

24 Over the course of that – I'd say from March
25 2009 onward, his focus, it became clear to me, was more

1 in identifying opportunities to capitalize on this
2 dislocation that we perceived to be in place in the
3 market.

4 Q And how did that lead to employment at Hull
5 Storey Retail Group?

6 A That's an excellent question. I think that
7 from – there was not a clear conversation as to what my
8 responsibilities would be based upon assuming that
9 initial salary. I think it was a step in good faith to
10 where I was showing that I was committed – I wasn't
11 doing anything else, that my focus was – I was very open
12 to working with him in capacities that he designed or saw
13 as desirable. But there was not clarification as to my
14 responsibilities as far as taking that salary.

15 Q And did you have a title?

16 A I believe I was an analyst.

17 Q And what did you do on a day-to-day basis when
18 you became the analyst at Hull Storey Retail Group?

19 A I was living in Philadelphia at the time. And
20 within a matter of weeks, we formed the Gibson Fund, and
21 at that point in time, it was certainly clear to me that
22 my responsibilities were advising Jim on the management
23 of the Gibson Fund.

24 Q And what is the Gibson Fund?

25 A The Gibson Fund was established after a

1 conversation with Jim -- up until this conversation, the
2 tenure of our discussions had been purely intellectual in
3 nature, identifying the landscape as it existed. And Jim
4 had a conversation with me when he said, "We've got to
5 put some money into this. If this is what we know to be
6 true, and we're in a unique position to know it, we've
7 got to allocate capital accordingly."

8 And he proposed investing in assets that we
9 believed would do well as a result of these observations
10 that we had made and asked for my commitment in
11 participating in it.

12 **Q And how was Gibson Fund formed?**

13 A It was formed as an LLC in the State of Georgia
14 as a partnership between James Hull, myself, and I
15 believe that my father had a participation initially as
16 well.

17 **Q Okay. And was it an investment fund?**

18 A It was an investment partnership. We didn't
19 charge fees to each other. And it was essentially
20 co-investing account.

21 **Q And who managed the account?**

22 A We managed it by consensus.

23 **Q And is the "we" in the consensus you, your
24 father and Mr. Hull?**

25 A No. It would be my father -- excuse me. It

1 would be Jim and myself. My father would not be involved
2 in the decision-making side.

3 **Q And that's Jim Hull, right?**

4 A Yes, sir.

5 **Q Okay. And how long did you operate the Gibson
6 Fund?**

7 A The Gibson Fund was operated until the end of
8 2009. And then was rolled up along side another fund
9 that we had subsequently started to the Gibson Fund
10 called Hull Fund. So Hull Fund and the Gibson Fund was
11 its formal name, were rolled into and became Geier
12 effective the first of January of 2010.

13 **Q Okay. And what was the Hull Fund?**

14 A The Hull Fund was a similar vehicle in terms of
15 its asset allocation, objectives, structure and so forth.
16 Why did we start a second fund, is actually unclear to
17 me. I do not -- I don't recall a specific reason why we
18 had two funds as opposed to putting everything into one.

19 **Q Were the holdings in the Gibson Fund similar to
20 the holdings in the Hull Fund?**

21 A Yes, sir.

22 **Q Do you recall what the assets that each of
23 those entities held?**

24 A Yes, sir. Largely physical gold and silver
25 bars that were purchased from a company called Kitco in

1 Montreal in Canada, and transferred to a depository
2 called Via Mat in New York. And additionally to those
3 assets, there was immaterial de minimis allocation to
4 securities as well.

5 **Q And do you recall, recognizing that the value
6 of these things fluctuate, but do you recall the
7 approximate value of your holdings?**

8 A Dollar value within each of those funds?

9 **Q Correct.**

10 A The Hull Fund was substantially larger in terms
11 of dollar value. And I believe that the Gibson Fund was
12 around in the 2 to \$4 million area and the Hull Fund was
13 8 to \$12 million area.

14 **Q Okay. And where did the assets in each fund
15 come from?**

16 A I made a cash contribution. My financial state
17 at this point in time when I left Deutsche Bank was that
18 I had approximately \$250,000 in cash, which I earned from
19 my time at Deutsche Bank and from selling an apartment I
20 bought and sold during that time.

21 The remaining proceeds came from Jim Hull
22 initially and then Jim brought in other partners who also
23 contributed amounts. My father made a contribution as
24 well, but through a loan from Jim.

25 **Q So your father borrowed money from Mr. Hull and**

1 **invested it in the funds?**

2 A Yes, sir. That's correct.

3 **Q And is the answer that you just gave about the
4 investors in each fund true of both the Gibson Fund and
5 the Hull Fund?**

6 Let me ask it again.

7 **Did the Gibson Fund and Hull Fund have the same
8 investors?**

9 A No. Jim Hull, Christopher Gibson and John
10 Gibson were in both. Actually John Gibson may not have
11 been in the Hull Fund. I and Jim were definitely in
12 both. My father was definitely in the Gibson Fund. And
13 in Hull Fund, there were different smaller LPs than there
14 were in the Gibson Fund. But there were smaller partners
15 in both of those.

16 **Q When you used the term "LP," what are you
17 referring to?**

18 A I am sorry. I'm referring -- I'm not being
19 precise. I am referring to a co-partner in these
20 structures. So a smaller partner in the fund?

21 **Q Is "LP" an acronym for something?**

22 A It's a limited partner.

23 **Q Thank you. And let me back up.**

24 **Did both the Hull Fund and the Gibson Fund roll
25 into Geier on January 1, 2010?**

1 A Yes, sir.

2 **Q Did the Gibson Fund continue to exist after**
3 **January 1, 2010?**

4 A Not to my knowledge.

5 **Q Did the Hull Fund continue to exist after**
6 **January 1, 2010?**

7 A Not to my knowledge.

8 **Q And can you then describe for us what the Geier**
9 **Fund is?**

10 A So going into the end of the year in 2009, we
11 had strong positive performance, as I recall. We were up
12 about 30 to 40 percent on those Funds, and Jim wanted to
13 charge fees, and I indicated that we could not do that
14 haphazardly, and we needed an appropriate structure in
15 place in order to do that.

16 And that led to our soliciting bids, if you
17 will, from various vendors, from administrators, small
18 mini-prime brokers, and legal counsel to draft offering
19 documents.

20 **Q And when you say "we," who are you referring**
21 **to?**

22 A Jim Hull and I.

23 **Q And what you've just described was occurring at**
24 **the end of 2009?**

25 A Yes, sir.

1 **Q Okay. During the 2009 time frame, when you**
2 **were associated with the Hull Fund and the Gibson Fund,**
3 **how much of your time were you spending on those efforts?**

4 A One hundred percent.

5 **Q Okay. And was that a nine-to-five job?**

6 A It's a 24-hour-a-day job.

7 **Q A 24-hour-a-day job.**

8 **Who was responsible for making the investment**
9 **decision for the Gibson Fund?**

10 A We, Jim and I, made these decisions by
11 consensus, but I could further clarify that by saying
12 that he was largely responsible for strategy and I was
13 largely responsible for tactics. And additionally I was
14 responsible for idea origination. So I would talk about
15 lots of things. Jim would set a general strategy and I
16 would tactically carry out the strategy.

17 **Q And that's true of both the Hull Fund and the**
18 **Gibson Fund?**

19 A Yes, sir.

20 **Q Okay. So beginning January 1, 2010, were your**
21 **day-to-day activities with respect to the Geier Fund the**
22 **same as they were with the Hull and Gibson Funds?**

23 A I'm sorry. Can you repeat the question?

24 **Q Sure. Did your day-to-day -- although the Hull**
25 **Fund and the Gibson Fund rolled into the Geier Fund, did**

1 **your day-to-day activities change at all?**

2 A I would say that the responsibility factor
3 increased materially.

4 **Q And why is that?**

5 A First throughout 2009, I had a very significant
6 personal investment in Gibson Fund and in Hull Fund. My
7 father had an investment. My mother did not. My
8 girlfriend of 10 -- I'm sorry, at this time, seven years
9 -- and her parents did not.

10 Going into the end of 2009, when we moved
11 forward with forming Geier, Jim asked me -- he did not
12 demand, but it was clear to me, because he asked several
13 times, that it was important to him that I establish a
14 yet-greater climate of interest with the entity that we
15 create. He asked at least three times if my mother was
16 going to participate. And I did pressure my mother to
17 come in.

18 In terms of the Marzullos -- Francesca Marzullo
19 is my girlfriend -- at the time, and her parents had been
20 asking me for years about different considerations
21 vis-a-vis savings and markets. And I had given them some
22 advice in 2009 that had resulted in gains for them, and
23 they asked to join Geier.

24 Additionally I borrowed substantially more
25 money from Jim, and my father invested substantially more

1 money through borrowed from Jim.

2 So by the time we began Geier, my alignment of
3 interest, if you will, of that structure had been
4 enhanced dramatically.

5 **Q And that was at the behest of Mr. Hull?**

6 A In part. I would say the participation of the
7 Marzullos had nothing to do with Mr. Hull. The
8 participation of my mother, I would say yes, it was a
9 result of his asking me a number of times if she would
10 participate.

11 And it was a talking point that he used to talk
12 to other prospective partners in conversations that I
13 heard him having. So he would say, you know, "He's got
14 his mother in the Fund."

15 **Q So did I understand you to say -- and correct**
16 **me if I'm wrong -- that Mr. Hull wanted your interest**
17 **aligned with his more so in Geier than before?**

18 A I would say that as we contemplated the greater
19 commitment mutually, he desired a greater alignment of
20 interest.

21 **Q Do you know why that is?**

22 A It would seem rationale to me, if he had more
23 at stake, he would want a large commitment. In 2009, the
24 dollar amounts that were involved were less than the
25 dollar amounts in 2010.

1 Q Did you ever have any conversations with Mr.
 2 Hull about this topic specifically?
 3 A No, we did not specifically address this.
 4 Q But it's from your dealings with him, you
 5 understood him to want you to have a greater alignment of
 6 interest with him in the new fund, the Geier Fund?
 7 A Yes, sir.
 8 Q Okay. And do you think that that was because
 9 he was committing more capital to the venture when it
 10 rolled into Geier in 2010?
 11 A In part, yes. Another theme that was occurring
 12 over this period of time was that Jim had substantial
 13 investments with two other investment managers, Goldman
 14 Sachs and Crawford Investment Counsel in Atlanta, with
 15 whom he had difficulty and had voiced opposition to me to
 16 the fees that he was paying, and he was seeking potential
 17 alternatives to avoid paying fees to outside vendors, the
 18 management of that capital.
 19 Q And how is that related to your interest being
 20 aligned with his?
 21 A Insofar as it speaks to your point that he was
 22 going to substantially increase his investment. So the
 23 source of the substantial increased investment was going
 24 to come potential from these other managers.
 25 Q Understood. And why do you think Mr. Hull told

1 prospective investors that your mother was invested in
 2 Geier?
 3 A I think to demonstrate that I was not simply
 4 taking a fee for my advising the structure, but rather
 5 was overwhelmingly committed to it.
 6 Q Okay. And going forward, it seems you refer to
 7 Mr. Hull as Jim.
 8 Can we agree today that if you refer to Jim
 9 you'll always be referring to Mr. Hull unless you tell us
 10 otherwise?
 11 A Yes, sir.
 12 Q Okay. Can you describe the structure of the
 13 Geier Fund for us? And when I say that, I mean the
 14 entities that comprised the Geier Fund?
 15 percent management fee. I think it was a 15 percent
 16 performance allocation after a 10 percent hurdle. There
 17 was no lock-up. And I mean there are many material
 18 significant elements to the structure. I can go
 19 though --
 20 Do you want me to keep going or --
 21 Q Well, let me try a different way.
 22 What is Geier Group, LLC?
 23 A Geier Group and Geier Capital were formed at
 24 the advice of Seward who indicated that it was tax
 25 efficient to not have a single management entity, but to

1 have one entity that would receive management fees and
 2 one entity that would receive performance fees.
 3 Evidently that allows in some way to capitalize
 4 on carried interest and defer your tax liability. We
 5 didn't take advantage of that. We paid our taxes anyway,
 6 but that was the basis of having two entities.
 7 But both were managing the Fund. Both had
 8 similar ownership profiles, and --
 9 Q Okay. And when you refer to "the Fund," is
 10 that Geier International Strategies Fund?
 11 A Yes, sir.
 12 Q And so let's -- so there are three entities
 13 that you just mentioned. Geier Group, LLC; and Geier
 14 Capital, LLC; and Geier International Strategies Fund,
 15 LLC.
 16 Which of the entities was the investment
 17 manager?
 18 A Geier Group we would dub the investment
 19 manager.
 20 Q And was one of those entities the managing
 21 member of the trio of funds -- trio of entities, excuse
 22 me?
 23 A If you're asking did one of those entities have
 24 management authority over the other two, I don't think
 25 so, no. I think that both Geier Group and Geier Capital

1 -- I would say Geier Group was the managing member and
 2 managing entity for Geier International Strategies Fund.
 3 And Geier Capital existed solely as an entity to receive
 4 performance allocations to the degree they materialized.
 5 Q Okay. And did you have a title at Geier Group,
 6 LLC?
 7 A I think managing director.
 8 Q Did you have a total at Geier Capital, LLC?
 9 A If I did, we would have called it managing
 10 director.
 11 Q Was --
 12 MR. BOHR: Can I step in?
 13 BY MR. BOHR:
 14 Q Because I think you testified -- I think you
 15 may have misspoken, sir, and contradicted yourself,
 16 because in any event, I'm not left clear as being Geier
 17 Group and Geier Capital, is it fair to say that one was
 18 the investment advisor to the Fund and one was the
 19 managing member of the Fund?
 20 A No. I think the Geier Group was both.
 21 Q Okay.
 22 BY MR. BAGNALL:
 23 Q Geier Group was both the managing member and
 24 exclusively to receive incentive-based compensation?
 25 A Yes, sir.

1 BY MR. BOHR:

2 Q And that's the carried interest, the incentive
3 fee, is what Geier Capital got?

4 A Well, carried interest is the tax strategy of
5 not paying your tax liability in a given year on a
6 performance allocation. The incentive fee is what Geier
7 Capital -- correct, yes.

8 Q The performance fee, the incentive fee went to
9 Geier Capital. The management fees went to Geier Group.
10 Is that correct?

11 A From a structure perspective, yes. From a
12 practical perspective, they remained in the Fund.

13 BY MR. BAGNALL:

14 Q When you say "they remained in the Fund," what
15 does that mean?

16 A I mean that as it is customary generally to
17 charge and receive management fees in cash, this was
18 unusual in that we did not do that. All management fees,
19 as they were accrued, were immediately reinvested into
20 the Fund, so they were never a cash liability.

21 Q And to whose capital account were they
22 allocated?

23 A First there was a capital account -- actually
24 called Geier Capital -- that would house both management
25 fees and performance fees to the degree they had not been

1 Q You mentioned the 50 percent, 35 percent, 15
2 percent ownership structure. I just want to be clear.
3 Was that the same for Geier Capital and for
4 Geier Group?

5 A Yes, sir.

6 Q And was that the same throughout the life --
7 did that continue to be the case throughout the life of

8 A Yes, sir.

9 BY MR. BAGNALL:

10 Q And does -- when we refer to Geier today or
11 GISF, can we agree that we are referring to the Geier
12 International Strategies Fund?

13 A Yes.

14 Q And similarly, if we say "the Fund," we are
15 referring to Geier International Strategies Fund?

16 A Yes, sir.

17 Q Unless we clarify otherwise.

18 A Yes, sir.

19 Q And does GISF still exist today?

20 A Yes, sir.

21 Q And how many members does it have today?

22 A Four.

23 Q And who are they?

24 A Giovanni Marzullo, John Gibson, Martha Gibson,
25 Christopher Gibson.

1 bookmarked to the respective owners of Geier Group and
2 Geier Capital, which, again, had the same ownership
3 structure.

4 So practically -- as a practical matter, when
5 fees were accrued, they would generally stay in that
6 management entity and then occasionally they would be
7 allocated to the various members.

8 Q And who are the various members that received
9 that money?

10 A So the ownership structure was 50 percent
11 Christopher Gibson, 35 percent James Hull, and 15 percent
12 John Gibson.

13 Q So when the -- correct me if I'm wrong -- the
14 money that Geier Capital received in management fees and
15 incentive-based compensation, when that was distributed
16 into the Fund, it went on the percentages you just gave
17 to you, Mr. Hull and your father, and it was assigned to
18 your individual capital accounts in Geier International
19 Strategies Fund?

20 A To the degree that that actually occurred.
21 Generally speaking, it didn't. Generally it just stayed
22 in this entity called Geier Capital. It was just treated
23 as another LP.

24 Q Okay.

25 BY MR. BOHR:

1 Q And how many assets does it have under -- what
2 is the amount of assets under management that it has
3 today?

4 A My understanding, and I have not looked
5 recently, is it's around 700,000 U.S. dollars.

6 Q And is that being actively managed today?

7 A We have not done a trade since the end of 2012.

8 Q Okay. And who is the investment manager for
9 GISF today?

10 A I think that we take a position that it's not
11 -- it's an investment partnership.

12 Q Okay. At some point was GISF being managed by
13 an investment manager?

14 A I would say from its inception, it was managed
15 by Geier Group.

16 Q Okay.

17 A Which would have been the investment manager,
18 up until the formal closure of the Fund for all other
19 investors which occurred at the end of 2012?

20 Q And when you say "all other investors," do you
21 mean besides the four that you just mentioned a moment
22 ago?

23 A Yes, sir.

24 Q And the end of 2012, is that December 31, 2012?

25 A Yes, sir. To clarify further, I believe that

1 only Jim was around at that point in time. The other
2 limited partners left at the beginning of 2012. I
3 believe at the end of January 2012.

4 **Q Okay. And how much time do you spend today on
5 efforts related to GISF?**

6 A I do not spend time with it.

7 **Q Okay.**

8 A I don't effectively have a position anymore
9 either. I have – I'm not sure what my percentage of
10 ownership is, but it's offset by my abilities that I have
11 to my father. My father paid a note that I had owed Jim
12 that – for which I had insufficient funds when that was
13 closed. My father has loaned me money because I was
14 insolvent at that point in time. And my father has
15 loaned me money to pursue to fulfill my responsibilities
16 here. So whatever assets are in my name are overwhelmed
17 by liabilities.

18 MR. FERRIGNO: Can we take a break --

19 MR. BAGNALL: I'll tell you what. Can you give
20 me 10 minutes and then we're at a natural stopping point?

21 MR. FERRIGNO: Sure.

22 BY MR. BAGNALL:

23 **Q At what point did you stop devoting your
24 energies to GISF?**

25 A The end of 2012, January 1, 2013.

1 **Q And have you been working since that time?**

2 A Yes.

3 **Q Doing what?**

4 A I worked for Nova Capital Global Markets, Nova
5 Global – I'm not sure what their formal name of the
6 entity was, but I worked for that firm. And then I
7 started a firm that's called Weiji Capital.

8 **Q Okay. So when did you begin working at – is
9 it Nova? When did you start working there?**

10 A In January of 2013.

11 **Q And how long did you work there?**

12 A Until late November of 2013.

13 **Q And when did you start Weiji – Weiji, is that
14 how you say it?**

15 A Weiji, as I understand it.

16 **Q Okay. And when did you start there?**

17 A In January of 2014. Yes, 2014.

18 **Q And you are still working there today?**

19 A Yes, sir.

20 **Q And what is Weiji Capital?**

21 A We give advice to companies outside of the
22 United States on marketing initiatives.

23 **Q And who is "we"?**

24 A I'm sorry. My partners and I at that firm.

25 **Q How many partners do you have?**

1 A No U.S. citizens but I've got consultants,
2 independent consultants, who live around the world and
3 work with me in that endeavor.

4 **Q And what do you mean when you say "marketing
5 services," is that what you said? What does the business
6 enterprise do? It does consulting with respect to
7 marketing, is that what you said?**

8 I might have it wrong. I'm asking you, what
9 does Weiji Capital do?

10 A Right. We give advice on construction of
11 marketing documents.

12 **Q Marketing – what kind of marketing documents?**

13 A To market the company.

14 **Q Okay. To sell its products?**

15 A Not to sell its products per se, no. To
16 attract in investment.

17 **Q So to sell its securities?**

18 A I wouldn't say to sell its securities, no.

19 BY MR. BOHR:

20 **Q Are these marketing documents in some form of
21 offering memoranda or private placement memoranda?**

22 A Targeted toward non-U.S. investors, yes.

23 BY MR. BAGNALL:

24 **Q So you are helping – your clients are
25 companies.**

1 A I'll say this. I am doing – it's largely M&A

2 work. So there's a company in South Africa who produces
3 widgets, and there's another company in Botswana who
4 produces widgets, and if they merge, you know, value can
5 be created.

6 **Q Okay. And one of those widget producers would
7 be your client?**

8 A That's right.

9 **Q And you would help them generate marketing
10 material to interest the other widget producer into some
11 form of business combination?**

12 A Yes, sir.

13 **Q Okay. Mr. Gibson, do you hold any professional
14 licenses?**

15 A Not at this time, as I understand it. I passed
16 the Series 7, 63 and 65.

17 **Q Why did you take the Series 65?**

18 A I understood it to be a requirement based upon
19 my initial analysis when I was living in Pennsylvania,
20 and contemplating starting an investment advisory
21 business.

22 **Q Okay. And so is it your understanding that
23 each of those licenses that you hold today are inactive?**

24 A Yes, sir.

25 **Q Okay. Do you recall any of the topics that**

1 were covered on the Series 65 exam?
 2 A I do not.
 3 BY MR. BOHR:
 4 Q Was there any discussion – what is the Series
 5 65 exam? You alluded to it in passing, but what is it?
 6 A I don't know.
 7 Q Is it an investment advisor qualification?
 8 A Yes.
 9 Q Was there any discussion on that exam of laws,
 10 rules or regulations pertinent to investment advisors?
 11 A I would -- yes, I would imagine.
 12 Q Did you pass it the first time?
 13 A Yes.
 14 Q So you studied topics related to investment
 15 advisor regulation presumably in order to pass that exam.
 16 A Yes, sir.
 17 BY MR. BAGNALL:
 18 Q Were you ever registered as an investment
 19 advisor in any U.S. state?
 20 A I think that I registered in the State of
 21 Pennsylvania that year.
 22 Q Okay. Were you ever registered in the State of
 23 Georgia?
 24 A I do not believe so.
 25 Q When was the last time you communicated with

1 for starting GISF?
 2 Q And who had the day-to-day responsibility of
 3 contacting the attorneys and the other vendors that were
 4 used by the Fund?
 5 A I did. I'd say that I was responsible for
 6 carrying out the strategy that Jim gave me guidance for
 7 in dealing with vendors.
 8 Q Okay. And what other day-to-day tasks did you
 9 have with respect to starting GISF?
 10 A With regards to starting GISF, we had the task
 11 of identifying administrators, a prime broker, legal
 12 counsel, and continuing to follow the markets.
 13 Q How about identifying and soliciting new
 14 investors?
 15 A No, that was not my responsibility. I also had
 16 no interest in doing that. I opposed bringing on new
 17 investors and I did not look for new investors.
 18 Q Did anyone do that?
 19 A Jim brought on his friends, and I went to those
 20 meetings and participated in them. But I would not have
 21 solicited them.
 22 Q Okay. Other than strategy and the meetings you
 23 just discussed, did Mr. Hull have any other
 24 responsibilities with respect to the Fund?
 25 A Setting strategy was the big one, and not in

1 Mr. Hull?
 2 A At the time that he wound down his position in
 3 Geier at the end of 2012.
 4 Q Okay. And when was the last time you
 5 communicated with Mr. Grovenstein, Wayne Grovenstein?
 6 A Preceding that.
 7 Q Before that.
 8 MR. BAGNALL: Okay. Let's go off the record at
 9 10:07 a.m., and take a short break.
 10 (A brief recess was taken.)
 11 MR. BAGNALL: Let's go back on the record at
 12 10:16 a.m., on March 19th.
 13 Mr. Gibson, do you recall you are under oath?
 14 THE WITNESS: Yes, sir.
 15 MR. BAGNALL: And just to clarify, during the
 16 break, Mr. Bohr and you discussed how to spell Via Mat.
 17 THE WITNESS: Yes, sir.
 18 MR. BAGNALL: Other than that, there were no
 19 conversations of substance between you and the staff, is
 20 that correct?
 21 THE WITNESS: That's correct.
 22 BY MR. BAGNALL:
 23 Q Could you please tell us, who was responsible
 24 for starting GISF?
 25 A I'd say that Jim Hull and I were responsible

1 terms of complete strategy, but guideposts, I would say.
 2 And I can give you examples if you'd like.
 3 Q Please. Yes, please.
 4 A Several of the guideposts that he set were as
 5 follows. One, was establishing an overwhelming alignment
 6 of interest. That was a critical consideration of his
 7 from the beginning.
 8 Another was ensuring that I was heavily
 9 leveraged relative to other participants in the Fund
 10 through borrowed money. And as an example of that, we
 11 did well in 2010. I sought to pay Jim back his loan, and
 12 I did without advising him, I paid him his loan. And he
 13 was disappointed with that, and subsequently I
 14 re-borrowed money to get back into a position that he was
 15 comfortable with.
 16 Additionally, he did not like the tax
 17 efficiency of our gains in 2009, 2010. At the end of
 18 2010, he determined that we would no longer engage in any
 19 strategy that resulted in short-term gains. So we would
 20 only be subject to securities and stocks at that point.
 21 The Internal Revenue Services treats gold as a
 22 commodity. So even if you hold gold for more than a
 23 year, it does not qualify for long-term gains. So the
 24 strategy guidepost of must be stocks occurred at the end
 25 of 2010.

1 And then additionally, he opposed
 2 diversification. He believes that — he wanted a
 3 low-cost operation, and it would take more resources to
 4 cover more names, and his view was that we could know the
 5 stock name better than others, and that that would be the
 6 strategy we would pursue.
 7 I would not have pursued those strategies, but
 8 those were the guideposts that he set and I felt able to
 9 execute the strategy though I failed in doing so.

10 BY MR. BOHR:

11 Q Can you tell us at time when he communicated
 12 his opposition to diversification to you?

13 A I remember numerous e-mails where he said that.
 14 I'm sure we can produce one.

15 MR. FERRIGNO: Let the staff ask questions.

16 BY MR. BAGNALL:

17 Q So the first guidepost that you outlined was a
 18 desire for overwhelming alignment of interests.

19 What does that mean? Alignment of interests
 20 between what parties?

21 A Between the individuals who have more control
 22 over the process than others, and those others.

23 So I would say Jim and I had more control than
 24 the other participants in the Fund. We shared that
 25 control. And we should therefore be more committed to it

1 than those others. And the mechanisms by which that
 2 alignment of interests can be established would be both
 3 personal and financial.

4 So personally I put my mother and all of her
 5 wealth into the Fund. My father had a substantial
 6 investment as a percentage of his net worth in the Fund.
 7 My girlfriend's parents had all of their net worth
 8 outside of their primary residence, in the Fund. And I
 9 had all of my accumulated net worth in the Fund plus, at
 10 various points in time, many hundreds of thousands of
 11 dollars in borrowed money.

12 Q Okay. Did your father render legal advice to
 13 the Fund?

14 A No, sir.

15 Q Your father is an attorney, is that right?

16 A Yes, sir.

17 Q Okay. Did Wayne Grovenstein render legal
 18 advice to the Fund?

19 A Yes, sir.

20 Q Okay. Did he render legal advice in connection
 21 with forming the Fund?

22 A He rendered legal advice in connection with
 23 forming the management entities. But with regard to the
 24 offering documents in the Fund itself, no. We relied on
 25 counsel at Seward & Kissel.

1 Q Okay.

2 BY MR. BOHR:

3 Q Did he provide any advice — and we don't want
 4 to know what the advice is — but did Grovenstein provide
 5 any advice after helping with the formation of Geier
 6 Group and Geier Capital?

7 A No, sir.

8 BY MR. BAGNALL:

9 Q Do you recall the identity of all the investors
 10 in the Fund?

11 A I believe I should, yes.

12 Q How many investors did the Fund have?

13 A As I recall, around 26.

14 Q And who were they?

15 A They were acquaintances and good friends of Jim
 16 Hull, and then they were my family.

17 Q Okay. Anybody else other than those two groups
 18 of people?

19 A No. No investor -- well, I'm sorry. Then
 20 additionally there was a gentleman named Tim Strelitz,
 21 who is the father of a girl who dated a friend of mine
 22 from college, whom I had long conversations with in New
 23 York, and whom I did not solicit, and really, you know,
 24 insisted on investing. I mean we accepted his
 25 investment.

1 Q Okay. I'm sorry if this is redundant. But did
 2 you have any responsibilities at all with respect to
 3 finding GISF's investors?

4 A I found my mother. I found the Marzullos.

5 Q Okay.

6 A You know, to answer your question as well as I
 7 can, there were people in my life who knew this was a
 8 significant thing for me and, you know, perhaps that
 9 entered into the equation for the decision-making they
 10 made.

11 But generally speaking, I can say it was not my
 12 practice to solicit investors, and I didn't want to
 13 solicit investors. I believed that we needed to prove
 14 ourselves for several years and then we should do that.

15 Q Okay. You testified a moment ago I think that
 16 you attended some meetings with Mr. Hull and prospective
 17 investors, is that right?

18 A Yes, sir.

19 Q Do you recall the attendees to those meetings?

20 A Yes, sir.

21 Q Who were they?

22 A We met individually with each investor. So all
 23 the investors with the exception of Tim Strelitz. So
 24 every investor who resided in Augusta, Georgia, was met
 25 with, and we gave a similar guidance as to what we were

1 trying to do and what the risk profile would be.
 2 **Q Did you have any speaking roles in those**
 3 **meetings?**
 4 A I did.
 5 **Q What was -- to the extent you recall, what was**
 6 **the substance of what you said during the meetings?**
 7 A The substance of what I said was that -- one
 8 phrase that we used in every meeting was that the
 9 volatility would light their hair on fire. That we were
 10 swinging for the fences, and that we weren't going for
 11 singles or doubles. That's the substance of what I said.
 12 **Q Okay.**
 13 A Jim parroted my other ideas about, you know,
 14 gold and currencies.
 15 **Q Okay. And did you have any written materials**
 16 **with you in the meetings?**
 17 A I did not.
 18 **Q Did Mr. Hull?**
 19 A No.
 20 **Q Was anything -- were any copies of documents**
 21 **provided to the prospective investors during the**
 22 **meetings?**
 23 A During the meetings physically, no.
 24 **Q At some time subsequent to the meeting?**
 25 A The subscription agreement, operating agreement

1 and offering, confidential offering memoranda were
 2 delivered. And for each investor, we received two
 3 physically signed copies.
 4 **Q Okay. During the meetings, did you use a**
 5 **PowerPoint presentation?**
 6 A No.
 7 **Q It was just individuals in a room speaking.**
 8 A Correct.
 9 **Q Did any of the investors have --**
 10 **Sorry, go ahead.**
 11 A No, please.
 12 **Q Did any of the investors have questions about**
 13 **the Fund before they invested?**
 14 A No.
 15 **Q You don't recall receiving any questions?**
 16 A I do not recall a single question from an
 17 investor, no.
 18 **Q You mentioned two groups of investors -- or**
 19 **three groups of investors. Your family, associates of**
 20 **Mr. Hull and then Mr. Strelitz.**
 21 **Were the majority of the investors in one of**
 22 **those three groups?**
 23 A Yes, sir. Oh, oh, of those three.
 24 **Q Yes. Right.**
 25 A Okay.

1 **Q So if there's 26 investors, were the majority**
 2 **of them your family?**
 3 A By count or by dollar amount?
 4 **Q Let's do first by count.**
 5 **So were the majority of them your family**
 6 **members?**
 7 A I would say by count, the majority fell into
 8 the constituency of James Hull, and by dollar amount.
 9 **Q Both.**
 10 A Both. If you include James Hull. If you take
 11 James Hull out of that constituency and then you'd look
 12 at the remainder, I would say that it's about equal in
 13 terms of dollar amount between my constituency and
 14 theirs.
 15 **Q Who are the individuals that Jim Hull brought**
 16 **to the Fund, to invest in the Fund?**
 17 A Mason McKnight, III. His brother, William
 18 McKnight. Mason McKnight's sons, Mason McKnight, IV, and
 19 I'm not recalling the other gentleman's name. Douglas
 20 Cates, who was my accountant and the accountant of all
 21 these people.
 22 BY MR. BOHR:
 23 **Q Was he your accountant prior to this**
 24 **arrangement, the Fund?**
 25 A He's been my accountant since I filed taxes and

1 continues to be.
 2 Let's see. T.R. Reddy, who is a real estate
 3 developer and owner in Augusta, who is friends with Jim.
 4 BY MR. BAGNALL:
 5 **Q And it's Augusta, Georgia, is that right?**
 6 A Yes, sir.
 7 **Q Not Maine.**
 8 A That's right.
 9 And I know by face all the others and I'm doing
 10 a little blanking right now.
 11 **Q Okay. That's okay.**
 12 BY MR. BOHR:
 13 **Q John Engler?**
 14 A John Engler. There's another gentleman who is
 15 a member of the Augusta National --
 16 BY MR. BAGNALL:
 17 **Q Is that the country club?**
 18 A It's a golf club. It's very -- you know --
 19 **Q Where they play the Masters?**
 20 A That's right.
 21 **Q Okay. Who are the McKnights?**
 22 A The McKnights are friends of Jim Hull and in
 23 the construction business.
 24 **Q Okay. After the Fund was formed, and it had**
 25 **its investors, when it started out, what was the amount**

1 of assets under management it had?

2 A So as of January 2010 we're talking about?

3 Q Yes, correct.

4 A \$30 million I believe was raised, and then an
5 additional one and a half million was raised that month.
6 So effectively 32.

7 Q Okay. And once the Fund was started, who was
8 responsible for actively managing the money on a
9 day-to-day basis?

10 A Jim Hull and I.

11 Q So did Jim Hull make trades?

12 A No. I executed tactics, everything carrying
13 things out, I was responsible for. We spoke everyday.

14 Q So you and Jim spoke everyday about the
15 tactics?

16 A About the strategy.

17 Q The strategy. And then it was you though who
18 interacted with the brokers.

19 A Correct.

20 Q And made trades.

21 A Jim never interacted with a vendor.

22 Q Okay. Did the investors in GISF know about --
23 let me back up.

24 So is it fair to say that you were the
25 investment manager of the Fund?

1 A Yes, sir.

2 Q And was there anybody else that would be deemed
3 the investment manager of the Fund?

4 A Jim Hull.

5 Q And GISF investors, the limited partners, were
6 they aware that both you and Jim Hull were the investment
7 manager of the Fund?

8 A Yes. They would not have come into the Fund
9 were it not based upon the solicitation of Jim and the
10 fact that Jim was actively managing it.

11 Q Okay. And were they told expressly that Jim
12 would be actively managing the Fund?

13 A No.

14 Q Then how did they -- how did you --

15 A Because they know Jim Hull.

16 Q Hold on one second. Let me --

17 A I apologize.

18 Q That's okay. I told you we'd do it.

19 A Sorry.

20 Q Why do you believe that the investors knew that
21 Jim Hull would be actively managing the Fund if they
22 weren't told expressly?

23 A Based upon Jim's modus operandi in doing
24 business. Jim has an extreme level of control over
25 anything that he gets involved with. And I think that

1 the facts here, you know, reveal that.

2 And so they have commercial experience with
3 Jim, and understood that I believe, and I think that
4 served as the basis for their participation.

5 Q Okay. And just to sort of untack a little bit
6 the communications between you and Mr. Hull with respect
7 to managing the Fund.

8 Hypothetically, was it the situation where you
9 would have to call Jim and say, "I want to buy 10,000
10 shares of ABC Company today. Is that okay?"

11 A No. That would not require his authorization,
12 no.

13 Q So what would have required his authorization?

14 A Substantial material changes to the strategy.

15 Q And what would constitute a substantial
16 material change to the strategy?

17 A I think it's a judgment call. But to the
18 degree that it could result in a material, you know,
19 impact on the value of our position, it would be in his
20 purview.

21 Q Okay. Were there any times where there was
22 such a material substantial change that required his
23 approval?

24 A Where I advocate something that he didn't
25 himself want? There were definitely examples where there

1 were material things that he advocated and then we did.

2 Were there examples where I had something I
3 wanted to do that did not come from him and that was
4 material that I solicited him to do? No, I don't recall.

5 Q Okay.

6 A His guidance was, again, through guideposts.
7 It wasn't micro-managing. They were significant
8 guideposts nonetheless though.

9 Q So is it fair to say he would give you a goal
10 and then tell you to go accomplish that goal and not tell
11 you how to do it on a day-to-day basis?

12 A He might be involved on the day-to-day. And on
13 occasion, he was more involved on the day-to-day. But
14 generally speaking, yes, he would set strategy objectives
15 and I would be tasked with carrying them out.

16 Q Okay. Other than you and Mr. Hull, was there
17 anybody else responsible for managing the Fund?

18 A No.

19 BY MR. BOHR:

20 Q Did your dad ever have any role in managing the
21 Fund?

22 A No. He also, in my memory, he offered one
23 observation that I recall. In December of 2010, he was
24 in New York for the holidays and I was there with my
25 family at a hotel. And my family stepped away and my

1 father mentioned that he had heard that we were going to
2 go into one stock, and he said he opposed that. And we
3 went into one stock. That was the one time that he
4 offered an observation that I recall.

5 BY MR. BAGNALL:

6 Q Were there any restrictions on the types of
7 assets that the Fund could own?

8 A I do not believe so, no.

9 Q Okay. Would it surprise you –

10 BY MR. BOHR:

11 Q Other than the time at which you decided to no
12 longer invest in commodities, would that be an exception?

13 A To?

14 Q Restriction on types of assets that the Fund
15 could own?

16 A Would what be a restriction?

17 BY MR. BAGNALL:

18 Q I think that what Paul is saying is that at
19 some point you made a decision to move away from owning
20 commodities because of the tax treatment they received.

21 A That's correct.

22 Q And invested in stocks, equities.

23 A Yes, sir.

24 Q Did that mean that the Fund could no longer own
25 commodities if it wanted to?

1 A I would say from a legal structural
2 perspective, no, we remained able to change direction
3 back. It was merely a strategy adjustment.

4 Q The option existed to reinvest in commodities
5 if the investment managers decided to do so at some
6 future date.

7 A Yes.

8 Q Okay.

9 BY MR. BOHR:

10 Q And you referred to stocks, but you also named
11 options, other types of investments besides just strictly
12 common stock. Preferred stocks, bonds, presumably you
13 could invest in.

14 A Anything that would allow us to achieve
15 long-term gains.

16 BY MR. BAGNALL:

17 Q Would it surprise you to learn that Mr. Hull
18 does not believe that he was an active manager of the
19 Fund?

20 A Yes, it would surprise me.

21 Q And why is that?

22 A Because of my experience during this period of
23 time.

24 Q And in your experience, he was an active
25 participant in managing the Fund?

1 A Yes.

2 Q Okay. Do you recall how much you invested in
3 the Fund? How much?

4 Sorry. When I asked you do you recall, you
5 nodded your head. Was that to say "yes"?

6 A Yes, sir.

7 Q How much?

8 A Before the Fund existed, I had saved \$250,000.

9 Q Uh-huh.

10 A I put approximately \$150,000 of that into
11 Gibson Fund, that then rolled into Geier. The other
12 \$100,000 were coins, gold coins, that I owned and had
13 contemplated owning for the rest of my life.

14 In the spring of 2011, when we were down on the
15 year, I felt an obligation to show further solidarity,
16 alignment of interest, and so I sold those coins and put
17 them into the Fund in the spring of 2011.

18 So all the money I had accumulated before was
19 in by that point in time.

20 In addition to that, any management fees was
21 invested into the Fund, and any performance allocated was
22 invested in the Fund. There were monies that came out of
23 the Fund to me on one occasion in order to pay taxes.
24 But that was the one occasion that I took money out of
25 the Fund.

1 Q So did you contribute the coins to the Fund, or
2 you sold the coins and contributed the funds to the Fund?

3 A I sold the coins and contributed the proceeds.

4 Q Okay.

5 BY MR. BOHR:

6 Q What was the amount of those proceeds?

7 A Approximately 100 to \$120,000.

8 BY MR. BAGNALL:

9 Q And so at its peak, what was the amount of your
10 assets invested in the Fund approximately?

11 A Gross of my note to Jim or –

12 Q Inclusive of.

13 A By that you mean not taking out the note?

14 Q Correct.

15 A Okay. That would be two and a half million
16 dollars.

17 Q Okay. And what was the value of the amount of
18 money that you borrowed from Mr. Hull to invest in the
19 Fund?

20 A It was generally around 200 to \$300,000 in
21 2009, growing to 400 to \$500,000 during 2010, and
22 throughout 2011, it was 600 to \$675,000.

23 Q And is that including principal and interest?

24 A Yes, sir.

25 Q And what was the rate of interest you were

1 charged?

2 A Eight percent.

3 Q Okay. How was — the loan was memorialized in
4 a note, is that what you said?

5 A Yes.

6 Q And what type of note was it?

7 A A demand note.

8 Q A demand note. And did you borrow money from
9 anybody else to invest in the Fund?

10 A No, sir.

11 Q Was your borrowing money from Mr. Hull a
12 prerequisite to his investing in the Fund?

13 A Yes.

14 Q So without your borrowing money from him, he
15 would not have invested in the Fund?

16 A Yes.

17 Q Okay. And is that — I don't want to get into
18 it again, but is that so your interests were aligned with
19 his in the Fund, is that right?

20 A Yes, sir.

21 Q Were there any other reasons he wanted you to
22 take the note — excuse me — to give him the note?

23 A Not that he explained, no.

24 Q Okay. What percentage of your assets was the
25 total that you just gave us that was invested in the

1 Fund?

2 A 160 percent. All of it plus the borrowed
3 money.

4 Q Okay. How did the size of your investment
5 compare to the other investors in the Fund?

6 A I would say it was — Jim's was obviously very
7 significant. 82 percent of the Fund, as I recall. The
8 Marzullos had a million cost basis, \$3 million high water
9 mark. I'd say that's reflective of about — the
10 McKnights probably as well, about the size of theirs.

11 Q Each McKnight, or the McKnights together?

12 A I'd say that Will McKnight had a more
13 substantial investment. I'd say Will McKnight was
14 probably equivalent to the Marzullos. Mason was about
15 half of that. The McKnight boys and John Engler were all
16 under \$100,000 if I recall correctly.

17 Doug Cates was I believe around 150 or
18 \$200,000. T.R. Reddy was another substantial investor.
19 I think he had a million.

20 My mother had everything. It was around 700
21 principal. One and a half high water mark.

22 To answer your question generally though, I
23 would say my investment and the investment of my family
24 members was substantial, you know, equal generally to the
25 larger other participants, with the exception of Jim

1 Hull.

2 Q Okay. Did the fact that Jim Hull had the
3 largest investment in the Fund generate for him any
4 benefits that didn't exist for the other investors?

5 A No. And we sought to manage that
6 appropriately.

7 Q And how did you do that?

8 A We gave them every liquidity option that Jim
9 had. We gave them the ability to liquidate their
10 position whenever they wanted. We emphasized that to
11 them many times, particularly as soon as the market moved
12 against us.

13 Q Did Mr. Hull receive more information about the
14 Fund than the other investors?

15 A I would say in volume, yes. And I would say
16 any information that was material though or critical to
17 their considerations was passed along.

18 Q Okay.

19 BY MR. BOHR:

20 Q How do you know that it was passed along?

21 A I sent or Jim sent it, and I know Jim sent it.

22 MR. FERRIGNO: May I ask one question?

23 MR. BAGNALL: Sure.

24 MR. FERRIGNO: In his capacity as -- I think
25 you described Mr. Hull as an investment manager

1 previously in your testimony.

2 In his capacity as an investment manager, was
3 he well aware of what was transpiring with respect to the
4 Fund and its assets?

5 THE WITNESS: Yes.

6 BY MR. BAGNALL:

7 Q Was your investment in the Fund profitable?

8 A No.

9 Q How much money did you lose in the Fund?

10 A I lost everything.

11 Q So the amount that you told us before, you lost
12 the entire thing?

13 A I lost the entire thing and I did not default
14 on Jim though. I felt I owed it to him and I had my dad
15 pay him off and I owe my father now. So I had a strong
16 negative net worth after this.

17 Q And so you had some assets that remain in the
18 Fund of that \$700,000 but you owe your father more than
19 the value of those assets.

20 A Multiple of what is in the Fund, yes.

21 Q How much do you owe your father?

22 A Okay. So the note as of August 2011 was
23 \$675,000 accumulating at 8 percent. It was paid off at
24 the end of 2012, so that would be another 8 percent --
25 another -- call it in the low 700s was about the total

1 that my father paid off.

2 Q Uh-huh.

3 A And I had borrowed an additional \$50,000 from
4 my father, and then the cost of this investigation --

5 Do you want me to say or no?

6 Q No, no, no. I'm interested in the note that
7 you gave Mr. Hull.

8 A Okay.

9 Q That was paid -- do you recall the date on
10 which it was paid off?

11 A I do not. I believe it was after -- it was
12 2013 actually.

13 Q Okay. And so Mr. Hull received all of the
14 money that you owed him.

15 A Yes.

16 Q Did he forgive any portion of the note?

17 A No.

18 Q Okay. Did the other investors in GISF earn
19 profits in the Fund?

20 A No.

21 Q Everybody lost money?

22 A Yes.

23 Q Do you have -- approximately how much money did
24 the Fund lose?

25 A I think it was 80 to 90 percent.

1 Q Okay. And is that of the initial principal or
2 is that -- let me ask the question again.

3 Did it lose 80 to 90 percent of the high water
4 mark, or did it lose 80 to 90 percent of everybody's
5 initial capital contribution?

6 A Certainly of the high water mark, and I believe
7 it was around 80 percent of the principal.

8 Q Okay. Have you heard of a company called
9 Tanzania Royalty Exploration?

10 A I have.

11 Q What is it?

12 A It's a junior resource company.

13 Q What does it do?

14 BY MR. BOHR:

15 Q Can you help us out for the record?

16 What's a "junior" -- what does "junior" refer
17 to?

18 A So in the area segments of resource production,
19 there are juniors, intermediates and majors. Juniors do
20 not produce metal. They focus on exploration in order to
21 attract better capitalized entities to exploit those
22 resources.

23 They are riskier because the directionality of
24 the underlying commodity has a dramatic impact on price.
25 So if you're in the gold market and in a junior, it can

1 do very, very well as intermediates and majors trying to
2 acquire it.

3 The opposite is true as well. So junior is
4 characterized by generally less capitalization, lower
5 level of capitalization and focusing on exploration
6 identification, resource identification and exploration.

7 BY MR. BAGNALL:

8 Q And like we've done a couple of other times a
9 day, is it okay if we agree that if we refer to TRX
10 today, that we're referring to Tanzanian Royalty
11 Exploration Company?

12 A Yes, sir.

13 Q And I understand TRX to be the current
14 iteration of the company's ticker symbol.

15 A Yes, sir.

16 Q Okay. Who runs TRX?

17 A James Sinclair.

18 Q Okay. Have you ever had any communications
19 with TRX personnel?

20 A Yes.

21 Q With who did you communicate primarily?

22 A Jim Sinclair.

23 Q Okay. When did you communicate with him?

24 A I think I first heard of Jim Sinclair in an
25 article in the New Yorker. And his commentary in that

1 article resonated with me. I e-mailed him. We shared
2 certain observations about financial markets and his
3 first step was to put me in touch with a woman who was
4 seeking to protect homeowners whose mortgages had been
5 transferred from one trust to another and were being
6 wrongly evicted from their house. And I was impressed by
7 the Sinclairs appreciation for the scale of the crisis
8 and the securitization of the residential mortgage
9 market.

10 That was the first basis for my above and
11 beyond his commentary in the New Yorker regarding global
12 financial markets.

13 And then I subsequently met with him at his
14 house in Connecticut in 2009, and I shared my conviction,
15 bullish conviction, on the metals generally and that I
16 might be seeking to invest in his company.

17 Q Okay. But before I go on with questions on
18 TRX, another thought occurred to me.

19 So other than Jim Hull, did the other investors
20 in GISF know that you were also invested in the Fund?

21 MR. BOHR: Invested in TRX.

22 BY MR. BAGNALL:

23 Q No. Did the other investors in GISF know that
24 you were a GISF investor along side them?

25 A Surely, yes.

1 **Q** And we've discussed today how that was very
 2 important to Mr. Hull.
 3 **Are you aware of whether it was also important**
 4 **to the other GISF investors?**
 5 A That I was invested?
 6 **Q** Correct.
 7 A I don't know if it was important to them.
 8 Again, based upon my understanding of their relationship,
 9 commercial relationship with Jim Hull and his general
 10 operating principles, I'd imagine it was.
 11 **Q** Okay. So based on your experience with Mr.
 12 Hull and knowing how he runs his business, you believe
 13 that the other GISF investors, it would have been
 14 important to them that you invest in the Fund along side
 15 them, is that correct?
 16 A Yes, sir.
 17 **Q** Okay. Sorry. I talked over you.
 18 Is that correct?
 19 A Yes, sir.
 20 **Q** Back to TRX now. Did GISF invest in TRX?
 21 A Yes, sir.
 22 **Q** Why?
 23 A We believed that it was a highly compelling
 24 opportunity. First, we were bullish on gold. That was
 25 the core principle. Given the guideposts that we needed

1 to be in a security, we were not bullish, in fact, on
 2 many of the majors and intermediates.
 3 So this might be counter-intuitive, but in some
 4 bull markets, major gold companies can lose a lot of
 5 money because they have hedged their position.
 6 So if you are a major and you're sitting on a
 7 nice flow at \$1000 gold, but you've hedged at a \$1000 and
 8 gold goes to \$2000, you might end up losing money because
 9 some of them over-hedge and so forth.
 10 So based upon our understanding of the
 11 marketplace, we believed it should be a junior that would
 12 actually have exposure to a rising gold price as opposed
 13 to risk from a rising gold price.
 14 And then within the junior space, we were
 15 attracted to TRX because of the breadth of its assets and
 16 its low capital intense. Limited capital insensitivity
 17 of its business relative to its peers.
 18 So as opposed to focusing on one or two small
 19 projects and then semi seeking to finance them themselves
 20 and thereby creating some risk, financing risk, TRX had a
 21 much wider portfolio of prospecting assets and was
 22 pursuing -- when we first got involved, a royalty model,
 23 that would mitigate entirely that financing risk.
 24 You'd get a smaller cut of the upside when
 25 things were doing well, however, you weren't subjecting

1 yourself to the concentration of one concession and one
 2 outcome.
 3 **Q** Okay. So who made the decision to invest in
 4 TRX?
 5 A Jim and I.
 6 **Q** Okay. Did anyone perform due diligence on TRX
 7 before GISF invested in it?
 8 A We did. We read their filings and we met with
 9 Jim Sinclair, and we asked other market participants
 10 about their views of the company. And subsequent to our
 11 investment, we went and diligenced properties in the
 12 country.
 13 BY MR. BOHR:
 14 **Q** You said "we" in your answer to all those
 15 questions.
 16 Did Mr. Hull ever meet with Mr. Sinclair?
 17 A No.
 18 **Q** Did Mr. Hull review any prospectus or 10-K of
 19 TRX?
 20 A My understanding is that he did, yes.
 21 **Q** How do you have that understanding?
 22 A Because we discussed them.
 23 **Q** What time frame was this decision made to start
 24 investing in TRX?
 25 A In the summer, fall -- I would say August,

1 September, October of 2010. It was during what was the
 2 first time that I alerted to Jim that we had some real
 3 gains, and then I additionally said, "We're probably
 4 going to have some tax liabilities." We discussed that.
 5 And it was at that point in time that Jim
 6 became clear, increasingly clear, that we would have to
 7 be going into a stock, in one stock.
 8 And then from that point, with that guidance,
 9 TRX was already our established favorite stock.
 10 BY MR. BAGNALL:
 11 **Q** What was the nature of GISF's investment in
 12 TRX? And what I mean by that is, did you own its debt or
 13 did you own --
 14 A Equity.
 15 **Q** You owned TRX equity.
 16 A Yes, sir.
 17 **Q** Would you characterize the investment as long?
 18 A Yes.
 19 **Q** Okay. And how many shares of TRX stock did
 20 GISF own?
 21 A At the top, I think a little under 10 million
 22 shares.
 23 **Q** And at that time, did the Fund own any other
 24 assets?
 25 A At certain points in time, no.

1 **Q** So at certain points in time, the only assets
2 that GISF had was owned TRX stock?
3 **A** And related options securities, yes.
4 **Q** Options that were a derivative of TRX's stock?
5 **A** Correct.
6 **Q** Okay. Do you recall at the high point what
7 percentage of TRX's outstanding float GISF owned?
8 **A** I think the high point was just over 10
9 percent.
10 **Q** Okay. And what was the value of the Fund's
11 investment in TRX at its high point?
12 **A** The mid-to-high \$60 million area.
13 **Q** Okay. And then what time period was that?
14 **A** June or – I'd say mid-June of 2011.
15 **Q** So in mid-June of 2011, did the Fund own just
16 under 10 million shares of –
17 **A** Just over actually at that point.
18 **Q** Oh, just over 10 million shares of TRX?
19 **A** I'm sorry. I'm sorry. I thought you were
20 going to say "percent."
21 So under 10 million shares, just over 10
22 percent.
23 **Q** At a value of \$60 million – approximately \$60
24 million?
25 **A** A little bit more, yes, sir.

1 **Q** Okay.
2 **MR. FERRIGNO:** That was 10 percent of the
3 outstanding stock –
4 **THE WITNESS:** Yes.
5 **MR. FERRIGNO:** – of the company?
6 **THE WITNESS:** Yes.
7 **BY MR. BAGNALL:**
8 **Q** So not the float but the issued and
9 outstanding.
10 **A** I'm sorry. Let me clarify.
11 As far as the number, that numerator that we
12 always used, or the denominator, however – I'm sorry –
13 the denominator, we would use issued and outstanding,
14 yes.
15 **Q** Okay. And I'm sorry if this is redundant, but
16 why didn't you concentrate all of the Fund's assets in
17 TRX-related securities?
18 **A** Because Jim Hull gave me that directive.
19 **Q** And the reason for doing that was the increased
20 overhead, the cost of overhead, in diversification?
21 **A** Two issues. The first was the tax efficiency
22 that led us to stocks. The second was overhead.
23 **Q** Okay.
24 **A** We did not want to cover more than one.
25 **Q** Okay. How long did GISF float its TRX

1 position?
2 **A** I believe we went about 5 percent in December
3 of 2010 and we had no position by the end of November
4 2011. So less than a year.
5 **Q** Who decided to liquidate the Fund's position in
6 TRX?
7 **A** Well, Jim gave the directive on the weekend –
8 the stock had a very poor performance over a two-day
9 period on a Thursday, as I recall, the 22nd of September,
10 and the Friday is the 23rd. And after that Friday, I was
11 bullish full-stop on TRX more than I ever had been,
12 because it's a lot cheaper than ever, and we really
13 believed in it. And I can go to other reasons why I was
14 very bullish.
15 Over that weekend, in discussing with Jim, he
16 said that he had no tolerance for additional losses.
17 Since I cannot predict outcomes, and I can't guarantee
18 outcomes, that was guidance to me that we needed to seek
19 out a sale.
20 Now, Jim's a smart guy and I understood that
21 position to be – his communication to be, you know,
22 clear that price mattered. In other words, we're not
23 just going to go out and sell at any price. We're going
24 to try and get excellent execution. But that our
25 capacity to just use time on our side was no longer

1 there. That we needed to begin selling.
2 **Q** And that's September 22nd and 23rd of 2011?
3 **A** Right. So the conversation I had with Jim
4 would have been over that weekend, so the 24th or 25th?
5 **Q** Of 2011.
6 **A** Yes.
7 **Q** And so was that the – did you interpret that
8 conversation to be a decision to liquidate the entire TRX
9 position that the Fund held?
10 **A** No. I mean to the degree that we could
11 effectively at a good price, yes. But, again, it was
12 price sensitive.
13 **Q** At any time after the weekend of the 24th and
14 25th of 2011, did the strategy change?
15 **A** I mean we continually went back and forth. At
16 certain points in time, even after we had already sold
17 per Jim's direction, Jim discussed potentially buying it.
18 So, you know, we were having a robust, I would say,
19 discussion as to what our options were and what was the
20 smart thing to do, and we recognized that we were under
21 pressure and susceptible to making poor decisions. And
22 so we tried to keep the lines of communication as open as
23 possible and to discuss all options.
24 But generally speaking, from the 24th until we
25 concluded, the general guidance was, "Good prices. Let's

1 get out."
 2 Q Okay. So from the 24th of September 2011
 3 onward, the general guidepost was to get out of TRX at
 4 good prices?
 5 A Yes, sir.
 6 Q Okay. Do you recall when GISF was completely
 7 out of TRX?
 8 A The 10th of November.
 9 Q Of 2011?
 10 A Yes, sir.
 11 Q And other than Mr. Hull not being able to take
 12 on any other losses, were there any other reasons to
 13 liquidate the Fund's TRX position?
 14 A My view was, and understanding at the time, was
 15 that Jim was upset about the feedback that he was getting
 16 from his friends. And I think that, you know --
 17 I'm sorry, can you ask the question again? I
 18 kind of lost my place.
 19 Q Other than -- before I think you testified that
 20 you had that conversation with Mr. Hull the weekend of
 21 the 24th or 25th of 2011, where he told you that he could
 22 not handle taking on any more losses.
 23 A Right.
 24 Q And that you understood to be a direction to
 25 get out of TRX at good prices.

1 A Right.
 2 Q Were there any other reasons to get out -- for
 3 the Fund to liquidate its TRX position?
 4 A No, no, no. Definitely not. Because my -- to
 5 the degree I could control the structure and the
 6 situation, I would have held it. I had a desire to hold.
 7 Q Okay. And when you testified a moment ago that
 8 you think that part of the foundation for Mr. Hull not
 9 being able to take any more losses, was conversation he
 10 was -- or feedback, I think you said, that he was getting
 11 from his friends. Is that right?
 12 A Yes.
 13 Q When you say "his friends," do you mean other
 14 GISF investors?
 15 A Yes.
 16 Q So the group of GISF investors that were
 17 affiliated with Mr. Hull were complaining to Mr. Hull?
 18 A Yes. As an example, they wouldn't -- at no
 19 point in time did any other GISF investor that he brought
 20 into the Fund ever directly contacted me. Generally
 21 would never contact me. They would contact him, and then
 22 in the course of that conversation, there might be a
 23 subsequent conversation with me, but generally speaking,
 24 their direct dialogue was with Jim Hull.
 25 Q Okay. As of September 24th, 25th, how many

1 shares of TRX did the Fund own?
 2 A We owned 9.3 million shares, and we were short
 3 5000 option contracts with a strike price well above
 4 market, 9 and 10, that were obviously going to be
 5 exercised. They expired in October. So effective 9.8
 6 million shares.
 7 Q Okay. And I want to talk about the options in
 8 a minute, but before we get there.
 9 When GISF liquidated its TRX shares, did it do
 10 that over time?
 11 A Yes.
 12 Q And was it from -- what was the time period
 13 that it liquidated its shares?
 14 A So I had the conversation with Jim. In the
 15 course of that conversation, he asked what would our
 16 options be, and I mentioned that Richard Sands at Casimir
 17 Capital, who had recently arranged a placement for TRX,
 18 to the tune of about \$30 million, set a price at around
 19 \$5.75, if I recall correctly. In other words, higher
 20 than the levels we were trading at at that point in time.
 21 At this point I believe around \$4 a share.
 22 Q That was the market price for TRX stock in
 23 September, end of September 2011, was \$4 a share?
 24 A So on the 21st, which was a Wednesday, it was
 25 in the mid 5s. On the Thursday, it goes down to \$4.50.

1 And then on Friday it goes to \$4. And I think it was
 2 like a 17 percent decline over those two days.
 3 And that's what precipitated my stop in
 4 charging management fees and sending the letter to
 5 investors that I did.
 6 Q Do you know why the stock price dropped 17
 7 percent on those two days?
 8 A I do not.
 9 Q And then from the Monday, would have been the
 10 26th, did you sell shares on the 26th?
 11 A So over that weekend as well -- the answer is
 12 yes, I did sell shares on the 26th. Not out of Geier
 13 International Strategies Fund. I sold shares for myself
 14 and for my girlfriend, Francesca.
 15 Those shares were owned above and beyond our
 16 respective commitments to Geier. So I have a huge
 17 commitment to Geier that dwarfs my personal position in
 18 Schwab. And when we contemplated forming the structure
 19 and Jim laid out the significance of this severe align
 20 with interest that he wanted to establish, it was very
 21 important that we have a conflict -- a disclosure to our
 22 investors, such that we could actually achieve that.
 23 So we have a potential conflicts disclosure in
 24 the offering memorandum that was specifically
 25 contemplated such that we could then buy these extra

1 shares in our personal account to show additional
 2 alignment of interest. Had we not had that, we couldn't
 3 have done that.
 4 So over the course of the weekend, again, I'm
 5 not taking management fees out of the Fund and I have
 6 liquidity needs and so forth. And after the stock had
 7 gone down 20 percent, I acknowledged that we no longer
 8 had the flexibility to maintain that additional exception
 9 alignment of interest and that those funds are needed for
 10 liquidity, for Francesca and for me.

11 Q So I'm a little confused, because I thought I
 12 understood you to testify a moment ago, at the September
 13 24th, 25th time frame, you were bullish in TRX.

14 A I am bullish. I am bullish. I wish I could
 15 have held it. I still unfortunately have -- I'm an
 16 organic creature, continually rotting, and, you know,
 17 there are expenses that no matter how -- you know, you
 18 have rent, you have food, and other things that you have
 19 to pay for.

20 And so I unfortunately, despite -- in spite of
 21 being overwhelmingly bullish, and if I may explain why I
 22 was so bullish.

23 I loved the stock at \$6. Other professional
 24 investors had tremendous respect from Platinum to another
 25 investor, who also loved and bought significant positions

1 Abu Dhabi, who owned a position equivalent to us as well,
 2 as we understood.

3 And the view was that since we are lower and
 4 they, of course, also wanted to get this situation
 5 clarified before this substantial short could exploit the
 6 situation. In other words, they also would not want us
 7 to sell to that short, equalize the short, at a low level
 8 and then no longer have that short pressure.

9 So we believed quite strongly that from a gain
 10 theory perspective, it would be advantageous for them to
 11 buy our shares at this now relatively cheap level. And
 12 in part that was validated by our experience.

13 Q During the time that you were liquidating
 14 GISF's TRX position, what was happening with the share
 15 price?

16 A It essentially was flat. So I reached out to
 17 Richard Sands early that week and asked -- several weeks
 18 earlier Richard -- when the stock was trading in the
 19 mid-6s, I had complained to Richard that there was
 20 insufficient market support following the transaction we
 21 arranged.

22 He said, "We can take out your whole position
 23 right now if you'd like."

24 So when I came back to him, you know, "If you
 25 like it at \$6.50, I'm sure you'll like it at \$4."

1 at that level.

2 And my understanding -- you asked why it went
 3 down 17 percent. My speculation was that it was an
 4 attack from a short who was seeking to create the
 5 perception of overhanging stock, and it was entirely
 6 technical in nature.

7 So when we were at \$4, I was pretty sure and
 8 highly confident that we would see a nice retracement
 9 rally and that these levels were very cheap and not a
 10 good level to be selling on.

11 That said, I don't have the flexibility to
 12 maintain that commitment indefinitely, and I had to
 13 acknowledge the requirement for liquidity.

14 Q Okay. When GISF liquidated its TRX position
 15 between September 24 and November 10, 2011, did it do so
 16 in large blocks of shares?

17 A We sought to, yes.

18 Q And why did you seek to do it in large blocks
 19 of shares?

20 A We believed that we would achieve better
 21 execution to the degree that we were able to find our --
 22 sell our shares to the other large longs who existed.

23 So primarily there were two other large longs.
 24 There was a Platinum, who had just bought about \$30
 25 million at levels much higher. And there was a sheikh in

1 Although, of course, conditions have changed. But I
 2 asked him what he could get done, and it took him a day
 3 or two, as I recall, and he came back and initially
 4 represented that he would be able to do the whole
 5 position. And we, of course, would have been happy with
 6 that. And then came back and said he could only do 3.73
 7 million shares.

8 That he had already gone out to market, of
 9 course, to some people at least, and revealed our
 10 potential intention, left us in the position that we
 11 really needed to proceed anyway.

12 So we proceeded with that sale at \$3.50. And
 13 we sold additional shares, I would say between \$3.35 and
 14 \$3.75 to the sheikh, to BPI, which is a large bank in
 15 Portugal. And then once we felt we were close enough to
 16 the exit, we then began to use the market.

17 Q And how many shares did you sell outside of
 18 using the market?

19 A If you include the first deal arranged by
 20 Richard Sands, I believe around 4 1/2 to 5 million shares.

21 Q And so there were roughly 4 1/2 or 5 left
 22 afterwards?

23 A That's right.

24 Q And so 4 1/2 or 5 were sold using the market?

25 A Yes.

1 **Q And what happened -- were the sales through the**
2 **market done on one day?**

3 A Yes.

4 **Q And what, if anything, happened to the share**
5 **price?**

6 A It collapsed.

7 **Q Did you expect that to happen?**

8 A No. I had three base case scenarios. Three
9 scenarios. So my view at the time was that we had a
10 finite period of time to get out with good value. And
11 the risk of waiting too long would be that we see another
12 move down in the stock. So that we go into the market
13 and start selling, not when it's \$3.50 but it's 2.

14 So that was a risk even though, again, net
15 bullish and very bullish on the stock, I have to
16 acknowledge that the market is moving against me.

17 So the view was we want to act -- we want to
18 get as far along as we can before we hit the market, with
19 the knowledge that once we hit the market, if we are
20 already substantially a long, and those shares have been
21 acquired by these other two longs, they are now more
22 committed, and the balance of what we have left is much
23 lower, particular on a dollar amount, given share price.

24 So it was a question of at what point would
25 that inflection point be where we are far enough out.

1 The other longs have done enough to acquire those other
2 shares. That when we hit the market and call their
3 bluff, that they don't want to take out the rest
4 immediately, that they'll go ahead and do it.

5 So the view was that we're going to hit the
6 market. We're going to hit it hard in order to signal as
7 quickly and rapidly as possible to the other longs that
8 were serious and that were going to be into the market.
9 And that the consequences may be a lower price if they
10 don't act.

11 And I had basically three scenarios that I
12 anticipated. One was the base case, which is that the
13 other longs actually had bids below the market.

14 I anticipated there would be substantial bids,
15 you know, in the highs 2s and the low 3s, around that
16 technical point, which basically had been the low point
17 of the stock from a previous cycle. So I anticipated
18 very, very strong support at that level.

19 So my view was we're going to go in hard, we're
20 going to see those million-share bids. We're going to
21 hit one or two of them, and then we'll maybe touch up a
22 little bit, but effectively we're going to have a little
23 negotiation in the marketplace, and we're going to
24 effectively get out without the stock materially dipping
25 below 3.

1 The second case was that the stock did go below
2 3, and in that case, my view was that would be a result
3 of the fact that the others that are long simply weren't
4 paying close-enough attention in real time. They've got
5 other things going. They're not sitting at their desk
6 all day.

7 But once they got -- once they would get a
8 message, the stock has done this, and then they would
9 come in. The cavalry would come and they would start
10 bidding the stock back up and we would close around 3 or
11 higher.

12 In case two, that would be sub-optimal to case
13 one, because we'd have to go out and sell shares at below
14 \$3, a lower level, which I don't like, but in that case,
15 the best way to optimize in our view, was to do it
16 quickly and hard so that we'd sell as few shares down
17 there before the stock rallied.

18 And the third case was a chaotic outcome, which
19 is what materialized.

20 **Q So it sounds like in option one you would hit**
21 **the market hard and would hit a lower bid that was placed**
22 **by one of the other longs?**

23 And I'm not sure if you said it directly, but
24 were you inferring at least that the other longs would be
25 concerned with TRX's share price dropping?

1 A Correct.

2 **Q And why would they care about that?**

3 A Because they have such a long inventory. And
4 at the end of the day, these companies, you know, they
5 don't have cash flow and perception can become reality.

6 So, you know, it requires market support at
7 times in these companies in order to have the company be
8 alive and in a position to benefit from extreme upside.
9 And the base off of which retracement rallies and so
10 forth would occur would be relevant to them.

11 So, for example, the rumor that was in the
12 marketplace at this time was that we had overhang, that
13 that's why the stock is low, is because people are
14 anticipating us selling more stock.

15 To the degree that an announcement came out
16 that our position was closed and the overhang was
17 eliminated, my anticipation was the stock would bounce
18 significantly, and imagine that was their anticipation as
19 well.

20 The base off of which it bounces would matter
21 to them. So if it was a \$3 base, it might go up to \$4.55
22 after we get out. And how much do they have to pay in
23 order for it not to go below 3, relatively to how much
24 they've already invested just very recently, not too
25 much.

1 Q Okay. So in option one, GISF hits the market
2 hard. And it hits their below-market bids and
3 essentially stops the share price from dropping any
4 further, right?

5 A Right.

6 Q But initially the share price does drop until
7 it hits their below-market bid, is that right?

8 A Right. So let's say the share price opens at
9 \$3.40 or \$3.30, somewhere around there, I would
10 anticipate it going down to the low 3s, and maybe a
11 little bit below 3. Getting some activity and we're out,
12 and then it's back up.

13 Q Because you get the interest of the other longs
14 who'd negotiate with you directly to buy your shares?

15 A Not directly. In the marketplace.

16 Q Okay.

17 A In other words, now the bluff is being called.
18 You know, they were not as aggressive in buying our
19 position. From their perspective, if they can just sort
20 of wait, that's probably the best move. But the risk to
21 them of our being aggressive in the market was also a
22 risk for them as well.

23 Q And so this is on November 10, 2011, is that
24 right?

25 A Yes, sir.

1 Q So that's the date that GISF first hits the
2 market hard.

3 A Yes, sir.

4 Q Okay. In option one, where you hit the market
5 hard and the stock price initially drops until it hits
6 the other longs' below-market bids, how much time are you
7 anticipating would pass?

8 A Half an hour, an hour.

9 Q Okay. And then at that point it would hit the
10 below-market bid and then what would happen?

11 A It would stabilize and we'd be done. An
12 announcement would come out, "Geier's out," and the stock
13 would go -- blast off to \$4 or \$5.

14 Q Okay. So in 30 minutes, GISF would sell its 4
15 ½ or 5 million shares of TRX on the market and it would
16 be primarily to the other longs who had large
17 below-market bids.

18 A Correct.

19 Q Okay. And then option two, can you describe
20 that one again so that is --

21 A That's where it does break that \$3 level.

22 Q Okay.

23 A And that's a result of the fact that the bids
24 are not already in place. So option one presumes that
25 the other longs have big bids sitting there beneath the

1 market. To the degree they don't already have that in
2 place, they might still have the intention of doing that,
3 just not have the bid out there electronically.

4 And to the degree that was the case, it was
5 important to signal that we were serious and this wasn't,
6 you know, we're not doing 500 today, you know. It's time
7 to step up.

8 Q We're doing millions.

9 A Yeah.

10 Q And over what period of time would it be before
11 the other longs --

12 A Minutes, I would hope. So I mean obviously --
13 the longs were selling down below 3 is bad, an
14 undesirable and not something -- to the degree that
15 materializes, we would have been better off just selling
16 slowly and taking that risk.

17 Q Uh-huh.

18 A To the degree we had to materially sell at that
19 level. So the view was there would be a few minutes
20 where they would see their risk, and they can control the
21 sharp damage of a few minutes. You can call that a blip.
22 You can say there's a market, you know, dislocation and
23 we stepped in and that's that.

24 Q Okay. And in option two then, GISF selling
25 causes the market to drop, the share price, until, again,

1 until the longs get involved?

2 A And option two is characterized by that period
3 of time being one of us selling an immaterial number of
4 shares below 3.

5 Q What's that? How many is that?

6 A 100,000, 200,000, 300,000, somewhere in that
7 area.

8 Q And are you selling down to that level? You
9 are entering -- you are accepting a bid at that level.

10 A Accepting a bid at that level.

11 Q Somewhere in the 2s.

12 A Yes.

13 Q And that's the first trades of the day.

14 A No, no. Because you're going to start selling
15 and it's going to be where it was. So it's going to take
16 time to process --

17 Q I was being unclear. That's what I meant by
18 "selling down."

19 So you hit the market hard at the high 3s.

20 A Yes.

21 Q And --

22 A And you hit every bid all the way down until --
23 yeah.

24 Q Until the 2s.

25 A Until they come in and you're no longer in the

1 2s, correct.

2 Q Because they are entering bids that are higher
3 than what are out there in the market before they
4 participate.

5 A Correct.

6 Q Okay. And so then you sell – then again you
7 sell out GISF's entire TRX position, is that right, on
8 that day?

9 A Correct.

10 Q Okay. And then where did you expect the stock
11 price to be when you were finally out?

12 A Are you saying based upon what actually
13 occurred, or what –

14 Q In option two. No, you are anticipating option
15 two, yeah.

16 A In option two, again, it would be the same
17 outcome. We are going to close at \$4, \$4.50. They are
18 going to close out the position. Everyone is going to
19 know this narrative, that it was overhang, and all the
20 price action can be chalked up to that, and basically
21 everybody missed their opportunity to buy super cheap.
22 And the stock has stabilized and now we have, you know, a
23 solid long institutional professional longs who are not
24 mismanaging their position.

25 Q And in option two, over what period of time

1 would the stock price correct itself back to 4?

2 A So I would say, you know, options one and two
3 are the exact same up until, say, \$2.95. You're going to
4 crush the bids all the way to \$2.95 either way.

5 Q Uh-huh.

6 A Option one is where those bids are already
7 there and you blast off from there. Option two is where
8 you break \$2.95. You go lower and you're going to keep
9 going, and you are going to go hard because you need to
10 signal that this is serious. And presumably it's going
11 to be minutes before someone puts in a bid and absorbs
12 all of that supply.

13 And then to answer your question, it would be,
14 you know, straight down, straight back up, hopefully over
15 the course of minutes that you would be in that
16 situation. And then, again, once we're out, an
17 announcement would come and presumably be around that \$3
18 baseline and then they could have their narrative of the
19 overhangs been exhausted.

20 Q Okay. And then in option three, which was – I
21 think you described it as chaotic.

22 What does that entail? What does that option
23 entail?

24 A That is characterized by, again, the same for
25 all of option two up until right here, and then they

1 don't come.

2 Q Okay.

3 A And it's something less than that. In other
4 words, they did come. They showed up and they didn't bid
5 it back up, which is very surprising to me. They let a
6 dollar value go away in order to potentially save a few
7 million dollars, and they lost 10 or 15 or \$20 million.

8 So that's why I didn't anticipate it.

9 Q Okay. So in all three options, when GISF comes
10 to the market to sell its 4 ½ or 5 million shares, you
11 anticipated that TRX's share price would drop.

12 A Yes.

13 Q Okay. And the difference between the options
14 is the –

15 A Initially would drop, yes.

16 Q Initially would drop. And the difference
17 between the three options is when and how that share
18 price would recover, is that right?

19 A That is correct, yes.

20 Q Okay. So in option three, did the share price
21 ever recover?

22 A Not during that day, from the perspective – I
23 think it closed at \$2.25 that day, and that was a \$1.75
24 below where I thought it would close that day.

25 Q Okay.

1 A So then it subsequently recovered into the 4s,
2 I think this year.

3 Q Okay. And of the three options, which one did
4 you feel, before the 10th of November, of the three
5 options, which one did you think was the most likely to
6 occur?

7 A The base case was number one. That's where I
8 would say two standard deviations of likelihood. Call it
9 70 percent likely. Then maybe another standard
10 deviation, the second one. And the third I just – what
11 actually occurred still baffles me.

12 Q Okay.

13 MR. FERRIGNO: Are these options or scenarios
14 that you call it?

15 THE WITNESS: What do you mean?

16 MR. FERRIGNO: Options suggest –

17 THE WITNESS: Oh, we're not talking about
18 options. I'm sorry.

19 BY MR. BAGNALL:

20 Q Correct, yes. I used I think – one of us used
21 the term "options" and I stuck with it.

22 A Okay.

23 Q But I mean the possibilities – possible
24 outcomes.

25 A Yes, sir.

1 Q And I don't mean an option as a security, or
2 that you had the ability to choose which of the three
3 that you wanted to happen.

4 A Right.

5 Q And everything we've been talking about now had
6 to do with GISF's trading in TRX's stock, is that
7 correct, its equities, aside from options?

8 A Everything that we're talking about -- sorry,
9 what did you mean?

10 Q So when we were just discussing the three
11 possible outcomes of TRX liquidating --

12 A Yes, it had to do with TRX selling, yes.

13 Q And selling securities of TRX that were actual
14 stock and not options, correct?

15 A No, that's not correct.

16 Q Okay. So --

17 A So we pursued a strategy of buying options
18 instead of selling stock. That was a signal in strategy.
19 So, for example, if you were to try to intuit what my
20 intentions were, if I sold the stock, you might think I'm
21 bearish. If I bought a put that had a strike price below
22 the market, you would think, "He thinks it's going to
23 that price."

24 So that's a quicker way to signal that you're
25 going to -- you can signal that you're going to crush the

1 stock without actually having to subject yourself to
2 those losses in case two down there.

3 So if I go out and buy \$2 puts for the Fund
4 quickly, that signals to the other longs that we are
5 going to market in a serious way. And that, again,
6 motivates their action quickly.

7 Q And that's because at the time you purchased
8 the option, the puts with a \$2 strike price, the market
9 price of the share was higher than \$2?

10 A Was well higher. Well, I don't think anyone
11 contemplated that day with the stock having traded in the
12 mid 3s for the last month and a half and relatively
13 stable, that it would go, and the option expirations that
14 we bought were only a week away.

15 So no one would have naturally anticipated I
16 think that the stock would go to \$2 that day.

17 Q Okay. And so in addition to selling the 4 1/2 or
18 5 million shares of TRX that it owned, GISF also
19 purchased put options in TRX.

20 A No. We didn't -- we began by -- it had the
21 same effective impact on the market. It's effectively
22 selling. I go out and buy the \$2 option, the first thing
23 the person who sold me that option does is sell a share.
24 So the impact is basically the same with the exception
25 that you see someone buying options activity that then

1 can be used as a signaling mechanism.

2 Q So on November 10th, you, as the investment
3 manager for GISF, took two actions, at least two actions,
4 right? You bought some puts, is that right?

5 A Yes, sir.

6 Q And then you sold TRX stock, is that right?

7 A We did both, yes. What we had anticipated
8 would happen under, let's say, let's go to the cases
9 again.

10 Case one, you'd buy a few puts, and then you'd
11 get down to that level where you'd see the bids, and then
12 you'd start selling the shares, and you'd be done. You'd
13 only have to buy a few puts in order to generate that
14 signaling mechanism.

15 The same thing with scenario two. Either way
16 we would not be able to buy puts once the market started
17 to trade materially below three, because they would be
18 prohibitively expensive.

19 Q And so I think I understand what you're saying
20 now.

21 When you bought, you got the market price of
22 the shares to move by buying the puts --

23 A That's right.

24 Q -- because the counterparty sold you the put
25 and also sold the share to hedge.

1 A That's exactly right.

2 Q Okay. Do you know who your counterparty was
3 when you purchased the options?

4 A No. I presume it was marketmakers who were
5 just were looking at 10,000 stocks and look at daily
6 liquidity. They're just algorithms.

7 Q Okay. Do you recall, other than the -- I think
8 you testified that it was \$2 puts? Was it \$2 puts or \$3
9 puts that you purchased on the 10th of November 2011?

10 A I think we purchased both.

11 Q You purchased both.

12 A But what was important is that we purchased
13 some 2s.

14 Q Okay.

15 A As that's signaling.

16 Q Do you recall how many you purchased?

17 A I don't.

18 Q Okay. At any other times, setting aside for a
19 moment this November 10, 2011, time frame, did GISF own
20 other TRX options?

21 A We sold short options in the spring. It was
22 effectively a bullish bid, it was \$9 or \$10 strike puts
23 that contemplated the stock being higher than \$9 and \$10,
24 from the time they expired in the third week in October.
25 And they were, of course, a put to us.

1 Q Okay.

2 A Additional, we bought call options I think on
3 TRX that expired at various points in time.

4 Q So you purchased a call option, the right, but
5 not the obligation to buy TRX stock?

6 A At a high price.

7 Q Okay. And what was the purpose of buying those
8 calls?

9 A Speculative. In order to enhance our return
10 profile on the assumption that the stock would be
11 materially higher.

12 Q So it was a long investment.

13 A Yes.

14 Q So you're thinking that the share price of TRX
15 is going to be above the strike price of the option when
16 it comes due?

17 A Yes, sir.

18 Q Okay. And --

19 A Or that at least it will rise from the time I
20 buy the option, so I can sell the option for more.

21 Q Okay. Fair enough. And then you sold puts as
22 well thinking -- that was also a long investment, is that
23 right?

24 A Yes.

25 Q Because you were anticipating that the share

1 price would rise above the strike price and then --

2 A I would just collect the premium and have
3 nothing to -- up.

4 Q Because the holder of the option could sell on
5 the market at a price higher than the strike price,
6 correct?

7 A Right.

8 Q Okay. So other than the \$2 and \$3 options, the
9 puts that you purchased on the 10th, which were -- those
10 were short positions, is that right?

11 A Yes.

12 Q At any time did GISF own other short position
13 options in the Fund?

14 A No.

15 Q Okay. So all the options that the Fund bought
16 or sold prior to November 10th or 11th were long?

17 A Long, that's correct.

18 Q Okay. And so do you recall owning \$10 April
19 2011 calls?

20 A Yes.

21 Q And those were long --

22 A Yes.

23 Q And \$8 January 2012 calls? Do you recall
24 owning those?

25 A Yes. Those might have been short though. We

1 might have sold those calls.

2 Q Okay. And that's after -- okay, fair point.
3 So for the strike prices that are prior to
4 November of 2011 --

5 A Right.

6 Q -- or including November 2011, they were all
7 long?

8 A That's right

9 Q After that --

10 A We sold some calls that gave us some premiums.

11 Q And does that mean that your view of TRX had
12 changed from bullish to bearish?

13 A No. I was bullish but I think we sold calls at
14 like \$8 strikes. I didn't think the stock was going to
15 triple over that period of time.

16 Q Okay. What was the purpose of buying the long
17 options instead of just buying additional shares of the
18 stock?

19 A You're talking about the --

20 Q Sorry, let me ask it again
21 Before November of 2011, and the first time
22 that the Fund bought short options of TRX --

23 A You're talking about the \$9 and \$10 ones we
24 sold.

25 Q Correct.

1 A Why did we do that instead of buying more
2 shares?

3 Q Correct.

4 A It's the equivalent position, so -- you know, I
5 think that we liked the idea of taking the premium and
6 not assuming more share ownership.

7 Q Okay. Did you typically exercise the options
8 that you purchased or sell them before they expired?

9 A We would typically -- well, with the short put
10 options, we had contemplated that there would be no
11 exercising. We'd just be collecting the premiums. So
12 when it materialized that we were in a position to have
13 to have the shares put to us, we were then in the
14 positing of we would like the take the shares, but we
15 also had constraints in terms of the leverage that we
16 could bring on.

17 So by assuming the shares that would increase
18 our leverage, and so in many of those cases, when the
19 shares were put to us, we would sell them off to maintain
20 equal leverage before and after.

21 Q And you are describing the options that were
22 purchased prior to November 10, 2011, correct?

23 A Yes, sir.

24 Q And so you sold the puts thinking that the
25 price is going to rise. It didn't. And they were put to

1 you?
 2 A Yes, sir.
 3 Q And you purchased them?
 4 A That's right.
 5 Q Did that happen in every time you bought a long
 6 option prior to November 10, 2011, did you have to
 7 exercise them?
 8 A Every time I bought a long option? Well, the
 9 calls expired worthless.
 10 Q Okay.
 11 A So no. But – and there were only two
 12 examples, as I recall, where we went short puts, and both
 13 of the times we had the put to us also.
 14 Q Okay. Well, they were long puts I thought you
 15 said. You were long on that investment, right?
 16 A I was confused with the terminology.
 17 We sold a put at a high – at a strike price
 18 higher than the market price.
 19 Q Because you thought the market price would pass
 20 the strike price, right?
 21 A Correct. So it's a bullish bid.
 22 Q Right. And so all the pre-November 2011
 23 options were aligned with the investment so you're being
 24 bullish on TRX?
 25 A Yes.

1 Q And turning back to the \$2 and \$3 puts that you
 2 purchased – excuse me.
 3 Did you sell the put or buy a put on November
 4 10, 2011?
 5 A Purchased with long a put. The right to sell
 6 at those below-market prices.
 7 Q Okay. And so what would have had to happen for
 8 those puts to be profitable?
 9 A The market price would have to be below the
 10 strike price.
 11 Q Okay. But I think you testified that you
 12 didn't buy those puts to profit from them. You were
 13 trying to signal the market, is that right?
 14 A That's correct.
 15 Q Did those puts become profitable?
 16 A We had a small almost immaterial gain on the
 17 purchase and sale of puts that day. To clarify, the puts
 18 that we purchased and sold as a percentage of the
 19 transactions we carried out, that they were relatively
 20 small, because as the market went below \$3, the puts
 21 became prohibitively expensive, and we couldn't buy more.
 22 You need to sell.
 23 So we made – I think it was like \$25,000, I
 24 think, on the put position that day. But it was a small
 25 portion of what we sold. Of course, we net lost money

1 that day.
 2 Q And you sold the contracts back on the 10th, is
 3 that right?
 4 A Yes.
 5 Q So you bought them and sold them on the same
 6 day?
 7 A Yes.
 8 Q Were the value of those put contracts that you
 9 purchased on the November 10th affected by your selling
 10 of the TRX stock that same day?
 11 A Yes.
 12 Q Do you think it was GISF's selling of TRX stock
 13 that caused the market price for TRX to drop?
 14 A Yes.
 15 Q Okay. Why do you think that?
 16 A Because we sold a large volume of stock that,
 17 generally speaking, would result in what occurred.
 18 Q Okay. And is that – not to belabor the point
 19 – but you generally expect the share price of a stock to
 20 drop when you sell a large portion of the shares?
 21 A Yes.
 22 Q Okay. And that's mitigated by what you
 23 described earlier, what you thought that the other longs
 24 would – how they would react to your doing so?
 25 A Yes. So as an example, with my brokers, when I

1 gave them guidance on this day, I told them, "Expect a
 2 dollar. You know, I want you to get to a dollar."
 3 Because their natural inclination is to get good value
 4 and to mask their selling. And that in this gain theory
 5 case was precisely the opposite of what we were trying to
 6 achieve.
 7 So as an example of – yeah.
 8 Q But you knew it was possible that it could tank
 9 the stock?
 10 A Yes, absolutely.
 11 BY MR. BOHR:
 12 Q On that day, November 10, 2011, the shares that
 13 GISF had sold were what percentage would you say of all
 14 the issued and outstanding shares in TRX?
 15 A Four percent.
 16 BY MR. BAGNALL:
 17 Q When you purchased the \$2 and \$3 puts on the
 18 10th, did you know at that time that you were going to
 19 liquidate the Fund's holdings in TRX that same day?
 20 A Yes.
 21 Q Did anybody else on November 10, 2011, know
 22 that GISF was going to liquidate its GISF holdings?
 23 A The day before or two days before I had had a
 24 meeting with Platinum, where they were scheduled to
 25 deliver to us an offer to stabilize the stock. We

1 thought it was going to be an offer to purchase our
2 shares. Instead, it was an offer to lock our shares up
3 and to agree not to sell them in exchange for a premium
4 of \$10,000 a month for them for six months.

5 Effectively it gives them the right to make
6 their decision ahead of us, which we didn't find
7 attractive, and I reported that to Jim. He said, "Well,
8 I think the best move is to -- let's call their bluff.
9 Let's hit them in the market and see how that goes."

10 **Q Okay.**

11 **BY MR. BOHR:**

12 **Q How did you make that report to Mr. Hull?**
13 **Phone or e-mail?**

14 **A Phone.**

15 **BY MR. BAGNALL:**

16 **Q So other than you and Mr. Hull, did anybody**
17 **else know that GISF was going to liquidate its TRX**
18 **position?**

19 **A My father called me, I believe on the 9th, with**
20 **indicative knowledge that that's what we were**
21 **contemplating, and asked me, in light of the fact that he**
22 **had no idea what was going on, what he should do with his**
23 **additional shares that he had purchased, on which he had**
24 **a loss.**

25 **Q Okay. And what did you tell your father?**

1 **A I gave him the guidance that I had given myself**
2 **and Francesca's parents as individuals within the Fund**
3 **with -- for the segment of their investment, it was**
4 **exceptional.**

5 **So the shares my father was talking about was**
6 **not his million dollars in the Fund, but the \$150,000, as**
7 **I recall, or something like that, that he had bought in**
8 **addition to the Fund outside in his personal account.**

9 **Generally having been as wrong as I had been**
10 **for the preceding several months, I was aware that I**
11 **could be wrong this time again. And I adopted a strategy**
12 **to assign a different risk tolerance to individuals who**
13 **were different. And Francesca's parents, as I said, or**
14 **maybe I didn't, are in their late seventies. They put**
15 **all of their money in outside their primary residence,**
16 **and I thought it appropriate to take a risk reverse**
17 **strategy with them and buy a put that I expected to lose**
18 **value, but they would be better served buying insurance,**
19 **even though it wasn't going to pay out.**

20 **With me, I owed, at this time I think I had a**
21 **capital account in Geier of \$1.1 million. I owed Jim**
22 **\$675,000. And I was very concerned about my capacity to**
23 **honor my commitment to him.**

24 **So I bought a similar put, a series of puts,**
25 **for myself to hedge what turned out to be a very small**

1 portion of that leverage balance.

2 **Q Sorry. Similar to what? When you say you**
3 **"bought a similar put"?**

4 **A I'm saying I bought -- it wasn't a single**
5 **transaction. As I recall, I bought a put on the 28th of**
6 **October, the 2nd of November, the 8th of November, during**
7 **this whole period I bought a couple of puts to begin**
8 **hedging my loan balance to Jim, lest I was wrong about my**
9 **assumptions going forward, so that I could honor that**
10 **commitment to him.**

11 **And similarly because, again, Francesca's**
12 **parents, I took the view, were different in terms of the**
13 **risk tolerance than the other investors who were**
14 **generally in their forties, fifties, generally had many**
15 **millions of dollars outside of the Fund and generally had**
16 **large incomes that they warranted a different risk**
17 **tolerance.**

18 **So when my father called me that day and asked**
19 **me what to do, I just in my mind, I situated that, you**
20 **know, this is exceptional risk segment, let's do the risk**
21 **reverse strategy here. "You should buy these puts" and I**
22 **told him what to buy.**

23 **Q And what were they specifically?**

24 **A I don't recall. But they, again, would have**
25 **been \$3 or \$2 -- I think they're \$3 strike puts that**

1 would expire worthless in scenarios one and two.

2 **Q Okay. And did you -- when you say you gave**
3 **that similar advice to the Marzullo, how did you do**
4 **that?**

5 **A So at this time I'm working about 24 hours a**
6 **day. I don't have a lot of time to communicate to people**
7 **in their late seventies about what's going on. I just**
8 **frankly did not have time to adequately inform them.**

9 **But my view was the following. I've got a \$1.1**
10 **million with \$700,000 in debt, about \$400,000 in equity.**
11 **Assuming I'm right and things don't go lower from here,**
12 **I'm going to have \$400,000 plus in equity. And so I'm**
13 **willing to take the loss on the puts that I buy for them.**

14 **So I took the account that I had access to,**
15 **Francesca's, and I bought these puts in the amount I**
16 **think about \$40,000, and my view was, I'll take a \$40,000**
17 **hit. I'll have the peace of mind of knowing that I'm not**
18 **putting elderly people at risk, and then when things go**
19 **well, it will be the happiest \$40,000 I cover with the**
20 **proceeds of what I have on my side.**

21 **Q And so the account that you had access to was**
22 **whose account?**

23 **A Francesca Marzullo.**

24 **Q Okay. And was that her -- did that account**
25 **hold her parents' money?**

1 A The proceeds of the money that she had was her
2 parents' and she's an only child, and she has elderly
3 parents and they are essentially one financial entity,
4 from my perspective.

5 Q So the account was in Francesca's name but the
6 proceeds of the puts that you bought in that account were
7 her parents' money?

8 A Yes, because -- I didn't clarify all this to
9 Francesca, again, because of lack of time and too
10 complicated beforehand. But Francesca sent me an e-mail
11 while she was at school that day, you know, seemingly
12 positive about the gains in her account.

13 I did not respond in written form because the
14 truth of the matter was too devastating. And when we sat
15 down to talk about it later, it became abundantly clear
16 that this was a very, very bad outcome, and that the
17 proceeds of that were going to be used for her parents,
18 yes. That's the way that went.

19 Q Do you know that her parents received the
20 proceeds?

21 A The proceeds were unfortunately lost in full.

22 Q How is that? How were they lost?

23 A Invested in similar strategies that we pursued
24 in Geier subsequent to this liquidation.

25 Q Okay. Other than your father and the

1 that it was a bad idea, my view was no, they wouldn't

2 have cared.

3 Q So when you purchased -- does a \$4 strike price
4 sound familiar to you?

5 A Yes.

6 Q So do you know whether you purchased \$4
7 November puts in your personal account?

8 A I don't recall.

9 Q Okay. Do you recall whether you purchased \$4
10 November puts in Francesca's account?

11 A If I recall correctly, I think I purchased \$3
12 puts and she purchased \$4 puts.

13 Q Okay. I'm handing you, Mr. Gibson, what's been
14 previously marked as Exhibit 25.

15 Do you recognize that document?

16 A It's my October Schwab statement.

17 Q Okay. And is this the account in which you
18 purchased the puts you testified to a moment ago?

19 A Yes, sir. For myself, yes, sir.

20 Q For yourself, okay.

21 Could you please turn -- and I'm going to be
22 referring what we refer to as Bates stamps, which are
23 these numbers here at the bottom.

24 Could you please turn to the page that ends
25 1065, which is the third page in on Exhibit 25.

1 Marzullo, did you advise any other GISF investors to
2 purchase puts in TRX?

3 A No.

4 Q Why not?

5 A Because I didn't think that they would pay out
6 and they wouldn't be appropriate risk -- I mean a rich
7 person doesn't buy life insurance, as an example. You
8 know, something goes bad in your business, you're still
9 rich. Whereas -- and life insurance costs money. It's
10 an unfortunate reality of being less than rich, that you
11 need it.

12 I look to this as the exact same thing, that
13 it's unfortunate that we're going to have to take a loss
14 unlike some of these better people, but we're not in a
15 position to run with the big boys at this time.

16 Q So do you think that the other GISF investors
17 would have wanted to know about the opportunity to buy
18 these puts?

19 A Well, we disclosed to them when we started the
20 fund that we'd have this severe alignment of interest,
21 and that as a result, we disclosed on our potential
22 conflicts of interest clause that we're able to do
23 whatever we want in order to manage that incremental
24 risk, one we bear.

25 Would they have wanted to know if I recommended

1 A Okay.

2 Q Do you see under "Transaction detail" at the
3 top of the page, on a trade date of October 28, what
4 securities you purchased?

5 A I purchased \$4 puts.

6 Q Okay. Does that refresh your recollection as
7 to what you purchased?

8 A Yes, yes.

9 Q Seeing this document, does it refresh your
10 recollection as to what you purchased in Francesca
11 Marzullo's account?

12 A I would imagine it was a \$4 put as well.

13 Q Okay. I am handing you what's been previously
14 marked as Exhibit 23.

15 Do you recognize this document, Mr. Gibson?

16 A This looks like Francesca Marzullo's October
17 statement.

18 Q And it's a statement from a brokerage account
19 at Charles Schwab, is that right?

20 A Yes, sir.

21 Q And is this the account in which you purchased
22 the puts for Francesca that you testified to a moment
23 ago?

24 A Yes, sir.

25 Q Okay. Could you please turn to the second page

1 of this exhibit, Bates ending 470, and look at the bottom
 2 of the page.
 3 A Right.
 4 Q Do you see -- what did you purchase?
 5 A \$4 puts.
 6 Q Okay. Having seen this, do you recall now that
 7 you purchased \$4 puts?
 8 A Yes.
 9 Q With an expiration in November 2011?
 10 A Yes.
 11 Q Okay. When you purchased these puts, was this
 12 a -- I think you described it as a hedge, is that right?
 13 A Yes.
 14 Q And so for them to be profitable, what would
 15 have to happen?
 16 A Are you specifically referring to either
 17 Francesca's or mine, or both collectively?
 18 Q It doesn't matter. For either option -- the
 19 options are the same, are they not?
 20 A They are, they are, yes, you're right, you're
 21 right. I didn't know where you were -- if you were going
 22 to go in another direction.
 23 Okay. So the question was?
 24 Q What would have to happen for these options to
 25 be profitable?

1 A You would have to sell them for more than you
 2 paid for them. And for that to occur, the company stock
 3 price would have to go below the price at which you
 4 bought the option minus the premium you paid for the
 5 option.
 6 Q Okay. So the share price --
 7 A Would have to go lower.
 8 Q Would have to go lower. Okay.
 9 So when you purchased these, was this a long
 10 bet?
 11 A No, it was a short.
 12 Q It was a short bet.
 13 A Yes.
 14 Q Okay. So in your personal account, you had a
 15 short bet against TRX.
 16 A Correct.
 17 Q And in your share of the assets of GISF, did
 18 you own collectively, with the other investors, a long
 19 investment in TRX at the time?
 20 A Yes.
 21 Q Okay. So doesn't that mean then that you have
 22 effectively reduced your alignment with the investors by
 23 taking the short bet?
 24 A Yes, it does mean that.
 25 Q Okay. And I think you testified before that

1 that was extremely important to Mr. Hull that your
 2 interests were aligned.
 3 A Right. Well, it was important to Mr. Hull that
 4 I have an alignment of interest that far exceeds anyone
 5 else's. And the amount by which I reduced my long
 6 positions still left me exceptionally long and far longer
 7 than anyone else in the Fund.
 8 Q So it's true though that you testified that it
 9 was extremely important to Mr. Hull that your investment
 10 be aligned with his, is that right?
 11 A Yes.
 12 Q Okay. So do you think then that he would want
 13 to know if you have reduced the extent to which you are
 14 aligned with him?
 15 A Not if it's in order to hedge the loan that I
 16 owe him.
 17 Q And why do you think that?
 18 A Because he would want to know if I expected
 19 these puts to pay out. Absolutely. If I anticipated, as
 20 I did, that they would not pay out, it does not seem
 21 important to discuss it with him.
 22 Q Did Mr. Hull know that you purchased these
 23 puts?
 24 A He did not.
 25 Q Has he ever known that you purchased these

1 puts?
 2 A I understand he knows now.
 3 Q Okay.
 4 BY MR. BOHR:
 5 Q How do you understand that?
 6 A Well --
 7 MR. FERRIGNO: Don't disclose any privileged
 8 communications --
 9 THE WITNESS: Yeah, I think -- I haven't had a
 10 conversation with him, so it would be through my counsel.
 11 BY MR. BAGNALL:
 12 Q Okay. Do you think he, based on what you know
 13 now, do you think he learned about it recently?
 14 Let me ask that question again.
 15 Without divulging privileged communications, is
 16 your understanding that Mr. Hull now knows that you
 17 purchased \$4 puts, did that come to you recently?
 18 A Did my knowledge that he knows come to me
 19 recently?
 20 MR. FERRIGNO: And let --
 21 MR. BAGNALL: Sure.
 22 MR. FERRIGNO: The relevant period, is that you
 23 want to pick it at the end of 2011 or 2012? Why don't
 24 you say -- would you ask him if he believes Mr. Hull knew
 25 up to the end of 2011, the end of 2012, maybe you'll --

1 MR. BAGNALL: Let me ask you this.

2 MR. FERRIGNO: -- get to a similar spot.

3 BY MR. BAGNALL:

4 **Q Do you know whether Mr. Hull knew that you**
5 **purchased these \$4 puts at any time before you paid off**
6 **your note to him?**

7 A Yes, actually he did. I mean I mentioned that
8 these puts paid out to him the next day, on the 10th. I
9 did mention both of these to him in passing.

10 He didn't pay attention, and it was not a
11 significant -- you know, it just didn't -- it's entirely
12 possible it didn't register with him, but I mentioned
13 that Francesca's parents had fortunately been hedged a
14 little bit and I felt good about that. And that I hedged
15 myself for a portion of my note and he summarily moved on
16 and went on to other stuff.

17 I don't think as well though that he
18 understood, you know, in detail the nuance elements that
19 we're getting at right now at that point, and I don't
20 think he understood that until after the subpoena.

21 **Q Okay.**

22 BY MR. BOHR:

23 **Q It's your testimony that you mentioned to Mr.**
24 **Hull on November 11, 2011, that there were some put**
25 **transactions in your personal account, is that correct?**

1 day or two before the 10th. Call it the 7th. So these I
2 think were both purchased on the 28th of October.

3 Essentially to further clarify and be more
4 precise. As the pace of selling diminished a little bit,
5 and they asked for another week to come back to us and so
6 forth, that's when I had a little bit of time to think
7 about, you know, my own liabilities and the different
8 risk tolerances of the different people.

9 So that's when I made this decision to do this.
10 And then it was several days later that we got, you know,
11 additional bad news that they were going to -- they gave
12 us kind of an offer that wasn't attractive in order to
13 sell our shares.

14 **Q This is the lockup offer you're referring to?**

15 A Yes, sir. And then we made the decision on the
16 9th and we executed on the 10th.

17 **Q So I understood your earlier testimony to be**
18 **though that the weekend of the 24th and 25th 2011 was**
19 **when you got the guidepost strategic direction from Mr.**
20 **Hull to liquidate GISF's TRX position at favorable**
21 **prices.**

22 MR. FERRIGNO: I'm sorry. What was the date
23 you gave?

24 MR. BAGNALL: September 24 and 25, 2011.

25 THE WITNESS: I think it was the -- one of

1 A On the 10th. On the 10th, not the 11th.

2 **Q But you mentioned to him -- I think you said**
3 **you mentioned it to him on the 11th.**

4 A No, I didn't. I mentioned it to him on the
5 10th when we spoke that day.

6 **Q Okay. And I believe you said, it's your**
7 **testimony that did not register with him.**

8 A That's right

9 **Q Okay. Between that time and, let's say, June**
10 **of 2013, halfway through 2013, is there any other basis**
11 **you have for believing that Jim Hull acquired knowledge**
12 **of your put transactions in your personal account and**
13 **Francesca's personal account?**

14 A No.

15 **Q Okay.**

16 BY MR. BAGNALL:

17 **Q When you purchased the \$4 TRX puts in your**
18 **personal account and in Francesca's personal account, did**
19 **you already know that GISF would be liquidating its TRX**
20 **position?**

21 A Not with Francesca's and not with almost all of
22 my puts.

23 **Q And how is that the case?**

24 A My anticipation was that we were going to get
25 bought out of the market when Platinum came back to us a

1 those two days, yeah.

2 BY MR. BAGNALL:

3 **Q Okay. So then when you purchased a short put**
4 **at the end of October, that was after you knew that GISF**
5 **would be liquidating its TRX position.**

6 A Yes. Yes, that's correct.

7 **Q Okay.**

8 MR. FERRIGNO: Did you also testify that as
9 time unfolded, after September 25th, you visited issues
10 with Mr. Hull and the strategy?

11 THE WITNESS: Yes.

12 MR. FERRIGNO: Is that right?

13 THE WITNESS: Yes. I mean we could have gone
14 long, you know, at any point in time, based upon Jim's
15 direction. But at every point in time, from September
16 24th through at least early 2012, I was very bullish,
17 full stop, on TRX.

18 BY MR. BAGNALL:

19 **Q But your marching orders from Jim Hull were to**
20 **liquidate GISF's TRX holdings at favorable prices,**
21 **correct?**

22 A Correct.

23 **Q Okay. And you knew -- I think you testified a**
24 **moment ago that you knew that selling 4 1/2 or 5 million**
25 **shares would cause the stock price to drop, is that**

1 right?

2 A I said generally that if you generally sell a
3 large volume relative to the average volume, it has a
4 negative impact on share price.

5 Q Okay.

6 A But in this case, no, I did not anticipate it
7 to go lower because of the unusual circumstances that
8 were here.

9 Q I think though that you also testified,
10 correct, that in all the three possible outcomes, at some
11 point the stock would drop when GISF liquidated its TRX
12 position, correct?

13 A Yes.

14 Q Okay.

15 A Before moving higher. And we wouldn't have the
16 ability to sell the puts at that moment in time, yeah.

17 Q You wouldn't have the ability to sell them at
18 that point in time?

19 A Well, it wasn't contemplated. I didn't
20 contemplate selling the puts during the first two
21 scenarios. If the stock went from \$3 to \$3.50 – \$3.50
22 to \$3, and then back up, we wouldn't have sold at 3, the
23 puts.

24 Q Was there any reason that GISF –

25 A And I want to explain further.

1 Q Sure.

2 A Because that would undermine the whole point or
3 buying the puts. So if stock goes down to 3, and I sell
4 the put, and we make a little bit of money on these
5 things, we're exposed – that undermines the whole point
6 of having protected ourselves for what could happen.

7 So I would say that there was no chance under
8 scenarios one and two of the puts paying out.

9 Q There was no chance of the puts that you owned
10 in the personal accounts paying out?

11 A That's correct.

12 Q What if you had sold the puts in the personal
13 accounts in the time between the stock price dropping and
14 it recovering?

15 A Well, what that presumes is that I would know
16 at that moment it was then going to recover. In other
17 words, it might have just kept going down. So we
18 wouldn't know we were scenario one or two until it was
19 too late. By the time you know you're in scenario one or
20 two, the stocks are at 4 and the puts are at zero.

21 Q But you purchased the \$4 puts as a hedge,
22 right?

23 A Right.

24 Q Because there was a possibility that they would
25 be valuable, right?

1 A Yes.

2 Q If it didn't go the way that you anticipated.

3 A Correct.

4 Q Okay. And was there any reason why you
5 couldn't buy \$4 November 2011 puts in GISF's accounts?

6 A No, you would have easily.

7 Q Would that have been a suitable investment for
8 the Fund?

9 A I did not see it as such.

10 Q And why not?

11 A Because we were down substantially. And my
12 view was very bullish on the stock and I did not
13 anticipate a lower movement in price, the share price.
14 And I did not have a tolerance to lose additional money
15 for GISF that I thought was bad value.

16 We're down 50 percent. The market is primed to
17 move higher in my view, and buying puts at the low was
18 almost shameful. Yeah.

19 Q So why was it a suitable investment for you and
20 the Marzulos but not the Fund?

21 A Because we had different risk tolerances. So
22 the Marzulos, unlike all the other participants in the
23 Fund, were older than 75 years old, and had all of their
24 resources, outside of their primary residence in the
25 Fund, unlike every other participant in the Fund who was

1 a millionaire, investments outside of their primary
2 house, and had a substantial income. So that's for the
3 Marzulos.

4 For me, and then the – you know, numbers
5 matter here as well, the scale of what we're talking
6 about. So the Marzulos on this day had approximately
7 \$1.9 million and would end up losing, you know, 60 down,
8 60 percent, so that's, you know, call it \$1.1 million,
9 and this hedge covered \$275,000 of that loss.

10 For mine, I think I had a net gain of all the
11 puts of about 75 or \$80,000. And I lost on this day 600
12 – I started out the day with \$1.1 million, and lost
13 \$680,000, and I had a \$680,000 note additionally.

14 So at the end of the day, I had \$420,000 in
15 Geier and a \$670,000 note. And a \$78,000 gain on the
16 puts. So the puts only covered a portion of the gap
17 between me and solvency.

18 Q And how much money did Mr. Hull lose on
19 November 10, 2011?

20 A Sixty percent of what he had along with
21 everyone else. And I don't want to give you a wrong
22 number. I don't recall the number, but tens of millions
23 of dollars.

24 Q So he lost 10 – and that's a lot of money,
25 right?

1 A Yes, it is.
 2 Q Okay. And you don't think he would have wanted
 3 an opportunity to hedge against that when his partner
 4 had?
 5 A Of course he should have every opportunity. If
 6 I believed that these options would pay out, or if I
 7 suspected they would pay out, then I would owe it to Jim
 8 to inform him. I agree with you there.
 9 But given the circumstances, which you don't
 10 have to take my word for it, you can look at my aggregate
 11 position, I did not buy hedges in an amount that offset
 12 my gain. I didn't buy them in an amount that lowered my
 13 loss to a level less than other investors. I bought
 14 hedges in an amount that hedged a portion of the
 15 leveraged amount that I had for Jim.
 16 Q Did you have funds in aero Schwab account
 17 sufficient to purchase a full hedge?
 18 A No.
 19 Q What percentage of the assets in aero Schwab
 20 account did you use to purchase the \$4 puts?
 21 A I think I used all of the resources I had,
 22 which is a good point. But, again, it would be
 23 immaterial if I, you know, had gone above a small portion
 24 of the leverage.
 25 Q Did you --

1 A I would have gone higher if I had the
 2 resources, and I would have felt comfortable to go
 3 higher.
 4 Q Did you have assets outside of GISF other than
 5 what you held in the Schwab account?
 6 A No.
 7 Q So is it fair to say then that you used every
 8 asset available to you at the time --
 9 A Yes.
 10 Q Let me finish the question.
 11 A I'm sorry, I'm sorry.
 12 Q Is it fair to say that you used every asset
 13 available to you at the time on November 10, 2011, to
 14 hedge your investment in the Fund?
 15 A Every liquid available asset, yes.
 16 Q Okay. And you would have done more if you had
 17 had the assets available?
 18 A Yes, I would have.
 19 Q Okay.
 20 A As I should have in light of the fact that I
 21 became insolvent after this, as a result of this.
 22 Q At any time prior to purchasing these options,
 23 the \$4 November 2011 puts, did you have a conversation
 24 with Mr. Hull in which you said, "I am purchasing a hedge
 25 outside of the Fund that is the opposite of the

1 investment that we have in TRX in the Fund"?
 2 A No, I did not say that.
 3 Q Okay. Did you have a conversation like that
 4 with any other investor, GISF investor, besides your
 5 father?
 6 A No.
 7 Q Okay. And why not?
 8 A Because I believed that -- I was bullish on the
 9 stock, and I believed these were not going to pay out,
 10 and I believed that that was the path forward. And if I
 11 thought there was any modicum of belief that these would
 12 potentially pay out, then I would have discussed it and
 13 we would have potentially tried to hedge the Fund and so
 14 forth.
 15 But I strongly took the view, down 50 percent
 16 in a concentrated market segment, with two other longs,
 17 who had very recently purchased substantial amounts of
 18 shares at higher levels, and who remained committed to
 19 the stock, were going to take us out and these would not
 20 pay out.
 21 Q When you testified a moment ago, and correct me
 22 if I'm wrong, that you didn't tell certain GISF investors
 23 because they had a different risk profile than the
 24 investors that you did tell, is that right?
 25 A Well, I didn't tell the Marzullos. I just did

1 it.
 2 Q Okay.
 3 A So I didn't tell anyone unfortunately.
 4 Q Okay. Other than your father.
 5 A I didn't tell him the reasoning. I told him
 6 what to do. He asked me what to do with the additional
 7 shares he had, and he had no understanding -- I didn't go
 8 into an explanation as to what we were doing or why. I
 9 gave him the advice that I gave to the other
 10 extraordinary segment of investors, and the only
 11 distinction between him and the others is that these are
 12 naked with regard to the accounts in which they are in,
 13 and referenced other things.
 14 So mine references my loan. Francesca's
 15 references her parents. And with respect to my father,
 16 he was actually only hedging what he had in inventory in
 17 that account as well. So there's quite a distinction
 18 there.
 19 Q You mean in his account that was separate from
 20 the GISF?
 21 A Yes.
 22 Q And how would your father have been able to
 23 hedge what he held in the GISF account?
 24 A How would he?
 25 Q Yes.

1 A Well, I wouldn't recommend that for him,
2 because he is not -- he didn't -- I wouldn't -- I didn't
3 think that my parents needed to benefit from this. Not
4 benefit, but, you know, had this position, because,
5 again, they didn't need to buy the life insurance. I
6 viewed them as well-off-enough that they'd be okay.

7 **Q So did the size of your father's investment in
8 GISF compare to the other investors that were affiliated
9 with Mr. Hull, excluding Mr. Hull?**

10 A On par. I think my father had a million to
11 high-water mark and my mother had about the same
12 high-water mark.

13 **Q Okay.**

14 A So individually they were equivalent to all the
15 others

16 **Q And so does that mean --**

17 A And some they were larger.

18 **Q Okay. And does that mean then that his risk
19 tolerance is effectively the same as those other
20 investors?**

21 A No, I look at risk tolerance based upon the
22 individual's financial condition, not the size of the
23 investment they have in the Fund.

24 **Q Okay. And how were you aware of the financial
25 condition of GISF's investors?**

1 **Q And had that improved their financial
2 situation?**

3 A It depends where you --

4 **Q Let me ask the question differently.**

5 **Had these investors' investment in GISF, as of
6 November 2011, been profitable?**

7 A It really -- as of -- you know, before this
8 day, before the 10th of November, it was really about
9 flat I think.

10 **Q Okay.**

11 A Maybe up.

12 **Q Maybe up.**

13 A Yeah. Maybe down, but I think about flat.

14 **Q Okay. And was your father's -- the financial
15 condition of your father was materially different from
16 these other investors?**

17 A No. I'm not say -- I'm not making it clear.
18 Well, again, if my father had no long shares in his
19 account, and had called, you know, I wouldn't have
20 advised him just to go out and buy puts in the way that
21 we did.

22 We did it as a result of our respective
23 financial conditions being different than other
24 investors. Me leveraged, the elderly nature and
25 financial condition of her parents.

1 A That was a very important thing that we did in
2 order to determine they were accredited and qualified
3 eligible persons. So they disclosed to me that each of
4 them had millions of dollars in assets outside of the
5 Fund. They weren't putting all of their money into the
6 Fund, and they had a primary residence.

7 **Q And they disclosed that to you when?**

8 A In advance of signing the subscription and
9 operating agreement.

10 **Q So is that the end of 2009, the beginning of
11 2010?**

12 A Yes, sir. End of 2009. Not the beginning of
13 2010.

14 **Q Okay. So the conversation with your father
15 about the TRX occurred in November of 2011.**

16 **What had you learned about the GISF's
17 investors' financial state between the end of 2009 and
18 November 2011?**

19 A I had not received any updates, but it was
20 incumbent upon them to give us updates if anything
21 materially changed.

22 **Q Okay. So the information that was available to
23 you in that time frame was just the value of their
24 investment in the Fund?**

25 A That's correct.

1 So, again, the hedges he bought, as I
2 understand it, covered the shares in that account.

3 BY MR. SACHAR:

4 **Q Did you know whether other investors in the
5 Fund had long positions in TRX in their personal
6 accounts?**

7 A I knew that they did.

8 **Q I knew that they did.**

9 A Well, they had mentioned that, yes.

10 **Q Which ones and when?**

11 A I think -- I never spoke with them individually
12 but Jim mentioned to me that they were -- because, again,
13 the disclosure that we made about potential conflicts of
14 interest, was very significant. We all knew that we were
15 all doing different things outside of the Fund.

16 So I knew that. I didn't know the size of
17 their position, when they were buying, what they were
18 doing, but I knew that they were doing things.

19 **Q With regard to TRX, are there any investors
20 that you know of that had long positions in their
21 personal accounts in TRX?**

22 A I don't know, no. None reported that to me,
23 but I believe that was the case based upon what Jim
24 reported to me.

25 **Q Can you elaborate on that, sort of basis for**

1 your belief? Did Jim tell you that?

2 A Jim mentioned in passing that, you know, other
3 people were buying and selling the stock. And he was
4 upset because he thought they should be paying us fees.

5 Q Okay.

6 BY MR. BAGNALL:

7 Q So if you knew that -- were the investors that
8 you believed from your conversation with Jim Hull to have
9 TRX holdings outside of the Fund, did they have a similar
10 sort of financial standing as your father?

11 A You know, I didn't know about -- I don't know
12 about any other shares -- I mean specific shares in any
13 other funds. And, again, my father called me and alerted
14 me to a position he had that I didn't know existed, and
15 that's why I gave him the advice I did. I would have
16 given the same advice to anyone else who called.

17 Q So I thought you testified a moment ago that
18 you understood from Jim Hull that other investors in GISF
19 held TRX outside the Fund.

20 A I learned that in retrospect after this all
21 occurred. Jim mentioned that to me, you know, the
22 conversation I had that mentioned that, that after this
23 all occurred.

24 Q Did Jim Hull own TRX shares outside the Fund?

25 A Yes.

1 Why wouldn't the other investors in GISF been
2 entitled to that same information and what --

3 MR. FERRIGNO: The information is what?

4 MR. BAGNALL: That Mr. Gibson purchased \$4 puts
5 in his personal account and that he advised his father to
6 do so in his personal account.

7 THE WITNESS: Well, they wouldn't be entitled
8 to that based upon the potential conflicts of interest
9 disclosure.

10 So we, again, were contemplating doing trading
11 outside of the Fund, and that's what we disclosed.

12 BY MR. BAGNALL:

13 Q But it's also the case that the investors were
14 told that your investment was aligned with theirs.

15 A And it was. It was to a degree greater than
16 any of them. Even net of this hedge. Again, I lost more
17 that day as a percentage of what I started with than any
18 other individual.

19 Q But you --

20 A Net of the hedge.

21 Q But you reduced your liability --

22 A Yes, I did, I did. Because I had competing
23 obligations. I have an obligation to my creditor and I
24 take that seriously.

25 Q And what other obligations did the GISF

1 Q Why then not tell him what you told your
2 father?

3 A Well, he contributed his shares into the Fund
4 in October. And the difference is, is that Jim's was
5 material. Jim owned \$2 million worth of shares outside
6 of the Fund. And my father owned a de minimis amount.

7 Q So the thing I'm struggling with is, the one
8 person that you told that to hedge, or advised to buy \$4
9 puts, did so. And why wouldn't the other GISF investors
10 have acted similarly if they had been given the
11 opportunity to know that their investment advisor had
12 purchased \$4 puts himself and advised at least one other
13 GISF investor to do so?

14 A Imputed in your assumption is that I
15 anticipated these to pay out. Again, I would not
16 recommend these to anybody, because they were not good
17 value. And I would only recommend them to people who are
18 in an exceptional position and can't tolerate losses and
19 need to pay for protection.

20 Q So there was not intended to be any assumption
21 in my question.

22 My question is, limited exclusively to the fact
23 that you purchase \$4 puts for yourself. You were the
24 investment manager of the Fund, and your father purchased
25 \$4 puts outside the Fund on your advice.

1 investors have?

2 A None of them were leveraged to my understanding
3 against this position. None of them had financial
4 obligations that they needed to serve out of these
5 assets. I'm the only one.

6 Q Do you know that specifically?

7 A Yes. That's the basis of their being a
8 qualified eligible person.

9 BY MR. BOHR:

10 Q But Mr. Hull wanted you to be indebted to him,
11 correct?

12 A Yes.

13 Q And he had previously rejected an offer by you
14 to pay down your debt to him.

15 A To clarify, I had paid down debt without his
16 knowledge. Well, without his permission, I guess you
17 would say, and alerted him to the fact that I had done
18 that in real time, and he was angry. And then
19 re-indebted me, yes.

20 BY MR. BAGNALL:

21 Q So then the only other time that you reduced
22 the extent to which you were aligned with Mr. Hull, he
23 got angry?

24 A Yes.

25 Q Okay. Why then wouldn't he want to know that

1 you had reduced your alignment with him on November 10th?
 2 A Because he was the beneficiary to the degree to
 3 which I reduced it. What I effectively did was instead
 4 of default on him for \$150,000, I defaulted on him for
 5 only \$75,000 if he had demanded the note that day.
 6 Q So did you --
 7 A He was the beneficiary -- go ahead, sorry.
 8 Q Did he receive the proceeds of your trades?
 9 A After this day, he told me he would not accept
 10 my loan repayment, and that he wanted to continue with
 11 the strategy and he wanted us to continue to invest, so I
 12 invested the proceeds in the same way we invested
 13 everything else.
 14 Q Okay.
 15 MR. BAGNALL: Were you going to say something,
 16 Tom?
 17 MR. FERRIGNO: Go ahead.
 18 BY MR. BAGNALL:
 19 Q I'm struggling to understand why the GISF
 20 investors, other than your father, wouldn't have acted
 21 the same way your father did if they had been told that
 22 you were purchasing \$4 puts in TRX, and that your father
 23 had done so as well.
 24 MR. FERRIGNO: Hold on. If you have a
 25 question, that's fine. But that wasn't -- as far as I

1 can tell, that wasn't a question.
 2 You are struggling, okay.
 3 MR. BAGNALL: Right.
 4 MR. FERRIGNO: But --
 5 MR. BAGNALL: Okay. That's fine.
 6 MR. FERRIGNO: Ask him a question.
 7 BY MR. BAGNALL:
 8 Q All right. So how do you know that the other
 9 GISF investors wouldn't have acted similar to your father
 10 if they had been given the opportunity to know what he
 11 knew?
 12 A I don't know.
 13 Q Okay. And why don't you think they were
 14 entitled to know that you had bought \$4 puts in TRX in
 15 your personal account?
 16 A I'm confident that they were not entitled to
 17 and would not have expected to know based upon the
 18 disclosure I gave them at the beginning of the offer.
 19 MR. FERRIGNO: Okay. I have a question.
 20 MR. BAGNALL: Sure.
 21 MR. FERRIGNO: Your role at Geier Group and/or
 22 Geier Capital was investment manager to what, which
 23 entity?
 24 THE WITNESS: Geier International Strategies
 25 Fund.

1 MR. FERRIGNO: Were those investors also
 2 clients of yours in any way?
 3 THE WITNESS: No.
 4 MR. FERRIGNO: Okay.
 5 BY MR. BOHR:
 6 Q While he's pulling a document,
 7 I just want to ask you. Was there anyone else
 8 -- we've talked about \$4 TRX puts that expired in
 9 November of 2011 that you bought in your personal Schwab
 10 account, you bought in Francesca Marzullo's personal
 11 Schwab account, and that you recommended to your father
 12 that he buy.
 13 And I'm wondering. Is there anyone else to
 14 whom you suggested that they buy these type of puts in
 15 this time frame?
 16 A No.
 17 Q So you didn't make the suggestion also to your
 18 mother or to your sisters?
 19 A I think that's a really important point. No, I
 20 didn't, because I thought they were bad trades. In other
 21 words, my mother and father, I didn't approach my father
 22 to tell him to do this trade. He, from hearing Jim, just
 23 wanted to know how he was supposed to treat his outside
 24 shares. He had no idea what was going on.
 25 I gave him advice that I thought would be less

1 -- have a less positive outcome than if he just sold,
 2 because I had given the risk adverse advice just very
 3 recently to myself, and Francesca and I viewed his
 4 exceptional segment to be sort of a similar nature.
 5 Q So the whole universe of people who are
 6 associated with you who bought these \$4 TRX puts that
 7 expired in November of 2011, and bought them in late
 8 October up until November 10th time frame, is Ms.
 9 Marzullo's account, your personal account, your father,
 10 and there's no other friends, relatives, college friends,
 11 former friends from Deutsche Bank, there's nobody else
 12 out there to whom you suggested this transaction.
 13 A No.
 14 MR. FERRIGNO: Can we go off the record for a
 15 second?
 16 MR. BAGNALL: Sure. We'll take a break at
 17 12:26 p.m.
 18 (Whereupon, at 12:26 p.m., a luncheon recess
 19 was taken.)
 20 A F T E R N O O N S E S S I O N
 21 MR. BAGNALL: We will go back on the record at
 22 1:40 p.m., on Thursday, March 19th.
 23 Mr. Gibson, do you recall, you're still under
 24 oath, is that correct?
 25 THE WITNESS: Yes, sir.

1 MR. BAGNALL: Oh, sorry, one more thing.
2 Just to confirm for the record, there were no
3 conversations of substance between you and the staff
4 during our break.

5 Is that correct, Mr. Gibson?

6 THE WITNESS: No, there was none.

7 BY MR. BOHR:

8 Q Mr. Gibson, I'd like to go back through some of
9 your – identifying some of the limited partners in the
10 Fund.

11 And so far we've talked about the McKnights,
12 John Engler. There was your father, your mother, your
13 then fiancée's parents, the Marzillos, Tim Strelitz –

14 A Just to clarify. She was not my fiancée at the
15 time, but –

16 Q Okay. Sorry. There was a gentleman named Doug
17 Cates, who you identified as an accountant.

18 Who are others, any others that you can
19 remember, limited partners in the Fund?

20 A T.R. Reddy, I believe I mentioned as well.
21 Nicholas – I'm sorry, I don't recall right now.

22 Q Barry Storey?

23 A Burt Storey. Barry Storey was not. Burt
24 Storey became an investor in 2011. That's right.

25 BY MR. BAGNALL:

1 advantage of.

2 And the element that I firmly recall in all
3 those discussions was my contribution, where I said,
4 "We're swinging for the fences. We're not going for
5 singles or doubles. The volatility is going to light
6 your hair on fire. We're going into a politically
7 undesirable asset class."

8 We talked about tax treatment of gold and
9 silver, namely that it wouldn't ever be long-term gains.
10 And that that we thought was because the government
11 wasn't particularly favorable towards those alternatives

12 And they asked – I don't recall a single
13 question that any investor asked during any of these
14 meetings. They effectively signed up.

15 Q Were there any investors you met with who did
16 not sign up for the Fund? Potential investors you met
17 with –

18 A Right, right.

19 Q – who did not sign up for the Fund?

20 A Not to my recollection. I think every person
21 we met with invested.

22 Q How many copies of the offering memorandum were
23 sent out to people who were interested in the Fund?

24 A Well, it would be all the individuals who
25 subsequently invested, and to my recollection, we did not

1 Q Mr. Grovenstein?

2 A Mr. Grovenstein, yes.

3 There's another gentleman's name that's
4 escaping me.

5 BY MR. BOHR:

6 Q How did Doug Cates come into the Fund?

7 A Through Jim Hull.

8 Q We talked a little bit about the solicitation
9 process, and the offering memorandum.

10 And I'd like to ask you, how did that process
11 unfold with respect to these limited partners? How did
12 they get in?

13 MR. FERRIGNO: These being the ones that we
14 just mentioned?

15 BY MR. BOHR:

16 Q Yes, the ones I just mentioned.

17 A Jim reached out to them, indicated he had a
18 business deal that he wanted to discuss with them. And
19 we arranged meetings at their respective offices, and we
20 met with each of them probably for approximately a half
21 an hour each.

22 Jim spent about 20 minutes going through our
23 spiel, largely parroting parts of the message I had sort
24 of described about why trends in the marketplace may be
25 beneficial to certain currencies that we could take

1 send it out to others generally.

2 Q Is there anyone else who might have gotten the
3 offering memorandum who did not invest?

4 A Not to my knowledge.

5 Q Did anyone keep track of the – did anyone
6 number the offering memoranda as they were distributed?

7 A Yes.

8 Q Who did that?

9 A Laurie Underwood, who is Jim Hull's assistant.

10 BY MR. BAGNALL:

11 Q Mr. Gibson, do you know a man named Luis
12 Ahlbom Sequeira?

13 A I do.

14 Q Who is that?

15 A He is an advisor to a sheikh in Abu Dhabi and
16 manages capital on that sheikh's behalf, as I understand
17 it.

18 Q Okay. And how do you know him?

19 A I was introduced to him by Jim Sinclair.

20 Q Was he an investor in TRX?

21 A He was personally and he managed capital on
22 behalf of others that invested in TRX, yes.

23 Q Okay. And was the sheikh you referenced, was
24 that sheikh Tahnoon Bin Zayed Al Nahyan?

25 A That's correct

1 **Q Do you know an entity named Roheryn**
 2 **Investments?**
 3 A Yes.
 4 **Q What is it?**
 5 A As far as I understand, that's the investment
 6 management company owned and operated by Luis Sequeira.
 7 **Q On behalf of the sheikh?**
 8 A I don't believe that the sheikh has an interest
 9 -- or I wouldn't imagine. I don't know either way. But
 10 my understanding would be that that was the investment
 11 management company that was owned and operated by Luis
 12 and under which he advises individuals like the sheikh.
 13 **Q Is the sheikh one of Luis Sequeira's customers?**
 14 A Yes.
 15 **Q Okay. Did you have any business dealings with**
 16 **Sequeira?**
 17 A Yes.
 18 **Q What were they?**
 19 A We were following close to the stock from the
 20 moment that I met him, or was introduced to him earlier
 21 in 2011.
 22 And then we had a financial relationship
 23 between the Fund and Luis during this period when we
 24 engaged him to sell -- or we engaged in order to generate
 25 demand to buy securities, the TRX stock from us.

1 **Q What does that mean exactly, "engaged him to**
 2 **generate demand"?**
 3 A So we took the view that the sheikh was relying
 4 on the advice of Luis Sequeira to manage his position,
 5 and we wanted to achieve best execution on behalf of our
 6 investors, and our view was that Luis could help us and
 7 he could help us less or more, to the degree that we
 8 compensated him for that assistance.
 9 **Q And so how were you compensating him?**
 10 A We paid -- we negotiated a commission.
 11 **Q So he was serving as a broker for the Fund?**
 12 A Yes. He was brokering transactions for the
 13 Fund.
 14 **Q Between the Fund and what counterparty?**
 15 A His client, the sheikh.
 16 **Q So GISF sold TRX shares to the sheikh using**
 17 **Sequeira as a broker?**
 18 A Correct.
 19 **Q And you paid -- what was the commission that**
 20 **the Fund paid to Sequeira?**
 21 A I don't recall. We had -- we negotiated this
 22 back and forth. I believe that Luis requested 10 cents
 23 per share based upon the illiquidity of the stock at the
 24 time, and his knowledge that, you know, that he had a
 25 significant potential to assist us.

1 And in speaking with Jim, we aggressively -- we
 2 traded him lower I believe. We settled on eight cents,
 3 if I recall correctly.
 4 **Q And do you recall what you paid him, if you**
 5 **summed all the per-share commissions, what he received?**
 6 A I do not.
 7 **Q Do you recall how many shares you sold through**
 8 **him for the sheikh?**
 9 A I do not.
 10 **Q Okay.**
 11 A It would be between \$300,000 and a million.
 12 Could I explain a little further?
 13 **Q Sure, please.**
 14 A So the mechanism by which he was going to
 15 arrange these purchases from his perspective in sales,
 16 from our perspective, was over the marketplace, and the
 17 mechanism by which we would do that is he would put a bid
 18 into the market, below the market where we could see it,
 19 and then we would hit that bid.
 20 It was challenging when this occurred to be
 21 certain how many shares of demand he was responsible for.
 22 And we paid him on what we were certain he had demanded
 23 or he had generated.
 24 **Q Okay. And if you were selling the shares to**
 25 **him, if I understand correctly, he entered a bid below**

1 **the market and you tried to hit it?**
 2 A That's correct.
 3 **Q Why then wouldn't you just sell the shares at**
 4 **the market price, which is higher?**
 5 A So let's say that the bid/ask was \$3.44, \$3.45.
 6 There might have been a bid/ask of, you know, 5000
 7 shares, 5000 shares on either side of the stack. And
 8 then if you followed down, there might be, you know,
 9 naturally 50,000 shares below there, or something like
 10 that.
 11 So presumably he would do the higher volume.
 12 **Q Did you know what volume he was entering?**
 13 A Yes. That's the only way by which we would be
 14 certain it's him.
 15 **Q Okay.**
 16 A So he would tell us in advance, "I'm going to
 17 put in a bid at, say, \$3.44, \$3.45 bid/ask." I'm going
 18 to put in the bid at \$3.43 for 500,000 shares.
 19 **Q Okay. What time period was that transaction**
 20 **that you're describing?**
 21 A So I believe we initially began this discussion
 22 following our arranged sale through Casimir, the 3.73
 23 million shares that we sold at \$3.50 during the week of
 24 the 26th.
 25 **Q Of September?**

1 A Correct, I'm sorry. And following that, we
2 began our discussion with Luis. There were times that
3 Luis indicated with assurance that he would be purchasing
4 all of our remaining shares, and then there were times
5 when he was non-responsive, and everything in between.

6 And we viewed this as a negotiating strategy
7 whereby he had an interest but he wanted to be
8 compensated as much as he could for it, and wanted to
9 serve his client well, as well.

10 Q Okay. Do you know a person named Virgilio
11 Garcia?

12 A Yes.

13 Q Who is that?

14 A That is, as far as I understand, the investment
15 manager for certain funds of BPI, which is, as I
16 understand, the second-largest bank in Portugal.

17 Q Okay.

18 A And he's friends with Luis.

19 Q Was he managing money that was invested in TRX?

20 A Yes.

21 Q Did you have any business transactions with Mr.
22 Garcia?

23 A Yes.

24 Q What were the nature of those transactions?

25 A We sold shares to him on one occasion, as I

1 Brazil LTDA?

2 A Yes.

3 Q What is that entity?

4 A That's a subsidiary of the sheikh's investment
5 arm.

6 Q So it's related –

7 Are you okay?

8 A Yes, I'm sorry. Please, I'm sorry.

9 Q Do you need to take a little break?

10 A No, I'm fine. I'm sorry.

11 Q Okay. So it's related to Roheryn?

12 A No. Roheryn would be owned entirely by Luis
13 Sequeira.

14 Q Okay.

15 A The sheikh has many financial advisors globally
16 serving various investments that he has. And my
17 understanding from Luis was that he managed around \$100
18 million for the sheikh. The sheikh would have billions
19 of dollars in assets globally, and Reem is their
20 investment arm focused on real estate in the Americas,
21 which is managed by a gentleman named Marco Sperry, who
22 is friends with Luis.

23 Q And did the Fund have any business dealings
24 with Reem?

25 A Only insofar as we interpreted Reem to be the

1 recall, at a price of \$3.35 for what I recall was half a
2 million shares.

3 Q And shares of TRX?

4 A Of TRX.

5 Q And when did that sale occur?

6 A The first week of November.

7 Q 2011?

8 A Correct.

9 Q And do you know a man named Craig Sutherland?

10 A I do.

11 Q Who is Craig Sutherland?

12 A As I understand it, he's a money manager in
13 Ohio who owned TRX shares.

14 Q And how do you know him?

15 A I was introduced to him by Jim Sinclair.

16 Q And does he have a firm that he works for?

17 A Yes.

18 Q And what's the name of the firm?

19 A I don't recall.

20 Q Did you have any business transactions with Mr.
21 Sutherland?

22 A No.

23 Q Did the Fund?

24 A No.

25 Q Do you know an entity named Reem Investments

1 buyer of our stock through Luis. Whether it was Reem or
2 another entity owned by the sheikh, we're not sure.

3 Q Okay. Before we took our lunch break, I think
4 you testified that the decision to concentrate GISF's
5 investment in TRX was led primarily by Jim Hull, is that
6 right?

7 A Yes.

8 Q And you also testified that you did not want to
9 do that, is that right?

10 A I would characterize it as I would not have
11 done that had Jim not provided that guidepost, but that I
12 felt that it was a plausible and executable strategy.

13 Q Why wouldn't you have done it?

14 A Because I think the diversification factor
15 would be, you know, a better value than whatever value we
16 would generate from not diversifying. The primary
17 benefits of not diversifying accrued to Jim by not
18 having, you know, increased overhead.

19 Q Okay. And I want to touch again on something
20 we discussed before the lunch break as well.

21 I thought I understood you to say in the late
22 October – in the October, November 2011 time frame,
23 there were a series of meetings or communications with
24 Platinum, I think you said. Is that correct?

25 A Yes, sir.

1 **Q What is Platinum?**

2 A Platinum Partners is a hedge fund, with
3 approximately a billion dollars in assets under
4 management that entered into a transaction to purchase
5 approximately \$30 million worth of TRX in a lot deal at a
6 price of \$5.75 in, as recall, in late August of 2011.

7 **Q And then I think you said it was sort of in
8 between meetings or communications with Platinum that you
9 had time to reflect on your personal financial
10 well-being. And one of those moments of reflection is
11 when you decided to purchase the \$4 November 2011 TRX
12 puts, is that right?**

13 A It was contemporaneous to those meetings, yes.

14 **Q And so was that – when were the meetings?**

15 A So we had a series of meetings with David Levy
16 at Platinum Partners. I met with David at his office on
17 one occasion. I met with him at a restaurant he owns on
18 the upper west side of New York on another occasion. And
19 I met with him a third time at the office of Casimir on,
20 as I recall, the 8th or 9th of November. Those are three
21 meetings I had.

22 **Q And all three were on the 8th or 9th of
23 November?**

24 A No, sir. They occurred over a period of
25 several weeks.

1 **Q Okay. So was the first one that meeting you
2 mentioned in August of 2011?**

3 A Did I mention a meeting –

4 **Q I thought you said a moment ago –**

5 BY MR. SACHAR:

6 **Q You mentioned that Platinum bought 30 million
7 shares in August of 2011.**

8 A Oh, excuse me, excuse me.

9 **Q So when was the first meeting?**

10 A The first meeting would have been subsequent to
11 that, and subsequent as well to the decline in the share
12 price on the 24th and 25th of September 2011. So it
13 would have been after that. It would have been after our
14 deal with Richard Sands, which occurred the week of
15 September 26, 2011.

16 So I would say during the month of October
17 those meetings occurred.

18 BY MR. BAGNALL:

19 **Q Okay. And what was it about those meetings
20 that caused you to reflect on your personal financial
21 well-being?**

22 A There was nothing. There was no connection to
23 those meetings and my reflecting on my personal financial
24 condition. If anything, those meetings went relatively
25 well and confirmed my understanding that Platinum was

1 committed to the stock, that they saw tremendous value,
2 that they were well informed. They knew the stock very
3 well. They had excellent diligence. I was comforted by
4 that.

5 And that led me to believe that they would be
6 buyers of our position at this significant discount.

7 **Q Okay. And so was there some moment that you
8 recall where you had this reflection in which you decided
9 to purchase the \$4 TRX puts?**

10 A If there were something that motivated that, it
11 would be the gap in time between the transaction with
12 Richard Sands and the ones we did with Virgilio and Luis.
13 There was a period of several weeks where we were working
14 bids and we were not actively soliciting Platinum at that
15 time. But, you know, we, by the facts, did not get out
16 of the position very quickly.

17 So over the course of that period of time, I
18 recognized that I was low on equity, and that I was not
19 in control of the situation to the degree I had
20 anticipated.

21 **Q When you say "low on equity," do you mean you
22 personally –**

23 A Yes.

24 **Q – or the Fund?**

25 A I mean me personally, relative to my obligation

1 to my creditor, Jim

2 **Q Okay. And when you say that you didn't have
3 control of the situation, what do you mean when you say
4 that?**

5 A I mean that I was overly arrogant and
6 self-assured in retrospect for the entire period up to
7 September 23rd, and felt I had complete control over
8 everything. I had some minor financial success and felt
9 that I really had nothing to worry about.

10 And over the period of this time, I
11 acknowledged that I was imperfect and, you know, great
12 shortcoming, and that I needed to consider that as
13 self-assured as I did remain, I would say that my
14 self-assuredness during this period diminished from where
15 it was previously. And that my self-assuredness during
16 this period from, say, September 24th to November 10th,
17 was exceptionally higher than it is today.

18 So, you know, a notch of a little less
19 assurance but still a tremendous amount of assurance
20 self-assurance.

21 And at all times I was bullish, full stop, on
22 TRX.

23 **Q Okay. And I think you also said that you
24 remained bullish on TRX but Mr. Hull wanted to sell, is
25 that right?**

1 A Well, I would say that Mr. Hull's position was
2 a little more nuance than that.

3 Q Okay.

4 A He's a very intelligent person and I think he
5 selects his words very wisely. And what he said was, he
6 has no more tolerance for losses. And I think implied in
7 that, at least I think implied in that for me, since I do
8 not control outcomes, was that we needed to, at the very
9 least, increase the -- begin to focus on potentially
10 selling with respect to value as well.

11 Q Okay. Mr. Gibson, I am handing you what's been
12 previously marked as Exhibit No. 22.

13 Do you recognize this document?

14 (The witness reviewed the document.)

15 A Yes.

16 Q What is it?

17 A So this is a discussion relating to our
18 conversations with Luis.

19 Q Okay.

20 A So Luis, as I indicated earlier, was unclear
21 with his intentions. He both indicated he would buy all
22 of our shares, and then was non-responsive, and
23 everything in between. And, again, we interpreted this
24 as him strategizing to achieve best execution from his
25 perspective.

1 So at this point in time, Luis has told me he
2 would buy all of our shares, and then his non-responsive
3 during the time that he said he would.

4 And I am informing Jim about this, and namely
5 saying that it's a strategy that I believe Luis is
6 pursuing and that we just need to not appear desperate.
7 In other words, this is a signal from them to see if
8 we're desperate and if we will aggressively say that "You
9 promised" and chase them, if you will.

10 Q And what you are describing is the first e-mail
11 in the threat from September 29, 2011, at 3:57 p.m.? Is
12 that right?

13 A Yes, sir. And just to clarify. These time
14 stamps just are all off. My computer at the time was off
15 by I think like nine hours, just for what it's worth. So
16 it's not actually 3:57 p.m.

17 Q Okay.

18 A I'm not sure what time it is.

19 But, yes, so that e-mail I'm saying that, you
20 know, it's not happening today as we might have
21 anticipated. But that I think the right strategy is not
22 to chase them and to stay cool. And Jim is responding
23 that "Well, who else can we go out? Who else can we talk
24 to, and how else can we motivate them?"

25 Q So can I draw your attention on the first page

1 of the exhibit, in the e-mail that Mr. Hull sent to you
2 on that September 29, 2011, that says here 8:28 p.m.

3 A Uh-huh.

4 Q Recognizing that it may not be at that time.

5 On the second line, beginning just about the
6 ellipsis in the middle of that line, it says, "Also I
7 think all of us are well satisfied to hold the shares for
8 the duration."

9 A Right.

10 Q What did you understand him to mean when he
11 wrote that?

12 A This is the, you know, speaking out of both
13 sides of his mouth. I mean he set the objective to sell
14 and that we don't have more losses -- tolerance for more
15 losses, but at the time that we're price sensitive.

16 So I think that's what he's emphasizing here,
17 is that we're not just going to sell at anything.

18 Q When he wrote, "All of us are well satisfied,"
19 to whom do you think he was referring with "all of us"?

20 A I imagine, because he's speaking to me, that
21 he's referring to the parties that I don't have contact
22 with or a relationship with that are in the Fund that he
23 brought in.

24 Q That's the way you understood it when you read
25 it?

1 A Yes.

2 Q Okay. I'll take that back.

3 MR. BAGNALL: If we could just mark this one
4 next please.

5 (SEC Exhibit No. 32 was marked
6 for identification.)

7 BY MR. BAGNALL:

8 Q Mr. Gibson, I am handing you now what's been
9 marked as Exhibit 32.

10 Do you recognize this document?

11 A Yes.

12 Q What is it?

13 A It's an e-mail from Jim Sinclair to me.

14 MR. FERRIGNO: Just take a second to read it.

15 THE WITNESS: Sure.

16 (The witness reviewed the document.)

17 THE WITNESS: Okay.

18 BY MR. BAGNALL:

19 Q Did you say an e-mail from Jim Sinclair to you?

20 A I did. I misspoke.

21 Q Okay.

22 A I'm sorry. This is an e-mail from Jim Hull to
23 me.

24 Q Okay. And if you look at -- if I could draw
25 your attention to the most-recent-in-time e-mail, the one

1 that appears at the top of the page.
 2 That e-mail from Jim Hull, dated October 11,
 3 2011, appears as though he writes to you, "I am unclear
 4 that I am in favor of the sale of more shares of \$3.46
 5 per share. I would not be in favor of selling at such a
 6 low price, but I would like to discuss with you in
 7 greater detail."
 8 A Right.
 9 Q What did you understand Mr. Hull to be telling
 10 you when you received this e-mail in October?
 11 A That he is changing his mind, not quite sure
 12 where he stands and, you know, we've sold the bid and now
 13 we're not. It was back and forth. And, you know, we are
 14 having a robust discussion as to, you know, what is the
 15 right path.
 16 And so interpreted this as a challenge, you
 17 know, "Let's make sure that we're thinking about price
 18 and that we're achieving good levels."
 19 Q So you understood that the marching orders
 20 remained the same, to sell, but only at a good price?
 21 A Yes, exactly. So I think Jim is continually
 22 trying to set the guidance on not to fall the ship on
 23 either side, so to speak.
 24 Q Okay. I'll take that back.
 25 If you'd look at these -- sorry, bear with me.

1 I am handing you what's been marked previously
 2 as Exhibit 23. This we talked about before lunch as
 3 well. This look like Francesca Marzullo's Schwab
 4 brokerage account.
 5 Is that correct, Mr. Gibson?
 6 A Yes, sir.
 7 Q Okay. And if you turn to the second page of
 8 Exhibit 23, the one that ends in the Bates stamp 470, it
 9 shows the transaction detail.
 10 A Yes, sir.
 11 Q And at the bottom of the page, it shows a trade
 12 date of October -- three entries for purchases of \$4
 13 Tanzanian Royalty puts.
 14 A Yes, sir.
 15 Q Okay. Was there any reason why you purchased
 16 these puts -- sorry. If you just turn the page to the
 17 one Bates ending 471, you see that they continue at the
 18 top of the page, another one, two, three, four, five
 19 entries.
 20 A Yes, sir.
 21 Q And they all have a trade date of 10/27.
 22 A Yes, sir.
 23 Q Was there any reason in particular why you
 24 purchased these puts in this account on October 27th?
 25 A No.

1 Q Okay. Is this near that moment when you had
 2 the reflection that we were talking about before? Does
 3 seeing this make you have a better sense of when that
 4 occurred?
 5 A I wouldn't characterize it as a moment. But,
 6 yes, this is the result of that mood adjustment, yes.
 7 Q Okay. And then again on page ending Bates
 8 stamp 471, at the bottom of the page, there are four more
 9 entries for purchases of puts.
 10 A Yes, sir.
 11 Q The \$4 Tanzanian puts that had a trade date of
 12 10/28.
 13 A Correct.
 14 Q Was there anything in particular why you
 15 purchased these puts on the 28th?
 16 A No, sir.
 17 Q Was there any reason why you purchased some
 18 puts on the 27th and some puts on the 28th?
 19 A No, sir. I think if anything -- I don't
 20 recall, but perhaps I, you know, was continuing to do the
 21 math and realized that she was still wildly under-hedged.
 22 Q So when you said, "she was wildly
 23 under-hedged," what do you mean?
 24 A I view Francesca Marzullo, Giovanni Marzullo,
 25 and Sue Jin Marzullo as the same financial entity.

1 Q Okay. And how did you determine how many TRX
 2 \$4 November puts to purchase in this account?
 3 A I determined the exposure that the Marzullos
 4 had, their potential for loss under various scenarios,
 5 and determined that the total amount of cash that was
 6 available in this account was insufficient to cover what
 7 I would have anyway, so I deployed the full amount of
 8 cash available to buy these puts.
 9 Q So were there other assets in the account that
 10 were not cash that you did not use?
 11 A Not that I recall.
 12 Q So your memory is -- and please look at the
 13 statement to inform your answer -- but does that mean you
 14 used the entire value of the account to purchase these
 15 puts?
 16 A Evidently not. Let's see. Total cost basis of
 17 the puts was -- let's see -- no, I did not use all of the
 18 resources. I think I must have used all the cash that
 19 was available.
 20 Q And did you determine that from looking at the
 21 top of page 470, the Bates ending 470?
 22 Let me ask that a different way.
 23 How did you determine that from looking at this
 24 exhibit?
 25 A That the account value was 70 and the sum of

1 the trades for which the puts -- the sum of the put
2 trades I think, as I recall, sum up to around 40, as I
3 recall previously and what looks like here.

4 **Q** Okay. And so when you were pointing to the
5 exhibit in front of you, what page were you pointing to?

6 A 470 and 471.

7 **Q** Okay. If you look at the top of page 470,
8 under the section of the statement that's titled
9 "Investment detail," do you see in bold at the bottom, it
10 says, "Less margin loan balance" and in a parenthetical,
11 there's the value "\$39,245.26."

12 A Yes, sir.

13 **Q** Does that mean that this account -- you used
14 margin to purchase some of the securities it held?

15 A Yes.

16 **Q** Do you know which securities were purchased on
17 margin?

18 A No.

19 **Q** Did you purchase any of the Tanzanian Royalty
20 \$4 puts on margin?

21 A I don't think that that was possible. I
22 believe you need to pay cash for puts like that, but I
23 don't recall now.

24 **Q** Okay. So it looks like you purchased
25 approximately \$64,000 worth of TRX \$4 puts, is that

1 right?

2 A I think it's more around 40.

3 **Q** Sorry, the market -- you're right. That was
4 the market value at the end of October.

5 So you purchased approximately \$40,000 worth of
6 puts.

7 A Yes, sir.

8 **Q** And you think that was because there was
9 \$40,000 of cash in the account?

10 A No, I wouldn't say that. I mean I'd say it was
11 generally related to how much cash was in the account,
12 yes.

13 **Q** Do you recall whether you used all the cash in
14 the account?

15 A I don't.

16 **Q** Do you recall whether you used most of the cash
17 in the account?

18 A I don't.

19 **Q** Did you allocate any of the TRX \$4 puts that
20 you purchased in this account to the GISF investors?

21 A I don't know what you mean.

22 **Q** So these \$4 puts, the 1,604 contracts --

23 A Uh-huh.

24 **Q** Did any of those 1,604 contracts get allocated
25 to the GISF's investors, other than the Marzullos here?

1 A Other than the Marzullos, no.

2 **Q** Okay.

3 MR. FERRIGNO: May I ask a question?

4 MR. BAGNALL: Sure.

5 MR. FERRIGNO: Were you handling any of the
6 personal accounts for the other investors?

7 THE WITNESS: I was not.

8 MR. FERRIGNO: Okay.

9 BY MR. BAGNALL:

10 **Q** And just to be clear, this is Francesca's
11 account, correct?

12 A Correct.

13 **Q** Not Giovanni Marzullo's account.

14 A I did not have access to Giovanni Marzullo, but
15 there was an active standing, you know, understanding,
16 that their financial situation was all the same.

17 **Q** Okay. And was SueJin Marzullo a named person
18 on this account?

19 A No.

20 **Q** Okay. But your understanding is that by making
21 these trades in this account, you were doing so on
22 behalf, at least in part, Giovanni Marzullo and SueJin
23 Marzullo.

24 A In full. On behalf of those individuals, yes.

25 **Q** Okay. Who were also investors in GISF,

1 correct?

2 A Correct.

3 **Q** I'll take that exhibit back.

4 I'm going to hand you what's been previously
5 marked as Exhibit 25.

6 Do you recognize this document, Mr. Gibson?

7 A Yes, sir. It's my Schwab statement from
8 October 2011.

9 **Q** Okay. And if you could please turn to the
10 third page of the document, which is the Bates stamp
11 1065.

12 A Okay.

13 **Q** Do you see at the "Transaction detail," there
14 are five entries buying the \$4 TRX puts.

15 A Right.

16 **Q** And the trade date is October 28th.

17 A Correct.

18 **Q** Was there anything in particular about October
19 28th that caused you to buy these options in this account
20 on that day?

21 A No.

22 **Q** Did you allocate any of these options to the
23 GISF investors besides yourself?

24 A No.

25 **Q** Okay. I'll take that back.

1 I'm going to hand you what's been previously
2 marked as Exhibit No. 26, Mr. Gibson.
3 Do you recognize this document?
4 A Yes, sir.
5 Q What is it?
6 A It's my November 2011 Schwab statement.
7 Q Okay. And if you could please turn to the
8 third page of the exhibit, the one that ends in the Bates
9 stamp 1071.
10 Do you see at the top of the page there are
11 three entries for purchases of \$4 TRX puts on November
12 2nd.
13 A Right.
14 Q Was there anything in particular about November
15 2nd that caused you to purchase these options on that
16 day?
17 A No.
18 Q Do you see down – if you follow the trade
19 dates down the column on the left-hand side where the
20 first trade date of November 8th.
21 A Right.
22 Q Again, there's another five entries of
23 purchases of the \$4 TRX November puts on November 8th.
24 A Right.
25 Q Was there anything in particular about November

1 8th why you purchased the shares – the options on that
2 date?
3 A No.
4 Q Okay.
5 A So just to clarify. I purchased these options
6 because I was concerned about meeting my obligations to
7 my creditor, whom I owed \$675,000 to.
8 Q Okay. Did you allocate any of these options
9 that were purchased in November to GISF?
10 A No.
11 BY MR. BOHR:
12 Q You just mentioned, Mr. Gibson, you restated
13 that you purchased these puts because you were concerned
14 about meeting your obligations to your creditor. And you
15 discussed one occasion on which you paid down your note.
16 I'm curious. Were there any other occasions on
17 which you engaged in a transaction in order to be able to
18 satisfy your debt to Mr. Hull?
19 A First, I would not say that I ever entered into
20 a transaction in order to satisfy a debt to Mr. Hull. In
21 this case, I did enter into a transaction to be sure I
22 would be able to honor a debt to Mr. Hull.
23 No, there was never another time when the
24 outcomes available to us going forward were sufficiently
25 unclear that I felt it was prudent to buy a hedge again

1 that I anticipated to expire at zero.
2 BY MR. BAGNALL:
3 Q Sorry, one last thing. Again, this is Exhibit
4 26, the one we were just looking at.
5 If you'd turn again to the third page, 1071.
6 A The second page from a minute ago?
7 Q The third.
8 A Oh, okay.
9 Q That's okay. That's all right. The 1071.
10 Again, looking at the trade date on November 10th.
11 I see six lines in which you sold the \$4 puts
12 at various prices.
13 Do you see those?
14 A Yes, sir.
15 Q What do you – looking at this statement, do
16 you recall what your proceeds were from the sales of
17 those options?
18 A Approximately – the total proceeds would be
19 around \$100,000, a little less.
20 Q Okay. Approximately \$100,000.
21 A A little bit less I think, yes.
22 Q Okay. I'll take that back.
23 Okay. And this is what's been previously
24 marked as Exhibit 24. And if you'd turn to the page –
25 sorry, this is a longer statement, and I'm not going to

1 be able to tell you how many pages in, but if you could
2 turn to the page that's marked 14 of 17 in the bottom
3 right-hand corner, and it has the Bates stamp –
4 A Got it
5 Q – ending 488.
6 A Yes, sir.
7 Q Do you see the "Options activity" section at
8 the bottom?
9 A Yes, sir.
10 Q And do you see there's one entry on November
11 10th for selling \$4 puts?
12 A Yes, sir.
13 Q And it looks like a quantity of 1,604.
14 A Right.
15 Q Do you recall making that trade in this
16 account?
17 A Yes, I do.
18 Q And do you recall what the proceeds were from
19 that trade?
20 A \$303,529.37.
21 Q And did you allocate any of those proceeds to
22 GISF, the Fund?
23 A No. I mean I made these transactions very
24 transparently, and we can represent to you we made them
25 to the individuals and, you know –

1 **Q So when you made these transactions very**
2 **transparently –**

3 **A I'm saying I'm not trying to hide anything. I**
4 **mean they're in the account statement and we certainly**
5 **never tried to conceal from regulators what we were**
6 **doing.**

7 **Q Were they transparent to GISF?**

8 **A I would say so, because we disclosed that we**
9 **would be engaging in precisely that conduct.**

10 **Q You made a disclosure that you were going to**
11 **buy \$4 November 2011 TRX puts?**

12 **A No. I did not specifically acknowledge each**
13 **instance. That would be prohibitively difficult and we**
14 **could not have proceeded with the structure that we had**
15 **if it required that level of disclosure.**

16 **BY MR. BOHR:**

17 **Q What other instances were there where you did a**
18 **personal trade that might have been something you feel**
19 **was covered by page 19 of your offering memo, your**
20 **conflict section of your offering memo?**

21 **A I regularly maintained a de minimis amount of**
22 **TRX shares. Basically whenever I had any sort of**
23 **personal liquidity, I wanted it to be long TRX, but**
24 **occasionally I had bills to pay, and I would sell TRX to**
25 **pay the bills. I think there's a number of those**

1 transactions.

2 **Q Okay.**

3 **MR. BAGNALL: Could we please mark this next –**
4 **BY MR. BOHR:**

5 **Q Are there any other instances when you engaged**
6 **in a transaction that might be covered by the conflict**
7 **section of your Fund documents?**

8 **A Any other transaction that would be -- well,**
9 **the maintenance of the additional Jim Hull account that**
10 **he maintained and had me execute trades on his behalf.**

11 **Q Anything else? Any other transactions – did**
12 **you engage in any other transactions that you feel would**
13 **be covered by the conflict provisions of your Fund**
14 **documents?**

15 **A Well, I think that all the transactions I could**
16 **have ever engaged in would be captured by that. So in**
17 **terms of the transactions I engaged in, they were,**
18 **certainly from a material perspective, they were all**
19 **within the Fund with the exception of where I bought**
20 **hedges on this occasion to protect my creditor and to**
21 **protect, you know, different – you know, with the**
22 **context of the Fund, there was a range of risk tolerances**
23 **of different individuals, and this was the only occasion,**
24 **to my recollection, where the array of potential outcomes**
25 **necessitated layering different strategies in the**

1 aggregate.

2 **BY MR. BAGNALL:**

3 **Q Did Mr. Hull ask you to protect him?**

4 **A To protect him?**

5 **Q Yeah. I believe you just testified that you**
6 **engaged in this short put transaction to protect your**
7 **creditor. Is that right?**

8 **A In the event of an outcome that I did not**
9 **anticipate, yes, exactly.**

10 **Q Did Mr. Hull ask you to do that?**

11 **A He did not need to ask me to be in a position**
12 **to pay him the money I promised to pay him.**

13 **Q I want to make sure you understand the**
14 **question.**

15 **Did Mr. Hull ask you to protect him in the way**
16 **you just described?**

17 **A No.**

18 **Q Okay.**

19 **(SEC Exhibit No. 33 was marked**
20 **for identification.)**

21 **Q What I've just put in front of you, Mr. Gibson,**
22 **is marked Exhibit 33.**

23 **Do you recognize this document?**

24 **A Yes.**

25 **Q What is it?**

1 **A Mr. Hull's subscription agreement.**

2 **Q Okay. If you could just turn to the last page**
3 **of the document, the one that is Bates stamped ending in**
4 **3055.**

5 **A Yes, sir.**

6 **Q Do you see at the top left-hand corner there's**
7 **a signature over "Managing member."**
8 **Is that your signature?**

9 **A Yes.**

10 **Q And almost directly to the right of that,**
11 **there's another signature.**

12 **Is that Mr. Hull's signature?**

13 **A Yes.**

14 **Q How do you know? How do you know that's Mr.**
15 **Hull's signature?**

16 **A I guess I don't know.**

17 **Q Have you seen his signature before?**

18 **A I wouldn't be able to recognize it, no.**

19 **Q Do you have any reason to believe that's not**
20 **Mr. Hull's signature?**

21 **A No, I definitely don't.**

22 **Q Okay. You understand this to be Mr. Hull's**
23 **signed subscription agreement for the Geier Fund,**
24 **correct?**

25 **A Yes.**

1 Q Okay. If you could just turn to now the third
2 page into the document, the one that ends Bates 3037.
3 Do you see under the paragraph that begins –
4 or the section I suppose that begins "Third," spelled
5 out?
6 A Yes.
7 Q And Sub (a) under that section that says, "The
8 new member or its purchaser representative, if any, who
9 has been designated, is entering into this agreement
10 relying solely on the facts and terms set forth in this
11 agreement, the confidential private offering memorandum
12 of the company as amended from time to time, and the
13 operating agreement, as it has received copies of all
14 such documents."
15 Do you see where it says that?
16 A Yes, sir.
17 Q Do you agree that this incorporates into the
18 investment in the Geier Fund this subscription agreement,
19 the private offering memorandum and the operating
20 agreement?
21 A Do you mind saying that again?
22 Q Sure. Do you agree that this section here
23 incorporates into the investment the investor's decision
24 to invest, this agreement, private confidential offering
25 memorandum and the operating agreement?

1 A I don't understand the question.
2 MR. FERRIGNO: I don't understand the question.
3 MR. BOHR: Do you agree –
4 MR. BAGNALL: Hold on.
5 BY MR. BAGNALL:
6 Q Do you agree that what this is saying is that
7 the investor relied on this document in making an
8 investment into GISF?
9 A I believe that the investors relied on the
10 subscription agreement, the confidential private offering
11 memorandum, the operating agreement, and the guidance
12 that we gave them, yes.
13 Q Okay. And that's reflected here in this
14 paragraph, right?
15 A I don't think that everything that we said to
16 investors is reflected in this paragraph, if that's what
17 you're saying.
18 Q Okay. So not everything that's reflected in
19 this paragraph, but at least the subscription agreement,
20 the private offering memorandum and the operating
21 agreement, correct?
22 A Yes. I would say that those are – yes.
23 Q Okay.
24 BY MR. BOHR:
25 Q Would you agree that this subscription

1 agreement that has been marked as Exhibit –
2 MR. BAGNALL: 33, I believe.
3 BY MR. BOHR:
4 Q – 33 is the same subscription agreement that
5 all of the investors used to invest in GISF?
6 A Yes, sir.
7 MR. BAGNALL: Okay. I'll take this back.
8 BY MR. BAGNALL:
9 Q Was Exhibit 33 ever amended, do you know?
10 A The subscription agreement?
11 Q Correct. The exhibit that we were just looking
12 at.
13 A No, no, not to my knowledge.
14 Q Okay.
15 MR. BAGNALL: Could we please mark this next.
16 (SEC Exhibit No. 34 was marked
17 for identification.)
18 BY MR. BAGNALL:
19 Q Mr. Gibson, I am handing you now what's been
20 marked as Exhibit 34.
21 Do you recognize that document?
22 A Yes, sir.
23 Q What is it?
24 A The Confidential Private Offering Memorandum of
25 Geier International Strategies Fund.

1 Q Okay. And did every investor in Geier receive
2 the same copy of this document?
3 A Yes, sir.
4 Q Was this document ever amended?
5 A Not to my knowledge.
6 Q Okay. And so is this the offering memorandum
7 that was referenced in Exhibit 33 that we just looked at?
8 A Yes, sir.
9 Q Okay. Bear with me just a second.
10 If you could turn to page 1 please, which is
11 Bates stamped ending 2360, and it's the beginning of the
12 third page. So this document is printed double-sided.
13 So the third piece of paper in.
14 Do you see where it says, "The managing
15 member"?"
16 A Yes, sir.
17 Q And that identifies you as the managing
18 director or the managing member, is that correct?
19 A Yes, sir.
20 Q And the next entry on the same page is the
21 "Investment manager."
22 A Right.
23 Q And it identifies you as the managing member of
24 the investment manager, is that correct?
25 A Yes, sir.

1 Q It doesn't identify Jim Hull anywhere, does it?
 2 A No, it does not.
 3 BY MR. BOHR:
 4 Q Does it identify your father anywhere?
 5 A Not to my knowledge.
 6 Q Just to clear up one item.
 7 I believe this morning you testified that one
 8 of these entities served as both the managing member and
 9 the investment manager.
 10 Does this refresh your recollection that Geier
 11 Group was the investment manager and Geier Capital was
 12 the managing member?
 13 A Yes, sir, it does. As far as I understand, the
 14 managing member is, again, for all intents and purposes,
 15 an entity simply to receive the performance allocation.
 16 That was my understanding. Yeah.
 17 BY MR. BAGNALL:
 18 Q And then do you see under "Investment manager,"
 19 it says, "Investment by managing member"?
 20 A Yes.
 21 Q And it identifies -- or it states rather that
 22 you will invest the majority of your liquid net worth in
 23 the company, is that correct?
 24 A Yes.
 25 Q And the company here refers to GISF, the Fund,

1 is that right?
 2 A Yes, sir.
 3 Q Why was this included in the offering
 4 memorandum?
 5 A These clauses?
 6 Q This clause in particular, "the investment by
 7 managing member."
 8 A I do not recall if this was customary within
 9 the boilerplate document that Seward came up with or
 10 whether we came up with this. I don't recall.
 11 I would say this. That it's not customary to
 12 have as exceptional an alignment of interest as we
 13 carried out, and that it was important to Jim that we do
 14 so. And so Jim, being involved in the discussions with
 15 the docs, may have had this added.
 16 BY MR. BOHR:
 17 Q Mr. Gibson, to your knowledge, is there any
 18 place in the offering memorandum, Exhibit 34, where Jim
 19 Hull or your father are mentioned or are indirectly
 20 referred to?
 21 A No, sir. Not to my knowledge.
 22 MR. BAGNALL: Sorry, bear with me.
 23 BY MR. BAGNALL:
 24 Q If you'd turn to page 17, the Bates ending
 25 2376.

1 Do you see the section entitled "Reliance on
 2 Chris Gibson"?
 3 A Yes, sir.
 4 Q And then do you see the first line of that
 5 section says, "The success of the company is
 6 significantly dependent upon the expertise and efforts of
 7 Chris Gibson"?
 8 A I do.
 9 Q Is that true, or was it true at the time?
 10 A Yes.
 11 Q And how, if at all, was your purchasing the \$4
 12 November TRX puts in your account and in Francesca's
 13 Schwab account an aid of your effort to the company?
 14 A That was not an aid to the company. Well,
 15 let's break it down. Mine was not an aid to the company.
 16 It was an aid to Jim Hull, who was owed money. It did
 17 not detract from the performance of the company either.
 18 With regard to Francesca's, I would say it was
 19 -- it added an LP in the fund, the Marzullos.
 20 Q Did it help the company succeed? Did your
 21 purchase of the \$4 puts in your Schwab account help the
 22 company succeed?
 23 MR. FERRIGNO: He just answered that.
 24 BY MR. BAGNALL:
 25 Q Did the purchase of the puts in Francesca's

1 account help GISF succeed?
 2 A I would say yes.
 3 Q How so?
 4 A Our obligation was to deliver the best outcomes
 5 we could from a risk reward perspective, and I think this
 6 was an appropriate trade for the investor in question,
 7 the Marzullos, who were a participant in the company.
 8 Q Did the trade affect the company's, GISF's,
 9 profits?
 10 A No.
 11 Q Did it affect its losses?
 12 A No.
 13 Q So how did those trades help the company
 14 succeed?
 15 A To the degree that the Marzullos --
 16 MR. FERRIGNO: Well, he didn't --
 17 MR. BOHR: Let him finish.
 18 MR. FERRIGNO: But that's not what he testified
 19 to.
 20 MR. BAGNALL: I asked him the question --
 21 BY MR. BAGNALL:
 22 Q Did the \$4 puts you purchased in the Marzullos'
 23 account help the company, and you said "I think they do,"
 24 correct?
 25 A To the degree that a participant -- to the

1 degree the company is defined as its participants, and
 2 then one of the participants --
 3 MR. FERRIGNO: Let him finish the question.
 4 THE WITNESS: I'm lost where we are. Can you
 5 please repeat the question?
 6 BY MR. BAGNALL:
 7 Q The purchase of the \$4 TRX November 2011 puts
 8 in Francesca Marzullo's Schwab account help GISF succeed?
 9 A Generally no.
 10 Q No, it did not?
 11 A No, it did not.
 12 Q Okay. Did you testify a moment ago though that
 13 it did?
 14 A I believe that it advanced the company to the
 15 degree the company is defined as its participants, and
 16 that it advanced one participant. Not at the cost of any
 17 other participant.
 18 Q So you view the GISF then as a collection of
 19 the investors?
 20 A No, I view it as a single fund, a single
 21 entity.
 22 BY MR. BOHR:
 23 Q What you felt that you were helping the Fund,
 24 if I understand your testimony correctly, by helping the
 25 individual situation of one of the investors, the

1 Marzillos, correct?
 2 A Yes, sir. That is correct.
 3 BY MR. BOHR:
 4 Q Can you turn the page now to the Bates ending
 5 2378. Do you see the "Potential conflicts of interest"
 6 section?
 7 A Yes, sir.
 8 Q Is this the section you've been referencing
 9 throughout your testimony today?
 10 A Yes, sir.
 11 Q And what is it about this section in
 12 particular? What clause is it that you feel permits you
 13 to make the trades -- to buy the \$4 puts in your personal
 14 account?
 15 A I think the entirety of it is critical.
 16 Q Okay.
 17 A I can read the whole thing if you want or --
 18 Q Is there any part in particular?
 19 A No, there's not a particular part.
 20 Q Okay
 21 A The whole of it.
 22 Q Okay. Do you see the first sentence. "Each of
 23 the managing members and the investment manager will use
 24 its best efforts in connection with the purposes and
 25 objectives of the company, and will devote so much of its

1 time and effort to the affairs of the company as may, in
 2 its judgment, be necessary to accomplish the purpose of
 3 the company"?
 4 A Yes, sir.
 5 Q So who is the managing member that's referred
 6 to in that line?
 7 A As defined earlier, I understand that to be
 8 Geier Capital.
 9 Q And you are referring to the Bates page 2360,
 10 is that right?
 11 A Yes, sir.
 12 Q Okay. And Geier Capital, LLC. And who is the
 13 managing director of that entity?
 14 A I am, Christopher Gibson.
 15 Q Okay. And is there anybody else listed there?
 16 A There's no one else listed. However, Geier
 17 Capital is comprised of James Hull, myself and John
 18 Gibson, with James Hull and I as the active managers.
 19 Q Okay. Then the investment manager, if you
 20 refer back to that same page, right. Who is the
 21 investment manager?
 22 A Geier Group.
 23 Q And who is the managing member of the
 24 investment manager?
 25 A I am the managing member.

1 Q And nobody else is identified there either, is
 2 that right?
 3 A That's correct.
 4 Q Okay. So is it fair to say then that this
 5 first line of the potential conflicts of interest is
 6 referring to two entities, the managing member and the
 7 investment manager that have been identified as being
 8 controlled by you?
 9 A No, I don't think that's fair. I don't control
 10 it. I am the managing director of them, and the managing
 11 member of them, but I did not control them.
 12 Q Okay. As far as an investor who had this
 13 document in front of them was concerned, was there any
 14 other individual affiliated with the managing member?
 15 A James Hull.
 16 Q According to this document.
 17 A No, not according to this document, no.
 18 Q Okay. And how about the investment manager?
 19 According to this document, was there anybody else
 20 associated with the investment manager?
 21 A In this document, no.
 22 Q Okay. Did your purchase of the \$4 TRX November
 23 2011 puts -- was that you using your best efforts, in
 24 connection with the purposes and objectives of the
 25 company?

1 MR. FERRIGNO: I think you are taking it out of
2 context. The rest of the sentence says, "Devotes so much
3 of its time and effort to the company as may, in its
4 judgment, be necessary." It doesn't suggest that that's
5 the only thing that they could do.

6 And if you read the rest of it, you get there.

7 BY MR. BAGNALL:

8 Q You can answer the question.

9 A I'm confused. Can you say the question again?

10 Q Sure. Did your purchasing the \$4 TRX November
11 2011 puts in your personal account – was that an example
12 of you using your best efforts in connection with the
13 purposes and objectives of the company?

14 A I believe my purchase of the puts was
15 consistent with my objective to support and advance the
16 company, yes.

17 Q That's not what I asked.

18 I asked you if your purchase of those options
19 was an example of you using your best efforts in
20 connection with the purposes and objectives of the
21 company?

22 A Yes, I think that was consistent with achieving
23 the best efforts of the company.

24 BY MR. SACHAR:

25 Q Do you know who drafted this portion of the

1 Q What was his reaction?

2 A Agreement.

3 BY MR. BAGNALL:

4 Q Was there any reason that you didn't tell Mr.
5 Hull before you purchased these \$4 options in your
6 personal account that you were going to do so?

7 A There was no reason in particular. I would say
8 that I strongly anticipated their not paying out and
9 therefore I didn't see it relevant to mention to him.

10 Q Okay. So do you see the next clause in that
11 same line that says, "Will devote so much time of its
12 time and effort to the affairs of the company as may, in
13 its judgment, be necessary to accomplish the purposes of
14 this company"?

15 A Yes, sir.

16 Q How did the purchase of the \$4 puts in your
17 personal account help accomplish the purposes of the
18 company, if at all?

19 A I would describe it as not in the objective of
20 the company for a member of the company to face a default
21 of monies loaned to another member of the company. I
22 think a part of the objective of the company is ensuring
23 that loans between individual members of the company are
24 honored.

25 Q Can you point out in this offering memorandum

1 document, the "Potential Conflicts of Interest"?

2 A Which individual attorney?

3 Q Yes, I was just –

4 A No, I do not know.

5 Q Was it drafted by Seward & Kissel?

6 A Yes, sir.

7 Q Okay. Do you remember having any discussions,
8 outside of conversations with lawyers, about this
9 provision at the time it was drafted?

10 A Yes. Jim and I spoke about this, and this was
11 not a boilerplate element to the agreement. It was an
12 important clause in the agreement and was the only way I
13 could manage the amount of leverage and the range of
14 individuals in the Fund.

15 Q Okay. Can you tell us about those
16 conversations you had with Mr. Hull, when they happened,
17 what they were about?

18 A Late 2010 – I'm sorry. Late 2009, as we are
19 drafting the agreement, and Jim is clarifying his
20 expectations in terms of alignment of interest and
21 bringing in a range of people, and my having leverage, I
22 mentioned to Jim that, you know, "Leverage means that
23 there's going to be a point at which I could go to zero,
24 and I have an obligation to take measures to protect
25 against that."

1 where the loan is discussed between you and Mr. Hull?

2 A I cannot.

3 Q Is it discussed in here?

4 A No, sir. It is not.

5 Q Did GISF's limited partners all know that you
6 had a loan from Mr. Hull?

7 A I had essentially no discussions with them
8 outside of what we've discussed already, but it would be
9 very surprising to me to learn that they did not know
10 that I had a substantial loan, again, it being consistent
11 with how Jim generally operated within commercial
12 enterprises in this way.

13 Q Did Mr. Reddy, T.R. Reddy, care whether you
14 paid your loan to Mr. Hull, to your knowledge?

15 A To my knowledge, no. I'm not sure what Mr.
16 Reddy thinks.

17 Q Is there any reason, to your knowledge, why Mr.
18 Reddy would care whether you paid your loan to Mr. Hull?

19 A To my knowledge, no.

20 Q So I can't – is there anybody other than Mr.
21 Hull that was a limited partner in GISF that would care
22 whether you paid your loan to Mr. Hull, excluding your
23 parents?

24 A You know, I think that people would care that I
25 made good on my loan because to the degree that I did

1 not, that would cause a lot of stress between the
2 individuals managing their capital.

3 And so I would imagine if I were an LP and you
4 asked me would it matter to me if the investment manager
5 made good on his obligations to another LP, I would say,
6 yes, it does matter to me.

7 BY MR. BOHR:

8 Q Do you think that a reasonable person in a
9 position of, let's say, T.R. Reddy or John Engler or the
10 McKnights, would think it important to know that you had
11 this substantial loan to Jim Hull?

12 A I would think it's important.

13 Q And do you think a reasonable investor in the
14 position of, again, T.R. Reddy or John Engler, would
15 think it important to know that you want to be able to
16 satisfy the loan to Jim Hull?

17 A Yes.

18 Q And do you think a reasonable person in the
19 position of Reddy or Strelitz or the McKnights, would
20 think it important to know that you're doing these put
21 transactions to be able to satisfy your loan to Jim Hull?

22 A No, I don't think so.

23 Q Why is that?

24 A Because it didn't affect their performance. In
25 other words, to answer your question further and to do my

1 correct?

2 A That had -- in terms of determining the size,
3 one consideration and constraint was the amount of
4 resources that I had, that's correct.

5 Q So then that means that the mitigation of your
6 loss was limited only by the amount that you could put
7 towards buying the hedge, correct?

8 A At that time, based on practical
9 considerations, yes.

10 Q Okay. And did the Fund, the investors in the
11 Fund, other than the Marzillos, to what degree were their
12 losses mitigated on that day?

13 A They were not.

14 Q And so you were talking about a rational
15 investor a second ago.

16 You don't think a rational investor would want
17 to mitigate their losses, if their investor manager was
18 doing that very thing on the same day?

19 A Embedded in your question is the assumption
20 that I knew these options would pay out, or that I
21 suspected they would. Neither of which is accurate.

22 I anticipated their not paying out and I
23 believe other limited partners would not be interested in
24 taking on trades that I believed to be losers.

25 Q But the fact of the matter is, it did pay out.

1 best, to the degree that I entered into any transaction
2 that I contemplated being favorable, then I would have an
3 obligation to disclose it to others.

4 Secondly, to the degree that I entered into a
5 transaction that lowered my risk exposure below others,
6 in other words, if we were sitting here today and the
7 average LP lost 60 percent and the average LP had a
8 million and lost \$600,000, and I lost, as a percentage of
9 what I started that day with less, I would agree with
10 you. But that's not the case.

11 BY MR. BAGNALL:

12 Q So you don't -- do you --

13 A And to clarify further. In other words, you
14 don't need to take my word for it. You can look at the
15 objective positioning that I had in the aggregate to
16 intuit and know what I believed would occur.

17 I lost on this day, you know, \$700,000, and
18 then gained 70. I don't know people or anyone or any
19 rational person who engages in that intentionally.

20 It would make sense, however, that that 70
21 would be a hedge in an outcome you did not anticipate.

22 Q Well, you testified before, didn't you, that
23 the only reason you were hedged the amount that you were
24 hedged, was because that was all the assets you had in
25 the world outside of the Fund to put towards the hedge,

1 And you bought it at least in part because it was
2 possible that it would pay out, correct?

3 A Yes, both of those are true.

4 Q Okay. So then why wouldn't the other investors
5 want that same option?

6 A Because I am well informed about the array of
7 potential outcomes, and they trust my judgment as to what
8 I think is likely. They are not following this everyday.
9 They don't really have a view of bullish and bearish and
10 they are relying on my judgment.

11 Q But your judgment was to buy the options, to
12 buy the hedge.

13 A Not for the segment of investment that I had
14 that was consistent with theirs. Not for the unlevered
15 portion of my investment, which would be reflected of
16 where my actual view is, but rather for the portion that
17 is exceptional, above and beyond that.

18 Q Why is that a distinction -- why is that a
19 relevant distinction?

20 A Because it shows magnitude. Magnitude is
21 everything. If I had bought -- the magnitude of this
22 demonstrates credibly, in my mind, that I did not
23 anticipate this paying out.

24 Q And magnitude I think is important. Jim Hull
25 lost 15 to \$20 million, correct?

1 A Right.

2 Q That's a pretty significant magnitude.

3 A Yes, sir, it is.

4 Q Why wouldn't he want the option to mitigate

5 some of those losses? Did he know about the option to do

6 that?

7 A Jim is a sophisticated market participant, yes,

8 and he was doing his trading on his own and he knew about

9 the options market. We both were bullish on the stock.

10 And again, implicit in your question is the

11 assumption, that is wildly incorrect, that I knew the

12 future or that I believed that they would pay out.

13 And I think the independent objective data here

14 is indicative and demonstrates that I did not position

15 myself with the view that these would pay out.

16 Q And why is that?

17 A Because of the limited scale, and the scope of

18 losses that I suffered.

19 Q Okay.

20 BY MR. SACHAR:

21 Q Prior to your purchase of the \$4 puts in your

22 personal account, did you consult the language under the

23 "Potential Conflict of Interests" section located on page

24 19?

25 A Before we adopted leverage and had side account

1 activity at all, I read this very carefully and this was

2 the critical basis upon which we devised the structure.

3 Had we not been able to do this, or I was

4 advised by an attorney, as I wish I were that this was

5 not technically, you know, 100 percent on the up-and-up,

6 then we would never had had outside accounts. We would

7 never have -- I would not have had leverage, and none of

8 these trades would have happened.

9 And the same outcomes frankly would have

10 occurred, as it did. The performance would likely be

11 about the same.

12 MR. FERRIGNO: Could we take a break?

13 MR. SACHAR: I just want to finish this line.

14 BY MR. SACHAR:

15 Q Just answer the question. Prior to your

16 purchase of the \$4 puts in your personal account, did you

17 go back and consult this language contained on page 19?

18 A I did not look at the offering memorandum

19 during the year of 2011.

20 Q Okay. Did you seek any advice from anyone on

21 whether your purchase of the \$4 puts in your personal

22 account should be disclosed to the other Fund investors?

23 A No, I did not.

24 Q Okay. Did you seek -- with regard to the

25 purchases of the \$4 puts in the Marzullo account, did you

1 seek any advice from anyone concerning whether those

2 trades should be disclosed to the GISF investors?

3 A No, sir, I did not.

4 Q Okay. With regard to your advice to your

5 father to purchase \$4 puts in his personal account, did

6 you seek any advice from anyone concerning whether that

7 advice should be disclosed to GISF investors?

8 A No, sir, I did not.

9 BY MR. BAGNALL:

10 Q Before we turn off this,

11 If you look at the last sentence of that same

12 paragraph, that begins, "To the extent a particular

13 investment is suitable for both the company and other

14 clients of the affiliated parties, such investments will

15 be allocated between the company and the other clients

16 pro rata based on assets under management or in some

17 other manner that the affiliated parties determine is

18 fair and equitable under the circumstances to all

19 clients, including the company."

20 A Excellent statement. Love it.

21 Q Why do you love it?

22 A Please ask the question. I mean --

23 Q Why do you love it?

24 A Well, it says, "To the extent a particular

25 investment is suitable." Okay? That's the premise

1 Suitability is critical.

2 And in this context, buying insurance. We were

3 down 60 percent and I am very bullish. It was not

4 suitable or recommendable.

5 Q At this time, the Marzullos were members of the

6 company, were they not?

7 A They were.

8 Q And it was suitable for them?

9 A Yes, it was. I draw a distinction between the

10 Marzullos and other LPs in the company.

11 Would you like me to clarify why?

12 Q Sure.

13 A Okay. The Marzullos are -- Giovanni Marzullo,

14 the investor, was 77 years old at this time. The rest of

15 the investors were in their late 50s or early 60s.

16 Giovanni Marzullo had all of his money outside of his

17 primary residence in the Fund. None of the other

18 investors did. And all of the other investors had

19 substantial income.

20 Q Did the other investors, besides the Marzullos,

21 know that you were treating the Marzullos differently for

22 that reason?

23 A Did the others investors know that I was

24 treating the Marzullos differently? No.

25 Q Okay. So that -- I think -- and we can split

1 hairs on this, right, but to the extent a particular
2 investment is suitable, it was suitable for some of the
3 members of the company at the very least, the Marzulllos,
4 as you told us.

5 A Uh-huh.

6 Q Okay. It goes then, the sentence goes on to
7 say, right, that "Such investments will be allocated
8 between the company and the other clients pro rata based
9 on the assets under management."

10 So why doesn't this clause require you to
11 allocate some of the trades that you made for the
12 Marzulllos in Francesca's personal Schwab account to the
13 company?

14 A I don't see that at all here.

15 Q Do you see where it says – on the fifth line
16 from the bottom –

17 A No, no, I'm sorry, I see the line. "To the
18 extent a particular investment is suitable for both the
19 company and of the affiliated parties," so in this case,
20 we're talking about a TRX \$4 put expiring November 2011,
21 and I would say that that is not suitable for the company
22 in the aggregate.

23 It's not suitable for the company. The company
24 is the aggregation of every member, and for all members,
25 but one, it was not suitable. So this doesn't apply.

1 Q Well, two, right, three. You were a member and
2 you bought the puts.

3 A Sorry. Yes.

4 Q The Marzulllos were a member and they bought the
5 puts. And your father was a member, and he bought the
6 puts, right?

7 A There's a slight difference between my father
8 and the other two, but yes.

9 Q Okay. So it's not just one. It was suitable,
10 at least, for three.

11 A For three, yes. I'm sorry.

12 Q Okay.

13 A Well, I thought we were limiting our
14 conversation at this moment in context to the Marzulllos.

15 Q So it's suitable to some, right? So it's at
16 least an open question as to whether it's suitable for
17 everybody.

18 So was there ever a discussion with Jim Hull
19 about whether this investment was suitable for everybody?

20 A No.

21 Q Suitable for the company?

22 A No. It was my judgment call.

23 Q Okay. And so is it fair to say then that the
24 affiliated parties never had a conversation about how to
25 fairly and equitably allocate the trades that you made in

1 your personal account at Schwab?

2 A Nor were they entitled to under this sentence,
3 because it wasn't suitable for them.

4 Q What determines whether an investment is
5 suitable?

6 A The risk tolerance of the investor.

7 Q And where is what's a suitable investment for
8 the Fund outlined in this offering documents?

9 A I think the -- there's all sorts of guidance as
10 to what we can do and what we can't do.

11 Q So what –

12 A I'm not sure I can summarize very briefly for
13 you.

14 Q What in this document defines what is a
15 suitable investment for the company?

16 A It says that an illiquid investment is
17 suitable. It says that --

18 Q I'm sorry. Illiquid?

19 A An illiquid investment is suitable. It says
20 that new issues are suitable. It says that --

21 Q Are options suitable?

22 A Yes.

23 Q So why was a \$2 TRX option suitable for the
24 company but not a \$4 option?

25 A The options that we purchased for the Fund were

1 -- in order to achieve a different objective, then the
2 options that were purchased for the three constituents as
3 we've discussed -- the three constituents that we
4 discussed and the \$4 puts that were bought by me for
5 them, were not contemplated to pay out, and were
6 purchased to hedge downside risk for parties that were
7 exceptional in their risk tolerance.

8 The \$3 and \$2 puts that were purchased for the
9 Fund were also contemplated not to pay out. However, it
10 was important for the signaling effort, that I described
11 earlier, that the other market participants saw that
12 whoever was selling at that moment anticipated a material
13 move lower in the stock.

14 BY MR. SACHAR:

15 Q How was your dad exceptional from a risk
16 tolerance perspective?

17 A Because he -- the puts that he purchased were
18 not to cover losses in his Geier International Strategies
19 Fund account. They were purchased to hedge potential
20 forward losses on an already underwater position above
21 and beyond what he had invested in the Fund.

22 BY MR. BOHR:

23 Q And did you -- correct me if I'm wrong -- but
24 did you testify earlier today -- did you testify that at
25 some point you came to the understanding that some of the

1 other limited partners had also invested in TRX on the
2 side?

3 A Yes.

4 Q So therefore why wouldn't it have been useful
5 for them to engage in the S4 TRX put transactions like
6 your father did?

7 A I found out after this day that they had, so I
8 didn't know that at the time, first. And secondly, I
9 didn't call my father and tell him to do this. My father
10 asked me because he knew we were going to be doing
11 something in the market, "What was the appropriate
12 strategy?" and I decided that the appropriate strategy
13 was one where he did naturally a little bit worse in the
14 Fund, and that would be the one where there wasn't any
15 questions, but things played out the opposite as I
16 anticipated.

17 BY MR. BAGNALL:

18 Q So isn't the way that the offer memorandum
19 handles that situation, where certain LPs are treated
20 differently than others, by the allocation of the
21 investments after the fact? Isn't that what that last
22 sentence is designed to do?

23 A I don't understand the question.

24 Q So you are making the distinction between your
25 father and the other investors in GISF on the basis that

1 he had outside TRX investments.

2 A Uh-huh.

3 Q Okay. And you came to find out later that
4 other GISF investors were similarly situated. Right?

5 A Right.

6 Q And the way that the offering memorandum
7 appears to contemplate, disparate treatment among your
8 various clients for the Fund --

9 MR. FERRIGNO: He only has one client. He only
10 has one client. The Fund. He doesn't -- the other
11 individual investors are not his clients.

12 MR. BAGNALL: We'd like to hear the witness's
13 testimony.

14 MR. FERRIGNO: That's fine. But don't misstate
15 the facts. He doesn't have an advisory relationship with
16 the other individuals in their individual capacity.

17 MR. BAGNALL: He had access to --

18 BY MR. BAGNALL:

19 Q Did you have access to Francesca Marzullo's
20 Schwab account, Mr. Gibson?

21 A Yes, sir.

22 Q Did you have the authority to make trades in
23 that account?

24 A Yes, sir.

25 Q Were some of those trades for the benefit of

1 Giovanni Marzullo?

2 A Yes, sir.

3 Q Were some of those trades for the benefit of
4 SueJin Marzullo?

5 A I equate all three of those people as the same
6 financial entity.

7 Q Did you give your father some advice that was
8 related to TRX that he executed in an account that he had
9 outside of the GISF?

10 A Yes, sir.

11 Q Okay. So you were providing financial advice
12 then to individuals outside of GISF, is that correct?

13 A For those individuals, yes.

14 Q Okay. So turning back to the page ending 2378.

15 Doesn't the last sentence here -- isn't that in
16 there so that when you make investments outside the Fund
17 for other clients, that they can be allocated fairly to
18 the company, your other client, GISF?

19 A To the degree -- fairly, fairly is the word.

20 Q It's a yes or no question.

21 A Can you say the question again?

22 Q Yes. Does this last sentence --

23 A No, the answer is no.

24 Q Okay. Under what circumstances is the last
25 sentence of this first block under "Potential conflicts

1 of interest" relevant?

2 A Excellent question. I think it's the exact
3 heart of everything. To the degree that I anticipated
4 these to be, you know, potential profitable or to be
5 profitable, then they would be suitable for someone who
6 is a risky investor, unlike all the other people, in
7 which case it would be appropriate to allocate it across
8 the gamut.

9 However, I did not think this was suitable for
10 the other investors, who were aggressive investors like
11 me, and who wanted a big return, and I did not want to
12 buy puts, protection at the -- what I perceived to be the
13 dead bottom of the market.

14 I thought it was the stupidest trade I'd ever
15 been in. I wanted to kick myself for having to do it.
16 But I decided that, you know, I was not going to live
17 with myself. I was not going to default on my loan, and
18 I was not going to expose the Marzullos to unnecessary
19 losses.

20 Q Does the last sentence of this paragraph
21 contemplate fairness among clients that you have outside
22 of GISF and GISF, and handle the various outside
23 businesses you have by requiring you to allocate trades
24 you made for those other clients fairly with GISF?

25 A It does, to the degree -- but I think the

1 premise that is very important is that, you know, it's
2 not a heads we win, tails you lose type of game.

3 **Q You're --**

4 **A** You know, the Marzillos and I and my father
5 weren't going to be writing checks to the Fund if these
6 options didn't pay out. So your implication would be,
7 we'd go out and buy these options. They'd lose money,
8 and then we'd go get a check from the Fund. That is the
9 corollary to your assumption

10 **Q I am not implying anything. I am asking you**
11 **what this sentence says.**

12 **A** Well, that's how I interpret it. In other
13 words, what you're saying is if you buy anything outside
14 of the Fund, whatever happens, you've got to allocate pro
15 rata with the Fund. And I don't see that as making any
16 sense.

17 It would make sense if you are out there buying
18 something out of the Fund that you think would be a
19 benefit to the Fund, then, yes, I agree with you.

20 **Q So it's your exclusive determination as to**
21 **whether it's suitable for the Fund?**

22 **A** Based upon the structure and what was happening
23 at the time, I was the only one, yes.

24 **Q I thought you testified before that it was you**
25 **and Jim Hull that were making all the decisions.**

1 **A** For the direction of the Fund, yes.

2 **Q Okay. But you didn't discuss this with Jim**
3 **Hull. You decided unilaterally that you would buy a \$4**
4 **put for yourself, for the Marzillos and not for the Fund,**
5 **is that right?**

6 **A** That's correct. I saw this as a de minimis
7 transaction and, again, one that -- because it wasn't
8 going to pay out, and I didn't need to talk to Jim about.

9 **Q And I think you also testified, right, that you**
10 **didn't need to do that because the risk tolerances of the**
11 **investors were all different?**

12 **A** I wouldn't say all different. I would say that
13 the Marzillos were different than everyone else.

14 **Q Okay. And do the investors have any say in**
15 **what their risk tolerance is?**

16 **A** I would say that a wealthy investor can take
17 his risk tolerance down with guidance. But I would say
18 that an investor like the Marzillos doesn't need to tell
19 me because of their financial position that they're
20 different.

21 **Q My question was, does an investor -- did an**
22 **investor in GISF have the right to provide input on what**
23 **their risk tolerance is?**

24 **A** Absolutely.

25 **Q Okay. Did you discuss with the Marzillos what**

1 **their risk tolerance was before you purchased the puts in**
2 **Francesca's Schwab account?**

3 **A** No.

4 **Q Okay. Did you discuss with T.R. Reddy what his**
5 **risk tolerance was before you decided not to purchase the**
6 **puts in the Fund account?**

7 **A** No.

8 **Q Did you have a discussion with Mr. Hull about**
9 **what his risk tolerance was before you decided not to**
10 **purchase the \$4 puts in the Fund account?**

11 **A** No, sir.

12 **Q Did you have a discussion with anybody, any of**
13 **the investors in GISF --**

14 **A** I'll stipulate no.

15 **Q Okay.**

16 **MR. BAGNALL:** Do you want to take a break now?

17 **MR. FERRIGNO:** Yes.

18 **MR. BOHR:** Hold on a second. Can I just ask a
19 question?

20 **MR. SACHAR:** Let's give them a break. Tom
21 asked 15 minutes ago.

22 **MR. BAGNALL:** We'll go off the record at 3:16
23 p.m.

24 (A short recess was taken.)

25 **MR. BAGNALL:** We will go back on the record at

1 3:29 p.m., on Thursday, March 19th.

2 **Mr. Gibson,** you recall you are still under
3 oath, is that correct?

4 **THE WITNESS:** Yes, sir.

5 **MR. BOHR:** And just to confirm, Mr. Gibson,
6 none of the members of the staff and you had any
7 substantive discussions while we were off the record,
8 correct?

9 **THE WITNESS:** No, sir.

10 **MR. BOHR:** I want to ask you --

11 **MR. SACHAR:** Sorry, just to clarify.

12 It's correct, right, that we didn't have
13 substantive discussions? Because you said, "No, sir."

14 **THE WITNESS:** You are correct. We did not have
15 substantive discussions between the staff and me during
16 the break.

17 **MR. SACHAR:** Thank you.

18 **BY MR. BOHR:**

19 **Q So I'd like to wrap up with Exhibit 34, the**
20 **offering memorandum. And I have a question for you at**
21 **the bottom of page 19, which is the page that's Bates**
22 **labeled ending in 2378. It's the same page that**
23 **discusses potential conflicts of interest.**

24 **And the very last paragraph says, "From the**
25 **standpoint of the company, simultaneous identical**

1 portfolio transactions for the company, any other
2 clients, may tend to decrease the price received and
3 increase the prices required to be paid by the company
4 for its portfolio sales and purchases."

5 Did I read that correctly?

6 A I think you read the words correctly, yes.

7 Q What does that mean?

8 A I think it means that – I think it's speaking
9 to the fact that market activity, buying and selling, can
10 affect the price of the related security.

11 Q So if the Fund buys an asset and other persons
12 outside the Fund are trying to buy the same asset, that
13 could increase, basic supply and demand, that could
14 increase the price required to be paid for the asset,
15 correct?

16 A Yes, sir.

17 Q Or conversely, if the Fund moves to dispose of
18 an asset, and other investors outside the Fund are
19 simultaneously disposing of the asset against supply and
20 demand, that could drive down the price that is obtained
21 for that asset, correct?

22 A Yes, sir.

23 Q Okay. So is it fair to say that these laws of
24 supply and demand also apply to \$4 TRX puts in November
25 of 2011?

1 A Yes, sir.

2 Q You made a statement that you suggested to your
3 father that he might want to buy these \$4 TRX puts
4 expiring in 2011, when you had a phone call with him, I
5 believe you said, is that correct?

6 A Yes, sir, that's my recollection.

7 Q And you stated that he was aware that something
8 was going to happen to the Fund.

9 Did I understand your testimony correctly?

10 A Correct.

11 Q And that something was the exiting of TRX,
12 correct?

13 A I don't think he understood that. I think he
14 knew from speaking with Jim that we were potentially
15 thinking about doing that, and even at the time that I
16 spoke to my father the day before, we weren't 100 percent
17 certain we were going to do it, but yes.

18 Q Were other limited partners similarly aware
19 that the Fund might be about, on the next day, to exit
20 its TRX position?

21 A Not to my knowledge, no.

22 Q You said something that I wanted to explore a
23 little bit and let me just walk you through some price
24 data that I obtained online for TRX.

25 According to what I pulled online anyway, TRX

1 closed on June 1, 2011, at \$7.46. By September 1, 2011,
2 it had declined to \$5.85, closing price. October 3,
3 2011, it closed at \$3.51. And on November 9th, the day
4 before you exited, it closed at \$3.42 according to this
5 data in any event.

6 Isn't it fair to say that the Fund's position
7 in TRX experienced this loss over the course of this time
8 frame?

9 MR. FERRIGNO: This loss meaning?

10 BY MR. BOHR:

11 Q The loss in value – the loss as a result of
12 the TRX investment?

13 A Yes.

14 Q Okay. Because you said that on the day,
15 November 10th, when the transactions we've been
16 discussing occurred, I think you said you lost \$700,000,
17 and gained \$70,000.

18 A That's my understanding. That's the
19 approximate numbers, yes.

20 Q Okay. So the \$70,000 gain being approximately
21 what your put transactions yielded you personally.
22 \$700,000 being approximately what your pro rata share of
23 the Fund's loss would be.

24 A Yes, sir.

25 Q Okay. But it's fair to say that that wasn't

1 really a loss that occurred, the \$700,000 – strike that.

2 The \$700,000 loss to which you are referring
3 wasn't really all incurred on November 10th. It was
4 realized. The loss was realized on November 10th, isn't
5 that fair to say?

6 A No, no. When I say the beginning and end, that
7 beginning number is reflective of the \$3.46, wherever we
8 were that day. So I've already lost a million dollars.
9 I started the year at 2. Now I'm now to 1.1. And then
10 the trip from 1.1 to 400 occurred, to my knowledge, in a
11 large part on that day.

12 Q Okay.

13 MR. BAGNALL: Bear with me here.

14 THE WITNESS: Take your time.

15 MR. BAGNALL: I know it's been a long day.

16 THE WITNESS: No, please take your time. Thank
17 you.

18 BY MR. BAGNALL:

19 Q Did I understand you correctly before when we
20 were talking – if I could bring your mind back to the
21 proceeds of the \$4 TRX puts that you purchased in
22 Francesca's Schwab account.

23 When we were talking about the proceeds of
24 those trades, is it correct to say that those proceeds
25 were later traded away? Is that what you testified to

1 before?

2 A What do you mean by "traded away"?

3 Q Sorry. What happened to the proceeds of the \$4
4 TRX puts, those trades, in Francesca's Schwab account?

5 A They were lost in financial market transactions
6 that we engaged in subsequent to that, that were similar
7 in nature to what we subsequently had invested Geier into
8 after this time.

9 Q Okay. So when you say "financial transactions,
10 financial market transactions," what do you mean when you
11 say that?

12 A Let me be very specific. We bought – I
13 believe the strike price on the call was \$35 strike price
14 calls on SLV, which is a proxy for the price of silver,
15 expiring in January of 2013. And we did this during the
16 month – later in the month of November of 2011. So it
17 was a duration of a little over a year.

18 Approximately half of the Fund went into other
19 gold stocks. I think two other gold stocks. And the
20 other half went into these options positions, and 100
21 percent of the proceeds of the sale in the Schwab account
22 went into the options transactions.

23 Q And so did the transactions occur in
24 Francesca's Schwab account?

25 A Yes.

1 After this, incorrectly, I was very confident
2 that that was a problem that had occurred and now we're
3 going to do the right things.

4 Can you say the question again? I apologize.

5 Q Yes. So I was hoping you could explain how
6 replicating the GISF investments in Francesca's Schwab
7 account –

8 A So typically – the answer to that is that
9 typically over most periods of time, the objectives of
10 all of the limited partners were consistent and the
11 suitability was such that we could have the same things.

12 So that had been the case for the year and a
13 half or two preceding, and then it was the case for the
14 year and half following. This situation was unusual in
15 my uncertainty.

16 Q So the trades – once you started to reinvest
17 the proceeds of the \$4 puts in Francesca's account, those
18 trades were suitable for both the Marzullos individually
19 and the Fund?

20 A In my view, yes.

21 Q Did you allocate the trades that you made in
22 Francesca's Schwab account to the Fund?

23 A I'm not sure what you mean, did I allocate the
24 trades?

25 Q Yes. So if you turn back to the operating

1 Q So the proceeds from the \$4 put trades never
2 left that account?

3 A That's correct.

4 Q And I thought I understood – and so they were
5 reinvested into other securities that were similar in
6 nature to the investments that were in the Fund account,
7 is that right?

8 A That Geier simultaneously was doing, yes.

9 Q Okay. And at that time, were the Marzullos
10 still limited partners in the Fund?

11 A Yes, sir.

12 Q I thought I understood, and correct me if I'm
13 wrong, that one of the reasons that you purchased \$4 puts
14 in Francesca's account was to protect the Marzullos, an
15 elderly couple, from the risks associated with the
16 investment in GISF.

17 Is that not right?

18 A No, that's accurate.

19 Q So how was it protecting this elder couple to
20 then take those proceeds of that trade and replicate what
21 they already have invested in the Fund?

22 A Well, we're now – we were in a dynamic where
23 there was an array of potential outcomes, and I was very
24 uncertain at that point as to which direction things
25 would go. So that's what would necessitate hedging.

1 agreement that's in front of you –

2 A Are you talking about allocating money or
3 trades – Q Well, you tell me. If you look at
4 page – and can you just turn to the front -- is that
5 Exhibit 34 in front of you, Mr. Gibson?

6 A Yes, sir.

7 Q Okay. So page 19 of Exhibit 34, which ends
8 with the Bates 2738.

9 A 2378, yeah.

10 Q Excuse me. 2378. It says – the last line of
11 the first paragraph under "Potential conflicts of
12 interest," says, "To the extent a particular investment
13 is suitable for both the company and other clients of the
14 affiliated parties, such investments will be allocated
15 between the company and other clients pro rata based on
16 assets under management or in some other manner that the
17 affiliated parties determine is fair and equitable under
18 the circumstances to all clients, including the company."

19 So I understood you to testify a moment ago
20 that the investments that you made in Francesca's Schwab
21 account with the proceeds of the \$4 put trades, TRX put
22 trades, were suitable for both the Marzullos in that
23 account as well as the company.

24 A So the way I read this, we could have, you
25 know, combined those proceeds with Geier and that would

1 have been consistent with what practically occurred. But
2 we did not for practical reasons.

3 I'm not sure -- I don't think that this
4 sentence says that we are required to merge assets just
5 because we might simultaneously be doing something
6 similar to what we're doing elsewhere.

7 **Q** Okay. Well, even though the language says,
8 "Such investments will be allocated between the company
9 and the other clients"?

10 **A** I'm not sure I understand what that -- you
11 know, what that means.

12 **MR. FERRIGNO:** I have a question.

13 Were there instruments that purchased post
14 November 10, 2011, was there a real limit in any way to
15 what was available in the markets?

16 **THE WITNESS:** No, the liquidity of all of these
17 were -- that's an excellent point. The liquidity of what
18 we purchased was not -- our purchases were not a drop in
19 the bucket, even the daily liquidity. Our purchases in
20 the aggregate did not move the silver market.

21 **BY MR. BAGNALL:**

22 **Q** And why is that relevant?

23 **A** Because presumably the only reason for this
24 would be if you are making purchases in an asset whose
25 price would be affected by the fact that they're making

1 Okay. I'll take this back.

2 Would you please mark this one next.

3 (SEC Exhibit No. 35 was marked
4 for identification.)

5 **BY MR. BAGNALL:**

6 **Q** Mr. Gibson, I am handing you what's now been
7 marked as Exhibit 35.

8 **Do you recognize this document?**

9 **A** Yes, sir. This is the Operating Agreement for
10 Geier International Strategies.

11 **Q** Okay. And if you could please turn to the last
12 page, the one that is Bates stamped ending 3091.

13 **A** Yes, sir.

14 **Q** There are three signatures on this page, do you
15 see that?

16 **A** Yes, sir.

17 **Q** Is the one at the top left, is that your
18 signature?

19 **A** Yes, sir.

20 **Q** Is the one directly below that signature also
21 your signature?

22 **A** Yes, sir.

23 **Q** And is the signature that appears in the right
24 column the signature of Mr. Hull?

25 **A** I believe so, yes.

1 those purchases.

2 **Q** Are you referring to the last paragraph on the
3 page, or are you referring --

4 **A** No, I'm still referring to your sentence.

5 **Q** What part of that sentence refers to the moving
6 the price of an asset in the market?

7 **A** Oh, wait, wait. So this says, "To the extent a
8 particular investment is suitable for both the company
9 and other clients and affiliated parties," I stipulate
10 that this investment we're discussing was suitable for
11 both.

12 **Q** Okay.

13 **A** "Such investments will be allocated between the
14 company and other clients, pro rata, based upon assets
15 under management or in some other manner that the
16 affiliated parties determine is fair and equitable."

17 I would say that a fair and equitable
18 allocation of the proceeds of what we bought for the
19 silver options would be what the margin was paid for,
20 they got, and what Geier paid for, it got. We didn't
21 need to mix things up.

22 So I think that our action was consistent with
23 this.

24 **MR. BAGNALL:** Do any of you have a follow-up on
25 that?

1 **Q** You have no reason to believe that it's not Mr.
2 Hull's signature.

3 **A** No.

4 **Q** Okay. Bear with me just a second.

5 **Were there any changes to this document?**

6 **A** Not to my knowledge, no, sir.

7 **Q** It was never amended?

8 **A** No, sir.

9 **Q** Were there any side agreements or other
10 understandings that purported to modify this agreement?

11 **A** No, sir.

12 **Q** Okay. If you look on the page, the Bates
13 ending 3071.

14 **Do you see under Article III, Section 3.01,**
15 **"Management of the company"?**

16 **A** Yes, sir.

17 **Q** Do you see -- about the middle of that page,
18 the paragraph rather, the seventh line down, the line
19 beginning "The managing member shall devote so much of
20 its time and efforts."

21 That language, would you agree that that
22 language generally tracks what we saw and discussed in
23 the Confidential Offering Memorandum?

24 **A** It looks generally consistent with that, yes.

25 **Q** Okay. Is it worded -- is this document, the

1 line that we just read in the Operating Agreement, worded
2 in any way that your answers would change vis-a-vis
3 whether your purchase of the \$4 puts in your personal
4 account, were you giving your best efforts to the company

5 A Let me read it please.

6 Q Sure.

7 (The witness reviewed the document.)

8 A Yes, sir.

9 Q So your answers to the questions wouldn't
10 change, is that right? The questions that I asked you
11 about this language when we were discussing the
12 Confidential Offering Memorandum, your answers to those
13 questions would be the same if I asked them to you about
14 the language in this agreement?

15 MR. FERRIGNO: You can respond if you
16 understand that, if you can track all that --

17 He'll have to think back to a lot of questions
18 and a lot of answers.

19 MR. BAGNALL: I'm trying to save us a little
20 bit of time here.

21 MR. FERRIGNO: Yes, sir. No, I appreciate
22 that's what you're doing. I get that.

23 BY MR. BAGNALL:

24 Q So we went around -- and so what I'm saying is
25 this document worded in such a way that your answers

1 would change when I asked you questions similar to the
2 following?

3 Was your purchase of the \$4 TRX put in your
4 personal account in November of 2011, you using your best
5 efforts in aid of the company?

6 A Yes. And then my answers would be consistent
7 with those I gave earlier.

8 Q Okay. Because the language is about the same
9 between the two documents, correct?

10 A Yes, I believe so.

11 Q And do you rely on this portion of -- and when
12 I say "this portion," I mean Section 3.01 of the
13 Operating Agreement, as giving you the basis to engage in
14 transactions in your personal account?

15 A It certainly is consistent with that, but I
16 would not say it's the sole clause upon which I relied to
17 make that determination.

18 Q It's one of them but not the only one.

19 A Yes. Yes, sir.

20 Q Okay.

21 MR. FERRIGNO: Can I ask him a question?

22 MR. BAGNALL: Please.

23 MR. FERRIGNO: Would you take a look at the
24 next sentence, the one that begins with "Nothing herein
25 contained shall prevent the managing member or any of its

1 affiliates or employees or any other member from
2 conducting any other business including any business
3 within the securities industry, whether or not such
4 business is in competition with the company."

5 Did you understand that that sentence
6 contemplated that there might be situations in the future
7 where something that you're involved in might be
8 competing with the company?

9 THE WITNESS: I did.

10 BY MR. BAGNALL:

11 Q Was the purchase of the \$4 puts competing with
12 the company?

13 A No, sir.

14 Q So does that mean that this sentence isn't
15 applicable to those trades?

16 A No, it does not.

17 Q It means it is applicable?

18 A I would say it's generally applicable, yes.

19 Q So if the \$4 puts that you purchased in your
20 personal account and Francesca's personal account weren't
21 competing with the company, why is this line applicable?

22 A It's applicable because we're buying securities
23 with a directionally different bet than the one that we
24 have within the Fund.

25 Q So is it competing with the Fund then?

1 A When you say "competing," the way I interpret
2 that is that by purchasing the options, we would be
3 putting Geier International Strategies at a less
4 advantageous position than we otherwise would be.

5 And in that respect, no, we were not competing.
6 The options that we purchased did not materially move the
7 market.

8 Q So the sentence that Mr. Ferrigno just asked
9 you about seems to be indicating that you can participate
10 in businesses when they are in competition with the
11 company.

12 A So I guess what I'd further clarify. I read
13 this sentence as saying "Even if we went out and bought
14 puts and then in some way impacted the company as a
15 result of buying that put," so let's say, it changed the
16 liquidity of the stock, this would still say that was
17 okay.

18 But I am merely clarifying that in the puts
19 that we purchased, it had no material impact on the
20 performance of the company.

21 Q Okay. Can you turn please, Mr. Gibson, to that
22 page Bates ending 3081. And Article VIII, Section 8.02,
23 at the bottom of the page.

24 Do you see that?

25 A Yes, sir.

1 **Q** And it's titled "The Withdrawal Procedure."
 2 And it says, "A member or even the managing member may,
 3 upon at least 30 calendar days prior written notice to
 4 the administrator, withdraw all or a portion of its
 5 capital account attributable to a particular capital
 6 contribution as of the last day of each month provided
 7 such capital contribution has been invested in the
 8 company for at least six months."

9 **Do you see that?**

10 **A** Yes, sir.

11 **Q** Would you have been able to withdraw your
 12 investment in Geier pursuant to Section 8.2(a)?

13 **A** I think I had liquidity similar to other
 14 members with the exception of my, you know, maintaining a
 15 substantial portion of my assets in it.

16 **Q** Okay. So turn the page, one page, for me to
 17 the Bates ending 3083, and look at Section 8.02(d).

18 **A** Right.

19 **Q** Is this the limitation that you're referring
 20 to?

21 **A** Yes, sir.

22 **Q** So did this limitation apply to your personal
 23 account at GISF?

24 **A** My personal account – so my capital account in
 25 GISF.

1 at the very least that I was totally committed to this
 2 venture. And the requirement that is explicitly listed
 3 here was far less severe than what we actually carried
 4 out.

5 **Q** Okay. Did the withdrawal restrictions that are
 6 described in Section 8.02(d) of the Operating Agreement,
 7 did those apply to Jim Hull as well?

8 **A** I would say that Jim certainly benefitted from
 9 the withdrawal of 30 days, but furthermore had daily
 10 liquidity.

11 **Q** Could Jim Hull have withdrawn his entire
 12 position from the Geier Fund?

13 **A** On one day's notice, yes.

14 **Q** So he did not have to maintain in his capital
 15 account the lesser of \$100,000 or 1 percent of the
 16 capital accounts of all the other members?

17 **A** No, sir.

18 **Q** So when I asked you a second ago if the
 19 restrictions, withdrawal restrictions, in 8.02(d) applied
 20 to Mr. Hull, does that mean your answer is no?

21 **A** To my understanding, no, it did not apply to
 22 him.

23 **Q** Okay. Did your purchasing the \$4 TRX puts in
 24 your personal account reduce on a net basis your
 25 investment in TRX below \$100,000, or the 1 percent

1 **Q** So the way I understand this from your
 2 testimony before, and maybe I've got this wrong, is that
 3 there was an account at GISF in Chris Gibson's name.

4 **A** Yes, sir.

5 **Q** And there was also an account in GISF in Geier
 6 Capital's name.

7 **A** Yes, sir.

8 **Q** And that you held funds in both the accounts
 9 titled Chris Gibson and you had rights at least to a
 10 portion of the funds that were in the Geier Capital
 11 account, is that right?

12 **A** Yes, sir. That's correct.

13 **Q** Okay. Does (d) apply to your personal account?

14 **A** I think – I believe that (d) applies to the
 15 sum of my position in the Fund, inclusive of the other
 16 half that's in Geier Capital.

17 **Q** So it would apply to the account in the name
 18 Chris Gibson.

19 **A** Plus half of Geier Capital.

20 **Q** Okay. And why are you treated differently?

21 **A** I have a responsibility that exceeds that of
 22 other LPs with the exception potentially of Jim Hull. I
 23 think that we had different responsibilities but both
 24 significant ones. And given that I had less commercial
 25 experience in the world, it was important to demonstrate

1 threshold?

2 **A** No, sir.

3 **Q** It didn't draw it below the \$100,000 threshold?

4 **A** No, definitely not.

5 **Q** And it didn't draw it below the 1 percent of
 6 the capital accounts of other members' threshold?

7 **A** I do not believe so, no.

8 **Q** Do you recall at the time what that 1 – it's
 9 the lesser of – so would the 1 percent be greater than
 10 or less than \$100,000?

11 **A** Well, the 1 percent would be I believe around
 12 \$300,000 at this time.

13 **Q** So it includes your account in that
 14 calculation?

15 **A** I met both of those standards, if that's what
 16 your asking.

17 **Q** You had more than \$300,000 committed to a long
 18 TRX investment at the time.

19 **A** Yes, sir.

20 **Q** I'll take that back –

21 **MR. BAGNALL:** Unless you had some questions.

22 **BY MR. BAGNALL:**

23 **Q** What I was trying to ask you was whether when
 24 you calculate 1 percent of the capital accounts of the
 25 members, do you include your account in the sum?

1 A I do, yes.
 2 Q Okay. And so the value of the Fund was \$32
 3 million at the time?
 4 A Approximately.
 5 Q And so the 1 percent would be \$320,000 roughly?
 6 A Precisely, yes, sir.
 7 Q Okay. I'm going to hand you what's been marked
 8 previously as Exhibit 27.
 9 Do you recognize this document?
 10 A Yes.
 11 Q What is it?
 12 A This is a communication between Dennis Gerecke,
 13 who is our prime broker, and myself. This is on the 10th
 14 of November. And this is in reference to the receipt of
 15 the proceeds of the sale of, as I recall, 500,000 shares
 16 for approximately one and half million dollars to BPI,
 17 Blanco BPI, a Portuguese bank, and I am alerting Dennis
 18 to confirm receipt of the wire.
 19 And, again, as I clarified earlier, my efforts
 20 in communicating with our broker at this time, was to
 21 disarm their otherwise proclivity to achieve good value
 22 with the knowledge that we would be wanting to signal
 23 with our strategy to other investors.
 24 Q Sorry. And the time stamp on this e-mail is
 25 9:40 a.m.

1 A Right.
 2 Q So that's 10 minutes after the market opens?
 3 A I think that's off. I think that might be -- I
 4 think this is before the market opened, and I think this
 5 is probably midnight the night before or something.
 6 Q Okay.
 7 A I believe, but if I'm wrong, I might be wrong.
 8 I know the time stamps are all off on this, we recently
 9 discovered.
 10 Q But you think it's before market open on
 11 November 10, 2010?
 12 A Yes, sir. I would be pretty confident that
 13 it's before market open.
 14 Q And I don't think you mentioned this, and I'm
 15 sorry if you did.
 16 Who is Craig Gantar?
 17 A He is another trader at our prime broker,
 18 Garwood.
 19 Q Okay. And in the second sentence of the most
 20 recent e-mail in this thread, it says, "We are going to
 21 potentially tank this stock."
 22 Do you see that?
 23 A Right.
 24 Q What stock are you referring to in that
 25 sentence?

1 A TRX.
 2 Q Okay. And why were you saying that you were
 3 potentially going to tank the stock?
 4 A Two things. First I want him to get the wire
 5 quickly. And, two, in other words, I don't want --
 6 generally speaking, this is an administrative matter from
 7 his concern, and falls below all of his market
 8 considerations. And I want him to get this wire as soon
 9 as possible, and if the wire hasn't been sent, this is a
 10 top priority.
 11 And secondly, I want to prepare the ground for
 12 him to hit that market hard. I didn't trust them. I
 13 thought that they really didn't understand game theory,
 14 and they were going to try and get best execution by
 15 slowing selling, which would wholly undermine the
 16 strategy and potentially expose us to worse losses than
 17 we might otherwise be able to experience.
 18 Q Why was it so important for them to get the
 19 wire?
 20 A I don't like having sent people securities and
 21 not having the money.
 22 Q Okay. Did you need that wire -- let me back
 23 up.
 24 Is the request to get the wire fast related to
 25 the statements you made about potentially tanking the

1 stock?
 2 A No. When I send someone -- when I execute a
 3 contract to sell something, I want to get the money as
 4 soon as possible and until that risk has been eliminated,
 5 I'm all hands on deck.
 6 Q Okay.
 7 A Making sure that everything is on the up-and-up
 8 and we're good and we don't need to be pursuing in other
 9 ways.
 10 Q Okay. I'll take it back.
 11 MR. BAGNALL: Could you please mark this one
 12 next.
 13 (SEC Exhibit No. 36 was marked
 14 for identification.)
 15 BY MR. BAGNALL:
 16 Q Mr. Gibson, I am handing you what's been marked
 17 as Exhibit 36.
 18 Do you recognize this document?
 19 A I don't, but I see what it is.
 20 Q What is it?
 21 A It's an e-mail that my father forwarded to me
 22 from his wealth manager noting proceeds -- and he's got
 23 proceeds from the sale of TRX.
 24 Q TRX stock and options, correct?
 25 A Correct.

1 Q Are these the -- and so I'll represent to you
 2 that the way that this document was produced to us, we
 3 had an e-mail that had two attachments, but you can see
 4 at the top of the first page, which is Bates stamped
 5 ending 17046 --
 6 A Right.
 7 Q -- and the last two pages of this document are
 8 those attachments.
 9 A Yes, sir.
 10 Q Okay. Do you recall answering your father's
 11 question about what he should purchase with the \$41,558?
 12 A I do not.
 13 Q Is it your understanding that the proceeds of
 14 your father's sales of TRX options were approximately --
 15 I'm sorry, the \$4 options were approximately \$42,000?
 16 A The proceeds I think were \$60,000.
 17 Q Excuse me. You're right. \$60,000. The
 18 profits were approximately \$42,000, is that right?
 19 A Yes, sir.
 20 Q And he also had some proceeds from the sale of
 21 stock directly, is that right?
 22 A Yes, sir.
 23 Q On the 9th and 10th of November 2011?
 24 A Yes, sir.
 25 Q Okay. Are these -- to your knowledge, are

1 these the only trades in \$4 TRX puts that your father
 2 made?
 3 A Yes, sir.
 4 Q I'll take it back.
 5 MR. BAGNALL: Paul, unless you have --
 6 MR. BOHR: No.
 7 BY MR. BAGNALL:
 8 Q And, sorry, let me just ask you one more
 9 question, Mr. Gibson.
 10 At the top there of the first page of Exhibit
 11 36, is that your e-mail address, cg@GeierFund.com?
 12 A Yes, sir.
 13 Q Do you have any reason to believe that you
 14 didn't receive this e-mail from your father? That is
 15 your e-mail address, correct?
 16 A Yes.
 17 Q All right.
 18 A Yes, I should have received that, sent to me.
 19 Q Okay. So I'm going to hand you now what's been
 20 previously marked as Exhibit 19. And at the same time,
 21 I'm going to give you what's been previously marked as
 22 Exhibit 20. Okay.
 23 And let me explain just for a second. I
 24 understand these to be identical documents in two
 25 different formats for you. And in Exhibit 19, it appears

1 that you just sent an e-mail to yourself.
 2 Do you see that at the top of Exhibit 19?
 3 A Uh-huh.
 4 Q And if you then look at Exhibit 20, at the
 5 bottom of the page, it includes the metadata for that
 6 e-mail showing that you actually blind carbon copied a
 7 number of individuals as well.
 8 A Uh-huh. Right.
 9 Q Okay. If you compare, and please do so, the
 10 bodies of the e-mails in Exhibits 19 and 20, they should
 11 be identical. And if you would like, you may compare
 12 them.
 13 A This is going to take some time. Is that okay?
 14 Q If you want to, sure, take your time.
 15 (The witness reviewed the documents.)
 16 A They look identical, yes.
 17 Q Okay. And so if you look at the bottom of page
 18 20, which does not have a Bates stamp, but if you flip it
 19 over to the second page, is that a list of all the
 20 investors in GISF as of September 23, 2011?
 21 A Yes, sir. Plus a member of our administrator,
 22 Matthew Bell.
 23 Q I see that, okay.
 24 And so is this a communication, an e-mail that
 25 you wrote to all the GISF investors on September 23rd?

1 A Yes, sir.
 2 Q Okay. If I could draw your attention to the
 3 third paragraph. And I'm looking at Exhibit 19, because
 4 I find that a little bit easier to read, but you can look
 5 at whichever you prefer. I am referring to the
 6 paragraph that begins, "The fundamentals of junior gold."
 7 A Right.
 8 Q You write in the middle of that sentence,
 9 "Having other professional investors."
 10 Do you see that?
 11 A Yes.
 12 Q "Confirms the view of tremendous value."
 13 Was that a true statement at the time? Was
 14 that a true representation of your beliefs about TRX?
 15 A Well, that was an addition, a comment that Jim
 16 Hull made. That sentence is just his. We've got copies
 17 of the drafts and that sentence is a sentence that he
 18 added.
 19 Q Okay.
 20 A I wouldn't have put it that way, but --
 21 Q As of September 23, 2011, did you believe that
 22 Mr. Sinclair had a great reputation, character and
 23 integrity?
 24 A Yes, I did. I did, I did.
 25 Q And then the last sentence of this paragraph,

1 do you see it begins, "In short, I remain confident we
2 fail by not being in the right asset class or not being
3 in the right company but being there prematurely"?

4 A I'm sorry. Is it --

5 Q The same paragraph.

6 A Okay, got it.

7 Q The last sentence.

8 A Okay.

9 Q Was that a true statement at the time?

10 A Yes.

11 Q Okay. And then if you go to the next
12 paragraph, the last paragraph of the e-mail. "I can
13 report to you that more than 90 percent of the investors
14 in the Fund have confirmed their intentions to remain
15 invested in Geier and TRX at their current levels."

16 Who was included in the 90 percent? Or maybe
17 it's easier to ask, who is excluded, who is in the 10
18 percent?

19 A Oh, it's probably easier to answer your first
20 question.

21 So Jim would be 82, and between my father and
22 my mother and the Marzullos and myself, that gets us over
23 90.

24 Q Okay. So you were writing to essentially
25 everybody else to see if they wanted to stay in the Fund,

1 is that right?

2 A Correct. Alert -- well, the reason for this
3 e-mail is not everyone checks the markets everyday

4 Q Uh-huh.

5 A This is a big deviation from expectations, and
6 we wanted to alert them to it, and give them a chance to
7 get out if they wanted, and we stopped charging
8 management fees and those three things were the
9 objective.

10 Q Okay. And in the second sentence, "Personally
11 I will not redeem my interest in Geier and TRX until the
12 bull market matures over the coming years, which I
13 strongly believe will be at significantly higher levels."

14 Is that accurate?

15 A That was at the time.

16 Q Okay. So when you wrote this e-mail -- or when
17 you sent this e-mail, I should say, on September 23rd,
18 did you write it over a couple of days?

19 A No, because I wasn't in -- I didn't know what
20 had happened. I mean it only happened on Friday.

21 Q So you and Jim exchanged drafts of this e-mail
22 on the 23rd and sent it on the 23rd?

23 A Yes, sir.

24 Q Okay. And your plan as of the 23rd was to
25 maintain the investment in TRX, is that right?

1 A Yes, sir.

2 Q Okay. Now I am going to hand you what's been
3 previously marked as Exhibit 21.

4 A Do you want this back?

5 Q You can hang on to them for a second. I'll
6 collect them all in a minute.

7 Do you recognize this document?

8 A Yes.

9 Q What is this one?

10 A This is a confirmation e-mail from Joseph
11 Faskowitz, who is a employee at Casimir Capital working
12 for Richard Sands confirming the volume and price of
13 shares that were sold through the arranged sale by
14 Casimir.

15 Q Okay. And how many shares were sold?

16 A 3,734,395.

17 Q And do you know from this e-mail what the trade
18 date was?

19 A The 27th of 2011, September 27, 2011.

20 Q So it's four days after the e-mail that's in
21 Exhibit 19.

22 A That's correct.

23 Q So what happened in the four days between
24 September 23rd and September 27th where you changed
25 course and decided to sell some TRX?

1 A I had a conversation with Jim over the weekend
2 and I was very bullish and Jim was a little beat up, a
3 little shocked, and made the statement that he had no
4 more tolerance for losses, which was a big -- a shell
5 shocker, and by the end of the conversation, before we
6 had hung up, we had discussed going out and soliciting
7 bids.

8 Q And so that conversation over the weekend is
9 the one we spent a good deal of time talking about
10 earlier today in testimony, is that right?

11 A Yes, sir.

12 Q Okay. So it was when the decision was made to
13 begin selling GISF's TRX position.

14 A It was the most significant inflection point in
15 terms of the change of expectations and plan.

16 Q And so did you communicate with GISF's
17 investors on the 27th to let them know that you had
18 changed course?

19 A We did not.

20 Q Okay. Was there any reason in particular why
21 you didn't?

22 A The view was that we will best serve the
23 investors by acting discretely on their behalf, and not
24 -- at this time, one of our investors, John Engler, was
25 already in touch with someone who was short the stock at

1 Osprey Capital Management, a hedge fund, and that trader
 2 at Osprey approached Jim Hull and we knew at that point
 3 in time that anything we said to our general LPs was
 4 going to go straight, you know, out into the market
 5 broadly.

6 Q Why was John Engler telling Osprey what GISF
 7 was doing?

8 A I surely would like to know that.

9 Q Have you ever had a conversation with John
 10 Engler about that?

11 A I have not.

12 Q Do you know what John Engler told Osprey?

13 A I do not.

14 Q You know about it because Osprey contacted Jim
 15 Hull?

16 A Correct.

17 Q And do you recall when that happened?

18 A It would have been before this, and it would
 19 have been after we were above 10 percent. So it was
 20 during the summer of 2011

21 Q Okay.

22 A I would imagine it was probably July or August.
 23 I think it was August. In fact, it was August, it was
 24 August.

25 Q At the time, was John Engler invested in GISF?

1 MR. BAGNALL: Does anybody have any follow-up
 2 questions on this?

3 BY MR. BAGNALL:

4 Q If I can just draw your attention to Exhibit
 5 19.

6 Do you see in the second paragraph, the third
 7 line down about two-thirds of the way across the line, it
 8 says, "I made a terrible decision to concentrate our fund
 9 in the junior gold space before gold rally"?

10 A Yes.

11 Q Was that a true statement on September 23,
 12 2011?

13 A That was a dig at Jim Hull that I was making.

14 Q Okay. You seem to be attributing the decision
 15 to yourself, not to Jim Hull.

16 A Well, I always took total responsibility
 17 vis-a-vis our communications and anything that was going
 18 on. And I intended that statement to --

19 Q To qualify the decision itself?

20 A Well, I intended -- I wanted that -- I intended
 21 -- I wanted investors to know that was a mistake.

22 Q Okay.

23 A And I wasn't going to say, "Jim made us do
 24 this."

25 Q Okay, okay. I'll take all three of those back.

1 A He was, and then he redeemed a substantial
 2 portion at the end of August, as I recall.

3 Q Okay. Do you think that the communications
 4 with Osprey had any part in changing Jim Hull's mind
 5 about selling -- to your knowledge, did it have any
 6 impact on Jim Hull's decision to --

7 A I would be surprised.

8 Q -- sorry, to sell TRX?

9 A I would be surprised if that event and
 10 communication did not impact his thinking.

11 Q But you don't know one way or the other if it
 12 did.

13 A No.

14 Q And he never mentioned it to you?

15 A No, he did.

16 Q Did he mention it to you the weekend of
 17 September 24th, 25th?

18 A The Osprey incident?

19 Q Yes.

20 A No, no.

21 Q That conversation was limited only to the not
 22 wanting to take on any more losses in the TRX investment?

23 A You're talking about -- sorry, now you're
 24 talking about -- yes, that's correct, that's correct.

25 Q Okay.

1 MR. BAGNALL: If you could mark this next
 2 please.

3 (SEC Exhibit No. 37 was marked
 4 for identification.)

5 BY MR. BAGNALL:

6 Q Mr. Gibson, I am handing you what's been marked
 7 as Exhibit 37.

8 Do you recognize this document?

9 A Uh-huh.

10 Q What is it?

11 A It's a long --

12 Q Take your time.

13 A -- market commentary to Jim.

14 Q Do you want to take some time to read it?

15 A Sure.

16 Q Okay.

17 A Thank you.

18 (The witness reviewed the document.)

19 A Okay.

20 Q And when you say it's a "long market commentary
 21 to Jim," what does that mean?

22 A Well, I also included a discussion here about
 23 the McKnights and my preference to get rid of our LPs,
 24 and who had been -- at every discussion I had had with
 25 him, you know, I'd shown him where the door was, and said

1 that, you know, they can leave with liquidity at any
2 point in time they want, and every time they don't want
3 to leave, but they're saying they're displeased.

4 And so I didn't think that was a healthy
5 relationship and I thought that we should force them to
6 exit.

7 **Q** And is there something about the McKnights that
8 was unique about them amongst the GISF investors?

9 **A** Yes. They seemed to be demanding outcomes and
10 that's not something that we can do. No one can do that.
11 So they seemed to have unreasonable expectations and I
12 could not deliver unreasonable expectations.

13 **Q** Okay. In the second paragraph, the one that
14 begins with "regard to redeeming investors," the second
15 sentence, do you see, "I have worked tirelessly"?

16 **A** Yes.

17 **Q** "And while I have failed everyone deeply, I
18 have done so placing their interests ahead of mine."

19 **A** Yes.

20 **Q** Was that true?

21 **A** Yes.

22 **Q** How did you place the investors' interests
23 ahead of yours when you took the \$4 TRX hedge in your
24 personal account and not the Fund account?

25 **A** Because I didn't think that that position would

1 pay out and that would not be serving the investors.

2 The way I serve the investors is, you know, one
3 example would be taking all the management fees and
4 investing them in the Fund. It certainly was customary
5 to take those as cash and if at any point in time we or I
6 suspected or thought that the stock would go lower yet,
7 we would have converted those to cash, and that would
8 have been completely okay.

9 We kept everything along side the Fund with the
10 exception of positions that I felt obliged to purchase as
11 hedges even though I did not anticipate them paying out
12 even though they would be a cost to me at a very
13 difficult time. It was a time to buy insurance.

14 **MR. FERRIGNO:** I have a question.

15 Did you at one point waive management fees?

16 **THE WITNESS:** And then we waived management
17 fees after the e-mail that we just went through on the
18 23rd of September 2011.

19 **BY MR. BAGNALL:**

20 **Q** Okay.

21 **A** I think that, you know, overall I came to Geier
22 with \$250,000. I never took a nickel out of the Fund. I
23 worked 20 hours a day at it. And I lost not only all of
24 my financial resources, but people who were important to
25 me in my life. So, yes, I did.

1 **Q** Okay.

2 **MR. BAGNALL:** Do you want to take a break?

3 **THE WITNESS:** No, I'm fine, sorry.

4 **MR. BAGNALL:** That's all right.

5 **BY MR. BAGNALL:**

6 **Q** Can you look please at the last paragraph on
7 the first page, the page ending 78454, that begins, "My
8 focus is on ignoring the noise."

9 **A** Right.

10 **Q** The next sentence says, "Running our investment
11 by consensus will not work."

12 What did you mean when you wrote that?

13 **A** I am talking about consensus, you know, broadly
14 among 30 people. In other words, consensus with me and
15 Jim is totally achievable. But if we're going to be
16 making every decision and then going back to all 30 LPs,
17 that's a word I won't use, not an effective regime.

18 **Q** Is that what was being suggested by Mr. Hull
19 that all 30 investors would make investment decisions
20 together?

21 **A** I'm sorry. Could you say your question again?

22 **Q** Yeah. And maybe I'm wrong. Were you
23 responding to Jim Hull when you wrote "Running our
24 investment by consensus will not work"? Did someone
25 suggest that the investment be run by consensus?

1 **A** The frequency of input from the other investors
2 at this point in time was not going to be effective in my
3 view in order to generate investment decisions going
4 forward. So we failed, then we now had 25 people who had
5 an opinion and wanted to engage in the management. And
6 that's just not a plausible management strategy.

7 **Q** So it's not that somebody suggested managing by
8 consensus. It's that that was what was happening in
9 practice?

10 **A** That's precisely correct. Yes, sir.

11 **Q** Okay. I'll take this back.

12 **MR. BAGNALL:** Why don't we take a quick break
13 at 4:23 p.m., and go off the record.

14 (A brief recess was taken.)

15 **MR. BAGNALL:** Okay. We'll go back on the
16 record at 4:36 p.m., Thursday, March 19, 2015.

17 **Mr. Gibson,** you recall you are still under
18 oath, is that right?

19 **THE WITNESS:** Yes, sir.

20 **MR. BAGNALL:** And to confirm for the record,
21 there were no conversations of substance between you and
22 the staff during the break, is that correct?

23 **THE WITNESS:** That's correct. There were no
24 conversations.

25 **MR. BAGNALL:** I think we're close to the end

1 here, so bear with us, okay.

2 BY MR. BAGNALL:

3 Q The proceeds of the trading in \$4 TRX puts that
4 you made in your Schwab account, what happened to those
5 proceeds?

6 A They were invested in a similar manner with the
7 proceeds from the Marzullo Schwab account was invested;
8 i.e., into SLV call options, expiring on January 23rd of
9 a strike price of approximately 35, as I recall.

10 Q And so does that mean then like the proceeds
11 that were in Francesca's account, the proceeds that were
12 in your account, were lost as well?

13 A Yes.

14 Q Okay. So none of the proceeds remain in your
15 account?

16 A That's correct.

17 Q And none of the proceeds remain in Francesca's
18 account?

19 A That's correct.

20 Q Okay. In the interest of time, obviously you
21 see we've got boxes of documents here. I want to try
22 asking you something in a way that might help us not go
23 through these documents. If it works, that would be
24 great.

25 We've obviously gotten productions from you of

1 unintelligently.

2 Jim Hull is a very antagonistic aggressive
3 individual, and that's his general MO in how he deals
4 with counterparties in various commercial situations.
5 And I thought it my duty, in order to achieve the best
6 outcome for my investors, to be as aggressive as possible
7 with TRX management.

8 The view was that TRX management's conduct and
9 decision would have an impact on the share price, but not
10 a material one. The broader market conditions were going
11 to drive the performance of the stock. But if by
12 antagonizing management I can get one marginally better
13 outcome out, that might be worth five cents a share, it
14 was worth it.

15 And so that was the basis for my relentless and
16 continual antagonism of the management team, which
17 again, in retrospect, I do not think served an effective
18 purpose.

19 Q Okay.

20 MR. BAGNALL: Does anybody have follow-up?
21 Okay, Paul? Do you have some follow-up
22 questions?

23 MR. BOHR: I have a few questions.

24 BY MR. BOHR:

25 Q Was there ever a time when Geier Group and

1 your e-mails and productions from others, including Hull
2 Property Group. And we have noticed that there were
3 e-mails between you and TRX personnel, Jim Sinclair and
4 David Duval, for example, in which you seem to speak
5 relatively unfavorably about TRX. Is that fair?

6 A Yes.

7 Q Do you recall writing e-mails of that nature?

8 A Very aggressive, negative e-mails to TRX
9 management repeatedly.

10 Q Okay. And then not nearly simultaneously,
11 contemporaneously, you would write to Jim Hull and
12 describe the company more favorably.

13 A Yes, sir.

14 Q Okay. And would you agree that it's fair to
15 say that reading those e-mails side by side they seem
16 inconsistent?

17 A Possibly, although I would say that it may seem
18 that way, but it's highly consistent in my view.

19 Q Okay. So on their face they seem inconsistent.

20 A Yes.

21 Q Can you explain to us what you just mentioned a
22 moment ago why they are consistent?

23 A Yes. My objective in my communications with
24 Jim Hull was accuracy. My objective in communications
25 with TRX management was antagonism. In retrospect,

1 Geier Capital dissolved, were replaced by a different
2 entity or relocated?

3 A I learned later in the course of complying with
4 the subpoena, that Geier Group was closed. I believe in
5 as early as 2011, it may have been, or it might have been
6 2012. But that was done without my knowledge. I am not
7 sure what the basis was, but my suspicion would be that
8 it was in order to save expenses by not having an
9 additional entity outstanding.

10 Q Can I show you a document.

11 MR. BAGNALL: This will be marked as Exhibit
12 38.

13 (SEC Exhibit No. 38 was marked
14 for identification.)

15 BY MR. BOHR:

16 Q It's a two-page document. It's printed on both
17 sides. And, Mr. Gibson, if you could please look at
18 that.

19 (The witness reviewed the document.)

20 A All right.

21 Q And so this is Exhibit 38. I pulled this off
22 of the website of the Georgia Secretary of State, just
23 conducting due diligence on the entities affiliated with
24 Geier.

25 It says, "State of Georgia Certificate of

1 Voluntary Termination of Geier Group, LLC." It says, "It
2 has been duly terminated on April 13, 2011, under the
3 laws of the State of Georgia."

4 A Right.

5 Q If you turn on the back, it is signed James M.
6 Hull, member manager.

7 A Right.

8 Q And his signature is dated March 29, 2011.

9 A Right.

10 Q So that's Exhibit 38.

11 And I'll just represent for you, for the sake
12 of expedience, I have a comparable document for Geier
13 Capital, also signed by James Hull, dated March 24, 2011,
14 acknowledged and duly terminating Geier Capital, LLC, on
15 March 28, 2011.

16 MR. BAGNALL: Do you want to put that in?

17 MR. BOHR: I'll put that in. That's Exhibit
18 39.

19 (SEC Exhibit No. 39 was marked
20 for identification.)

21 MR. BOHR: So Geier Capital was terminated, in
22 Exhibit 39.

23 MR. BAGNALL: Do you have one for Tom?

24 MR. BOHR: Yes.

25 MR. BAGNALL: This here? All right.

1 BY MR. BOHR:

2 Q So to the best of your understanding, are these
3 the terminations that you were referring to?

4 A Yes, sir.

5 Q And if I understand your testimony correctly,
6 you don't understand – you didn't know about this at the
7 time it happened?

8 A No, I did not.

9 Q And can I hear again your understanding as to
10 why this happened?

11 A My only understanding that I would have as to
12 why this would occur and which is also consistent with my
13 knowledge of him, is that Jim would do this in order to
14 save expenses.

15 Q I have a couple of cleanup questions here.

16 How were you compensated? You testified
17 earlier that your management fees and when you were
18 getting them, performance fees, were plowed back into
19 your capital account.

20 Then you stopped charging a management fee.
21 And I'm just trying to – except for one time you
22 received the fees in order to pay taxes.

23 How were you compensated then?

24 A Generally I adopted what I thought to be an
25 extremely humble lifestyle and, of course, since have

1 adopted a yet more humble lifestyle.

2 But I lived – didn't pay rent – I lived with
3 Francesca's parents. I've kept my costs very, very low.
4 And I had some general liquidity and was able to live out
5 of that.

6 Q Did you get any salary from Hull Storey Gibson
7 or Hull Property Group?

8 A Yes, I did get a salary from Hull Storey
9 Property Group, yes. That's true.

10 Q In what years?

11 A 2009, '10 and '11.

12 Q Was that the \$24,000 a year that you testified
13 to earlier?

14 A Originally it was that, but it moved up to 150.

15 Q And what time frame did it move up to 150?

16 A Effective in 2011, for the year of 2011, as I
17 recall.

18 Q So it started with January 1, 2011?

19 A Yes.

20 Q And did you get that also in 2012?

21 A No.

22 BY MR. BAGNALL:

23 Q What were you being paid for?

24 A What was contemplated there was that I would
25 reimburse Hull Storey Property Group out of management

1 fees in the future.

2 Q So it was a loan?

3 A It was not formalized as such though. So
4 effectively Jim was financing my daily living with – in
5 a loose way with the expectation that additional fees
6 would come in in the future and I would thereafter pay it
7 back.

8 Q Have you ever returned that money to Mr. Hull?

9 A No. No, I haven't. And that entity was half
10 owned by Hull and half by my – actually that's not true.
11 I'm sorry. Actually I don't know the ownership of the
12 entity was paying me. But it was in part owned by my
13 father.

14 BY MR. BOHR:

15 Q Did you ever engage in any personal
16 transactions with Geier International Strategies Fund?
17 For example, did you ever buy securities from the Fund or
18 sell securities to the Fund?

19 A Jim did a contribution in kind of securities
20 and was paid the value – I'm sorry – was not paid
21 anything. His capital account accrued by the value of
22 the securities he contributed.

23 Q Are you referring to when GISF was formed and
24 people contributed their interests from the Hull Fund and
25 the Gibson Fund into GISF? Is that what you are

1 referring to?

2 A No, sir. That would be also an event like
3 that, but there was an additional event, as I recall, in
4 late September or October – no, it would have been
5 October of 2011 when Jim contributed his side account,
6 that had approximately \$2 million worth of TRX, and
7 contributed it in kind as a capital contribution.

8 Q Okay. But he did not receive any money back.
9 It was just allocated to his capital account.

10 A That's correct.

11 Q Okay. What I'm asking – and I'm asking with
12 respect to you only – did you ever buy any assets from
13 the Fund or sell any assets to the Fund?

14 A No, sir.

15 Q Did you ever lend any money to the Fund or
16 borrow any money from the Fund?

17 A No, sir.

18 Q I saw a document that reflected some sort of
19 loan that appeared to have been made from Mr. Hull to
20 GISF. I think it was in the amount of \$350,000, or
21 something on that order of magnitude.

22 And in exchange for that, he seemed, on two
23 different occasions, to receive a physical custody of
24 shares that were Fund assets.

25 Do you recall what I'm talking about?

1 recall the structure by which he did that, but I wasn't
2 privy to those discussions.

3 BY MR. BOHR:

4 Q Were shares that were held by the Fund, shares
5 of stock that were held by the Fund, transferred into his
6 brokerage account for him to have custody of that
7 collateral?

8 A I don't believe so, no.

9 Q I'd like to – we are near the end – I am
10 anyway. I'd like to ask you a few questions to
11 understand your role as an investment advisor to the
12 Fund, some of the things that you did.

13 So is it fair to say one of the things you did
14 was to track general market conditions?

15 A Yes, sir.

16 Q And to monitor macro economic trends and
17 political trends that would affect the market?

18 A Yes, sir.

19 Q And you, in your capacity as investment advisor
20 to the Fund, you negotiated transactions on behalf of the
21 Fund, transactions that the Fund entered into, correct?

22 A Yes, sir.

23 Q And you tracked the daily performance of the
24 Fund's portfolio, correct?

25 A Yes, sir, generally.

1 A I do.

2 Q And have I described correctly?

3 A The qualification I would add to that is that
4 if I recall, that was done in the summer of 2012, and at
5 this time, there were no other LPs in the Fund. So all
6 the others were cashed out in January of 2012. Then in
7 the summer of 2012, we didn't do any trades. We were all
8 just holding and expecting higher levels. And not only
9 did those higher levels not materialize, but the stocks
10 went down lower, and we had a capital call, a margin
11 call, that necessitated either selling securities at
12 those prices, or contributing cash.

13 I was not in a position to contribute
14 securities, I mean cash or anything. And Jim made a
15 decision that we would hold and he would contribute the
16 cash in order to settle the margin balance.

17 How he was compensated for that, I understood
18 that it was a simple accounting entry. At this point in
19 time, we don't have an administrator anymore. And I did
20 not manage the account anymore.

21 BY MR. BAGNALL:

22 Q Did he receive stock as collateral? Was it a
23 loan to the Fund?

24 A If it were a loan, then it would have been
25 collateralized by the Fund, I would imagine. I don't

1 Q Okay. And you chose the brokers that the Fund
2 used, like Casimir, Garwood, and to some extent, Luis
3 Sequeira?

4 A Singularly, no. I would say the selection of
5 brokers, the compensation of brokers, Jim was engaged in
6 all of those levels – those conversations.

7 Q Okay. And it was you obviously who
8 communicated with the management of the portfolio
9 companies on behalf of Geier International Strategies
10 Fund, correct?

11 A Yes, sir.

12 Q Did you ever have communications with other
13 portfolio companies' management, other than the TRX
14 management? Was there ever a time, like when you were
15 talking with McEwen Mining or Aurcana or any of those
16 companies?

17 A No.

18 Q Did anyone else communicate with such persons
19 on behalf of the Fund? Did Hull communicate with such
20 persons on behalf of the Fund?

21 A No. I think it's fair to say that Hull did not
22 communicate with outside vendors or portfolio companies.

23 Q Okay. Now, in April, July, October of 2011, it
24 was you who bought various puts and calls in TRX, I think
25 you testified as a hedge or to collect a premium over the

1 course of 2011 at various stages, correct?
 2 A That's a lot going on there.
 3 MR. FERRIGNO: That's on behalf of the Fund?
 4 MR. BOHR: Yes, that's a mouthful. Let me
 5 re-ask the question. Thank you.
 6 BY MR. BOHR:
 7 Q So on behalf of the Fund, it was you who bought
 8 various puts and calls in TRX in April, July and October
 9 2011 time frame, be it as a hedge or to collect a premium
 10 or for some other reason. Again, on behalf of the Fund.
 11 A All that's true with the exception that I don't
 12 think we ever purchased anything as a hedge for the Fund.
 13 Q Okay. And it was you, on behalf of the Fund,
 14 on behalf of GISF, who devised a strategy to try to exit
 15 from TRX on the most advantageous terms possible.
 16 A In terms of the tactics that were devised in
 17 order to exit the Fund, I was responsible, yes.
 18 Q So you were strategizing to try and achieve
 19 best execution for the Fund.
 20 A Yes, sir.
 21 Q Okay. And after GISF exited from TRX, it was
 22 you then who found new investments to explore and to
 23 invest in after GISF exited from TRX?
 24 A In consultation with Jim, yes.
 25 Q Okay. Thank you.

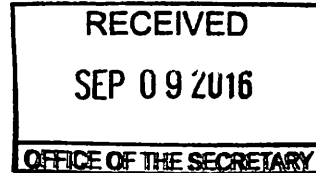
1 MR. BAGNALL: We have no further questions at
 2 this time. We may, however, call you again to testify in
 3 this investigation. Should this be necessary, we will
 4 contact Mr. Ferrigno.
 5 Mr. Gibson, do you wish to clarify any of the
 6 statements you have made today
 7 MR. FERRIGNO: Just one second.
 8 Could we step out for just two minutes and --
 9 MR. BAGNALL: Yes, absolutely. Sure.
 10 Let's go off the record at 4:53 p.m.
 11 (A brief recess was taken.)
 12 MR. BAGNALL: We'll go back on the record at
 13 4:55 p.m., Thursday, March 29, 2015.
 14 Mr. Gibson, do you recall that you are under
 15 oath?
 16 THE WITNESS: Yes, sir.
 17 MR. BAGNALL: Okay. And just to clarify, there
 18 were on conversations of substance between you and the
 19 staff during the break, is that correct?
 20 THE WITNESS: That is correct. No
 21 conversations.
 22 MR. BAGNALL: Okay. So, Mr. Gibson, do you
 23 wish to clarify any of the statements you have made
 24 today?
 25 THE WITNESS: I'd just like to clarify that in

1 terms of the management fees alone, not the performance
 2 allocation, just the management fee subset alone, we
 3 accrued approximately \$700,000 in management fees.
 4 \$350,000 effectively mine. And all of those were lost.
 5 So that the management fees that were paid and
 6 lost as a result of being invested in the Fund exceeded
 7 these put positions.
 8 Beyond that, I don't have anything to add, and
 9 I very much appreciate your time.
 10 MR. BAGNALL: Okay. Mr. Ferrigno, do you wish
 11 to ask any clarifying questions?
 12 MR. FERRIGNO: No. The staff has allowed me to
 13 ask questions along the course of the testimony, so I
 14 don't have any questions at this time.
 15 MR. BAGNALL: Okay, great.
 16 We will go off the record at 4:57 p.m.,
 17 Thursday, March 19, 2015.
 18 (Whereupon, at 4:57 p.m., the examination was
 19 concluded.)
 20 *****
 21
 22
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1 PROOFREADER'S CERTIFICATE
 2
 3 In The Matter of: GEIER INTERNATIONAL STRATEGIES
 4 Witness: Christopher Gibson
 5 File Number: HO-12361-A
 6 Date: March 19, 2015
 7 Location: Washington, D.C.
 8
 9 This is to certify that I, Nicholas J. Wagner,
 10 (the undersigned), do hereby swear and affirm that the
 11 attached proceedings before the U.S. Securities and
 12 Exchange Commission were held according to the record and
 13 that this is the original, complete, true and accurate
 14 transcript that has been compared to the reporting or
 15 recording accomplished at the hearing.
 16
 17 _____
 18 (Proofreader's Name) (Date)
 19
 20
 21
 22
 23
 24
 25

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. HO-12361-A
GEIER INTERNATIONAL STRATEGIES)



WITNESS: Christopher Gibson
PAGES: 275 through 783
PLACE: Securities and Exchange Commission
100 F. Street, N.E., Room 8
Washington, D.C. 20549
DATE: Monday, December 21, 2015

The above-entitled matter came on for hearing,
pursuant to notice, at 9:13 a.m.

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES:

2

3 On behalf of the Securities and Exchange Commission:

4 GEORGE BAGNALL, ESQ.

5 PAUL J. BOHR, ESQ.

6 GREGORY BOCKIN, ESQ.

7 H. MICHAEL SEMLER, ESQ.

8 Division of Enforcement

9 100 F. Street, N.E.

10 Washington, D.C. 20549

11 (202) 551-4316

12

13 On behalf of the Witness:

14 THOMAS A. FERRIGNO, ESQ.

15 Brown Rudnick

16 601 13th Street, N.W., Suite 600

17 Washington, D.C. 20004

18 (202) 536-1700

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MR. BAGNALL: We'll go on the record at 9:13 a.m., December 21, 2015.

Mr. Gibson, could you please raise your right hand?

Whereupon,

CHRISTOPHER GIBSON

was recalled as a witness and, having been previously duly sworn, was examined and testified further as follows:

EXAMINATION

BY MR. BAGNALL:

Q Okay, you can put your hand down.

I am George Bagnall, and this is Paul Bohr, Greg Bockin, and Mike Semler. We are members of the staff of the Enforcement Division of the U.S. Securities and Exchange Commission.

This is an investigation by the U.S. SEC, "In the Matter of Geier International Strategies Fund," SEC File Number 12361, to determine whether there have been violations of certain provisions of the federal securities laws. However, the facts developed in this investigation might constitute violations of other federal or state civil or criminal laws.

Prior to the opening of the record, you were

1 provided with a copy of the Formal Order of this
2 investigation – of the investigation in this matter. It
3 will be available for your examination during the course
4 of the proceeding. Also included are the two
5 supplements.

6 Mr. Gibson, have you had an opportunity to
7 review the Formal Order?

8 A I have reviewed them.

9 Q Okay. Prior to the opening of the record you
10 were provided with a copy of the Commission's
11 Supplemental Information Form, our Form 1662, which is
12 marked as Exhibit 1. This – a copy of this document was
13 also attached to the subpoena you received to appear here
14 today.

15 Have you had an opportunity to read Exhibit
16 Number 1?

17 A Yes, I have.

18 Q Do you have any questions about Exhibit Number
19 1?

20 A No, sir.

21 Q Okay. Mr. Gibson, are you represented by
22 counsel today?

23 A I am.

24 MR. BAGNALL: Would counsel please confirm the
25 representation and identify themselves?

1 impairs your memory?

2 A No, sir.

3 Q Okay. Since your last testimony session here,
4 which I believe was in March of 2015, have you given any
5 testimony in any other matters?

6 A No, sir.

7 Q Okay. Some rules of the road for today that we
8 talked about last time, and I'm going to do it today just
9 so it's fresh in everybody's mind, is that the staff
10 controls the record and the reporter will go off the
11 record at our request. If you would like to go off the
12 record, please ask us and we'll be happy to take a break.
13 We do, however, ask that if there's a question pending
14 that the question get asked before we go off.

15 It's also import to note that for the purposes
16 of SEC investigations, nothing is really "off the
17 record." If we have a conversation of substance off the
18 record, when we come back on the record, I'll summarize
19 it and ask you to agree with my summary.

20 Please remember that we need to have only one
21 speaker at a time; so I grant you we'll both screw this
22 up today, but please let me finish asking the question
23 before you answer, and vice versa so that the record is
24 clear; okay?

25 A (No audible response.)

1 MR. FERRIGNO: Yes, I represent Mr. Gibson.
2 And I am with the law firm of – my name's Thomas A.
3 Ferrigno. I'm with the Law Firm of Brown Rudnick, LLP in
4 its Washington, D.C. office.

5 MR. BAGNALL: And Mr. Ferrigno, do you
6 represent anybody else in this matter?

7 MR. FERRIGNO: Yes.

8 MR. BAGNALL: What individuals or entities do
9 you represent?

10 MR. FERRIGNO: John Gibson, Geier International
11 Strategies Fund, Geier Capital, and Geier Group, to the
12 extent the latter two are deemed to continue to exist.

13 MR. BAGNALL: Okay.

14 BY MR. BAGNALL:

15 Q Mr. Gibson, is there anything that could –

16 MR. BAGNALL: And sorry, just – sorry if this
17 is redundant, but did you confirm that you represent him
18 today?

19 MR. FERRIGNO: That's what I said first.

20 MR. BAGNALL: Okay, thank you.

21 BY MR. BAGNALL:

22 Q Mr. Gibson, is there anything that could impair
23 your ability to testify truthfully today?

24 A No, sir.

25 Q For example, are you taking any medication that

1 Q Verbal responses, like you just did right
2 there, we need – the court reporter cannot record
3 gestures, nodding your head or shaking it. Accordingly,
4 please us verbal responses to all questions to that you
5 can be heard; okay?

6 A (No audible response.)

7 Q Okay?

8 A Yes, sir.

9 Q Okay. If – ask for clarification if you don't
10 understand the question. If you don't, we will assume
11 that you understood the question and answered it, okay.

12 A Yes, sir.

13 Q Okay. I will be showing you some exhibits
14 today; please don't write on them, all right?

15 A Yes, sir.

16 Q Now, I'll take – I'll take back Exhibit 1 and
17 the Formal Order, so we have room on the table. But if
18 you would like to see these, they'll be available to you
19 throughout the day. Just ask, okay?

20 A Yes, sir.

21 MR. BAGNALL: Could you please mark this?
22 (SEC Exhibit No. 46 was marked
23 for identification.)

24 BY MR. BAGNALL:

25 Q Mr. Gibson, I'm handing you what's been marked

1 as Exhibit 46. Could you please take a look at it and
 2 let me know when you're done?
 3 A Yes, sir.
 4 Q Is this a copy of the subpoena pursuant to
 5 which you're appearing here today?
 6 A Yes, sir.
 7 Q All right, thank you. Take that back.
 8 BY MR. BAGNALL:
 9 Q I'm going to hand you --
 10 MR. BAGNALL: Oh, could we mark this one next,
 11 please?
 12 (SEC Exhibit No. 47 was marked
 13 for identification.)
 14 BY MR. BAGNALL:
 15 Q I'm going to hand you what's now been marked as
 16 Exhibit 47. Could you please take a look at that.
 17 MR. BAGNALL: Here's one for you, Tom.
 18 MR. FERRIGNO: Yeah.
 19 MR. BAGNALL: And let me know when you're done.
 20 THE WITNESS: I'm done.
 21 BY MR. BAGNALL:
 22 Q Did you -- do you -- what is this document?
 23 A This is an additional subpoena to produce
 24 documents that it describes.
 25 MR. FERRIGNO: You sent -- I don't believe

1 A Yes, sir, I have.
 2 Q Okay. So there are -- there are no
 3 documents -- or there's no search for documents
 4 continuing at this point in time; is that right?
 5 A No, sir. There is not.
 6 Q Can you please describe the search that you
 7 conducted pursuant to this subpoena that you produced
 8 documents to us.
 9 A We went through, in concert with counsel, all
 10 communications and documents to which -- or that related
 11 to this matter and turned them over to you.
 12 Q Okay. And are there any documents that you've
 13 withheld on the basis of privilege?
 14 A Yes.
 15 Q Okay.
 16 MR. BAGNALL: Has a privilege log for those
 17 documents been produced to the staff?
 18 MR. FERRIGNO: Yes, sir.
 19 MR. BAGNALL: When was that document -- when
 20 was that privilege log produced?
 21 MR. FERRIGNO: I believe yesterday. No,
 22 yesterday was Sunday, so Friday.
 23 MR. BAGNALL: Friday, okay. And to whom was it
 24 sent?
 25 MR. FERRIGNO: To Mr. Bohr.

1 these are the latest subpoenas for documents.
 2 MR. BAGNALL: And by is that?
 3 MR. FERRIGNO: Because at the -- on August -- I
 4 believe that another set of subpoenas were sent to Mr.
 5 Gibson's address by Mr. Bohr.
 6 MR. BAGNALL: Were those -- weren't those
 7 subpoenas for the entities?
 8 MR. FERRIGNO: Yes. But -- yeah.
 9 MR. BAGNALL: Okay. And are you -- are you
 10 suggesting there's another subpoena to Mr. Gibson in his
 11 personal capacity after this time?
 12 MR. FERRIGNO: Not in his personal capacity.
 13 MR. BAGNALL: Okay.
 14 MR. FERRIGNO: Is this -- okay, this is just
 15 Mr. Gibson. Yeah, okay.
 16 MR. BAGNALL: Correct. Okay.
 17 BY MR. BAGNALL:
 18 Q So could you please answer again, what this
 19 document is, Mr. Gibson?
 20 A These -- this is a subpoena to produce related
 21 documents.
 22 Q Okay. Did you receive a copy of this subpoena?
 23 A Yes, sir.
 24 Q Okay. Have you -- have you fully responded to
 25 this subpoena?

1 MR. BAGNALL: Okay. And how was it sent?
 2 MR. FERRIGNO: Hand delivery.
 3 MR. BAGNALL: Okay. So a hard copy?
 4 MR. FERRIGNO: Um-hmm.
 5 MR. BAGNALL: Okay.
 6 BY MR. BAGNALL:
 7 Q Are there any documents that you were not able
 8 to produce and were not withheld due to privilege because
 9 they are no longer in your possession.
 10 A No, sir.
 11 Q Are there any that -- documents that were
 12 responsive to the subpoena that were not produced because
 13 they've been lost, destroyed or otherwise disposed of.
 14 A No, sir.
 15 Q Okay. I'll take back Exhibit 47, please.
 16 MR. BAGNALL: Could you mark this next, please?
 17 (SEC Exhibit No. 48 was marked
 18 for identification.)
 19 BY MR. BAGNALL:
 20 Q I'm going to hand you now what's been marked as
 21 Exhibit 48. Would you please look it over and let me
 22 know when you're done?
 23 A I'm finished.
 24 Q Okay. Do you recognize this document, Mr.
 25 Gibson?

1 A Yes, sir.
 2 Q What is it?
 3 A It's an additional subpoena relating to Geier
 4 Capital.
 5 Q Okay. Did you receive this subpoena?
 6 A Yes, sir.
 7 Q Okay. Have all documents responsive to this
 8 subpoena been produced to the staff?
 9 A Yes, sir.
 10 MR. FERRIGNO: Just one second. We had sent a
 11 letter to -- regarding this subpoena to the staff. We'll
 12 be sending another one that essentially says -- directs
 13 the staff to documents produced by Mr. Gibson in terms of
 14 being responsive to the subpoena.
 15 MR. BAGNALL: All right.
 16 MR. FERRIGNO: So but he's saying there are no
 17 additional documents. The same documents, and you have a
 18 prior letter for the first production that we did for Mr.
 19 Gibson and a -- the letter indicates that in terms of
 20 documents responsive to the subpoena to Geier Capital,
 21 see the documents.
 22 MR. BAGNALL: Okay. So essentially, just to
 23 make sure I understand, you made --
 24 MR. FERRIGNO: Yeah.
 25 MR. BAGNALL: -- one production in Mr. Gibson's

1 name and then --
 2 MR. FERRIGNO: Right.
 3 MR. BAGNALL: -- for the entity, at least for
 4 the Geier Capital entity, the product is please refer to
 5 the production made by Mr. Gibson?
 6 MR. FERRIGNO: That's correct.
 7 MR. BAGNALL: Okay.
 8 BY MR. BAGNALL:
 9 Q And is -- so does that mean then, Mr. Gibson,
 10 that the -- since your production in your personal
 11 capacity is completed, to the best of your knowledge that
 12 that's true, too of the production for Geier Capital?
 13 A That's correct. Yes, sir.
 14 Q Okay. Were any documents withheld on the basis
 15 of privilege --
 16 A Yeah.
 17 Q -- for Geier Capital?
 18 A Yes, sir.
 19 Q Okay.
 20 A Yes.
 21 MR. FERRIGNO: A separate privilege log will be
 22 produced for Capital if we need to. It will essentially
 23 be the same as the one for Mr. Gibson.
 24 MR. BAGNALL: So as it stands right now,
 25 there's been a privilege log produced for the documents

1 that Mr. Gibson in his personal capacity but not for the
 2 Geier Capital entity.
 3 MR. FERRIGNO: That's right. But it -- it --
 4 there will be one. It will be the same. It will be --
 5 as -- it will be the same document.
 6 MR. BAGNALL: It will be identical?
 7 MR. FERRIGNO: Should be.
 8 MR. BAGNALL: Okay.
 9 MR. FERRIGNO: Unless there's a document that
 10 Mr. Gibson produced that isn't responsive to the subpoena
 11 to Geier Capital.
 12 MR. BAGNALL: So the production -- the
 13 privilege log, excuse me, for Mr. Gibson's production may
 14 be over inclusive, and that there are documents for which
 15 he claims a privilege but that's not applicable to Geier
 16 Capital?
 17 MR. FERRIGNO: That's correct.
 18 MR. BAGNALL: Okay.
 19 BY MR. BAGNALL:
 20 Q Mr. Gibson, are there -- other than the
 21 documents withheld based on a privilege, are there other
 22 documents that were not produced to us in response to
 23 this subpoena in Exhibit 48?
 24 A No, sir.
 25 Q For example, were any lost -- were any

1 documents lost, destroyed, or otherwise disposed of?
 2 A No, sir.
 3 Q Okay. I'll take back Exhibit 48, please.
 4 MR. BAGNALL: Will you mark this next, please?
 5 (SEC Exhibit No. 49 was marked
 6 for identification.)
 7 BY MR. BAGNALL:
 8 Q Mr. Gibson, I'm going to hand you what's been
 9 marked as Exhibit 49. Would you please look it over and
 10 let me know when you're done?
 11 A I'm finished.
 12 Q Okay. Do you recognize this document, Mr.
 13 Gibson?
 14 A Yes, sir.
 15 Q What is it?
 16 A It's the subpoena to produce materials relating
 17 to Geier International Strategies Fund.
 18 Q Okay. And have you completed the production
 19 called for, for all responsive documents, by the subpoena
 20 in Exhibit 49?
 21 A Yes, sir.
 22 MR. FERRIGNO: Well, just a second. I mean,
 23 the -- what we just discussed for Geier Capital would
 24 apply here, as well.
 25 MR. BAGNALL: Okay. So -- so that means that

1 the -- that any production communication in response to
 2 the subpoena in Exhibit 49 will say, "Please see the
 3 production for Mr. Gibson in his personal capacity?"
 4 MR. FERRIGNO: That's correct.
 5 MR. BAGNALL: Okay.
 6 BY MR. BAGNALL:
 7 Q And is -- were any documents responsive to the
 8 subpoena in Exhibit 49 withheld on a basis of privilege?
 9 A Yes, sir.
 10 Q Okay.
 11 MR. BAGNALL: And is -- was a privilege log
 12 produced?
 13 MR. FERRIGNO: I -- it will be coming --
 14 MR. BAGNALL: Okay.
 15 MR. FERRIGNO: -- similar to the one for Geier
 16 Capital.
 17 MR. BAGNALL: Okay. And it -- will the
 18 privilege log for the documents that were held --
 19 withheld pursuant to the privilege claim for the subpoena
 20 Exhibit 49, be identical to the privilege log for Geier
 21 Capital?
 22 MR. FERRIGNO: Close. Should be.
 23 MR. BAGNALL: Okay.
 24 MR. FERRIGNO: It just depends on if there's a
 25 document that's responsive to one but not responsive to

1 the other.
 2 MR. BAGNALL: So going back for a moment to the
 3 Geier Capital privilege log that we talked about in
 4 connection with Exhibit 48, when can we expect that
 5 privilege log?
 6 MR. FERRIGNO: Probably this week.
 7 MR. BAGNALL: Okay. What day this week?
 8 MR. FERRIGNO: Wednesday.
 9 MR. BAGNALL: Okay. For the privilege log, now
 10 coming back to Exhibit 49, when can we expect a privilege
 11 log for Geier International Strategies Fund?
 12 MR. FERRIGNO: Same day.
 13 MR. BAGNALL: Okay.
 14 BY MR. BAGNALL:
 15 Q Other than documents that were withheld based
 16 on a claim of privilege, were there other documents that
 17 were not produced in response to Exhibit 49?
 18 A No, sir.
 19 Q Okay. For example, were any lost, destroyed or
 20 otherwise disposed of?
 21 A No, sir.
 22 Q Okay. I'll take back Exhibit 49.
 23 MR. BAGNALL: Would you mark this next, please?
 24 (SEC Exhibit No. 50 was marked
 25 for identification.)

1 BY MR. BAGNALL:
 2 Q I'm going to hand you what's been marked as
 3 Exhibit 50. Would you please look over and let me know
 4 when you're done?
 5 A I'm finished.
 6 Q Okay. Do you recognize this document --
 7 A Yeah.
 8 Q -- Mr. Gibson?
 9 A Yes, sir.
 10 Q What is it?
 11 A It's the subpoena relating to materials for
 12 materials relating to the Geier Group.
 13 Q And has the -- is the production pursuant to
 14 this subpoena the same as you've testified or Mr.
 15 Ferrigno has explained with respect to Geier Capital and
 16 Geier International Strategies Fund?
 17 A Yes, sir.
 18 Q Insofar as that any production communication
 19 we'll receive in response to the subpoena in Exhibit 50
 20 will say, "Please refer to the documents produced in Mr.
 21 Gibson's name in is personal capacity"?
 22 A Yes, sir.
 23 Q Okay. And does that mean then that the
 24 production for -- pursuant to the subpoena in Exhibit 50
 25 is completed?

1 A Yes, sir.
 2 Q Okay. Were any documents responsive to the
 3 subpoena in Exhibit 50 withheld on a basis of privilege?
 4 A Yes, sir.
 5 Q Okay. And has -- have you produced a privilege
 6 log?
 7 A No, sir. But I imagine we will be.
 8 MR. BAGNALL: And --
 9 MR. FERRIGNO: Same. Same date, this week.
 10 MR. BAGNALL: Okay, Wednesday of this week.
 11 And will the privilege log related to Geier Group's
 12 production be the same or substantially similar to the
 13 privilege log for Geier International Strategies Fund and
 14 Geier Capital?
 15 MR. FERRIGNO: Substantially, yes.
 16 MR. BAGNALL: Okay. And we should expect those
 17 Wednesday of this week; is that right?
 18 MR. FERRIGNO: That's right.
 19 MR. BAGNALL: Okay.
 20 BY MR. BAGNALL:
 21 Q Other than documents that were responsive to
 22 the subpoena in Exhibit 50 that were withheld on a claim
 23 of privilege, are there any other documents that have not
 24 been produced to us?
 25 A No, sir.

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1 Q For example, were any documents lost,
2 destroyed, or otherwise disposed of?
3 A No, sir.
4 Q I'll take back Exhibit 50, please.
5 Mr. Gibson, since March of 2015, which I
6 believe is when you last testified in this matter; does
7 that sound right to you, by the way?
8 A Yes, sir.
9 Q Okay. Have you ever been -- have you been
10 named since that time as a defendant or a respondent in
11 any action or proceeding brought by the SEC?
12 A No, sir.
13 Q Since your last testimony, have -- with -- in
14 this matter, have you been named a defendant or a
15 respondent in any action or proceeding brought by any
16 other federal agency?
17 A No, sir.
18 Q Since your last testimony in this matter, have
19 you been named as a defendant or a respondent in any
20 action or proceeding brought by a state securities
21 agency?
22 A No, sir.
23 Q Since your last testimony in this matter, have
24 you been named as a defendant or a respondent in any
25 action or proceeding brought by FINRA?

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1 A No, sir.
2 Q Since your last testimony in this matter, have
3 you ever been named as a defendant or a respondent in any
4 action or proceeding brought by any stock exchange?
5 A No, sir.
6 Q Since your last testimony in this matter, have
7 you been named as a defendant in any criminal proceeding,
8 other than one involving a minor traffic offense?
9 A No, sir.
10 Q Okay. I'm going to hand you now what's been
11 marked previously as Exhibit 34. Please take a moment to
12 look it over and let me know when you're done.
13 A I'm finished.
14 Q Okay. Do you recognize this document to be the
15 Confidential Private Offering Memorandum for the Geler
16 International Strategies Fund?
17 A Yes, sir.
18 Q Okay. How was this document created?
19 A In consultation with counsel, Seward & Kissel.
20 Q Okay. What was the process for creating this
21 document?
22 A It was privileged.
23 MR. FERRIGNO: You can respond to the question,
24 but you have to -- be sure you don't disclose any
25 privileged communications.

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1 THE WITNESS: Can you repeat the question?
2 MR. BAGNALL: Yes, certainly.
3 BY MR. BAGNALL:
4 Q What was the process that was used to create
5 Exhibit 34?
6 A In consultation with Seward & Kissel we
7 described our -- the structure objectives that we had
8 and -- and sought to devise a structure that was
9 consistent with all laws.
10 Q Okay. In your response you said, "We told or
11 described to Seward & Kissel." Who -- whose included in
12 the use of the pronoun "we"?
13 A James Hull and I.
14 Q Did you have conversations with Mr. Hull about
15 the Exhibit 34, insofar as the creation of it Exhibit 34?
16 MR. FERRIGNO: Just same caution; you can
17 describe your communications with Mr. Hull, as long as
18 you're not reiterating what counsel -- what you've told
19 counsel or counsel has told you.
20 THE WITNESS: Yes, sir.
21 MR. BAGNALL: Okay.
22 BY MR. BAGNALL:
23 Q And what -- what conversations did you have
24 with Mr. Hull about the creation of Exhibit 34?
25 MR. FERRIGNO: Again, same caution about

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1 privilege.
2 THE WITNESS: May I consult with counsel for a
3 second?
4 MR. BAGNALL: Do you want to go off the record?
5 THE WITNESS: I don't think so.
6 MR. BAGNALL: Yeah, so we -- do you want to
7 talk with your lawyer about --
8 THE WITNESS: What's privilege.
9 MR. BAGNALL: -- the assertion of privilege?
10 THE WITNESS: Yes, sir.
11 MR. BAGNALL: Okay. Why don't we go off the
12 record and take a short break at approximately 9:30 a.m.,
13 December 21, 2015.
14 (A brief recess was taken.)
15 MR. BAGNALL: All right, we'll go back on the
16 record at approximately 9:32 a.m., December 21, 2015.
17 BY MR. BAGNALL:
18 Q Mr. Gibson, you call you're under oath?
19 A Yes, sir.
20 Q Okay. And do you confirm there are no
21 conversations of substance between you and the staff
22 during the break; is that correct?
23 A That's correct.
24 MR. BAGNALL: And you agree, Mr. Ferrigno?
25 MR. FERRIGNO: That's right.

1 MR. BAGNALL: All right.
 2 BY MR. BAGNALL:
 3 Q Going back to the questions I was asking before
 4 about Exhibit 34, the GISF Confidential Private Offering
 5 Memorandum, I had asked you what conversations you had
 6 with Mr. Hull about the creation of Exhibit 34.
 7 A Yes, sir. Mr. Hull indicated to an importance
 8 to establish what he described as an alignment of
 9 interest that was very severe. And in order to
 10 accomplish that, I would assume leverage or borrowed
 11 money from him in order to increase my position to a
 12 greater degree that I otherwise would have the capacity
 13 to do. And additionally, we would have outside accounts
 14 where we would maintain additional long positions to the
 15 degree it was feasible and consistent with other
 16 objectives. And the structure that we employed would
 17 require the capacity to manage those distinct objectives.
 18 Q Okay. So other than you and Mr. Hull, who was
 19 involved in the creation of Exhibit 34?
 20 A It would only be Mr. Hull and I and counsel.
 21 Q Okay. And what attorney -- what were the names
 22 of the attorneys involved?
 23 A David Mullé --
 24 Q Okay. Anybody else?
 25 A And I'm forgetting his name.

1 Q Okay. Is it -- is it potentially Kevin
 2 Neubauer?
 3 A He would be the -- a junior individual on the
 4 team, as well.
 5 Q Okay.
 6 A Yes, sir.
 7 Q And so there was another --
 8 A It was --
 9 Q -- so it was --
 10 A It was a senior partner.
 11 Q Was Mr. Mullé -- is that -- am I pronouncing
 12 that certainly?
 13 A Yes, sir.
 14 Q He was a partner at Seward & Kissel?
 15 A I believe he was only "associate."
 16 Q Okay. But you -- but you --
 17 A Steve Nadel. Steve Nadel is the partner.
 18 Q And so who did you work with to create -- which
 19 of those individuals --
 20 A Steve Nadel and David --
 21 Q Sorry; hold on --
 22 A Pardon me.
 23 Q -- let me get the question out.
 24 A Pardon me.
 25 Q So which of those three attorneys did you work

1 with to create Exhibit 34?
 2 A Steven Nadel and David Mullé.
 3 Q Okay. Those were the two primary points of
 4 contact?
 5 A With the assistance from an administrative
 6 perspective of Kevin Neubauer.
 7 Q Okay. Did you make Mr. Mullé and Mr. Nadel
 8 aware of the direction that Mr. Hull gave you?
 9 THE WITNESS: Same thing?
 10 MR. BAGNALL: It's the same thing; you can't --
 11 you can't disclose the communication that you had with
 12 counsel at Seward. Not the communications.
 13 BY MR. BAGNALL:
 14 Q Okay, so are you claiming privilege to that
 15 question?
 16 A Yes, sir.
 17 MR. FERRIGNO: Yes.
 18 MR. BAGNALL: Okay.
 19 BY MR. BAGNALL:
 20 Q Did -- did you communicate that -- the
 21 directive that Mr. Hull gave to you to those attorneys at
 22 Seward & Kissel in writing?
 23 MR. FERRIGNO: Just a second; was it direct --
 24 did you testify to a directive from Mr. Hull? Just now.
 25 MR. BAGNALL: That was my understanding, and if

1 I've gotten that wrong, please correct me.
 2 THE WITNESS: I think that we --
 3 MR. FERRIGNO: We're just talking about you and
 4 Mr. Hull now. Was there a directive from Mr. Hull?
 5 THE WITNESS: I would say that -- that that
 6 was -- that Mr. Hull shared his views with me as to what
 7 the objectives of the fund should be. No, I don't think
 8 there was a directive.
 9 MR. BAGNALL: Okay.
 10 BY MR. BAGNALL:
 11 Q Did you want a severe alignment of interest
 12 yourself?
 13 A All things equal, no.
 14 Q Okay. So is it -- is it fair to say then that
 15 it was Mr. Hull's idea to create a system in which there
 16 was a severe alignment of interests?
 17 A I would say he was the progenitor of that.
 18 Q Okay. "Progenitor" being he was the person who
 19 came up with that idea in other words?
 20 A Yes, sir.
 21 Q Okay. And to the extent that I didn't ask this
 22 clearly before, did you convey that idea to your
 23 attorneys at Seward & Kissel so that they could create
 24 Exhibit 34 in a way that's -- met those goals?
 25 A I'm going to claim privilege.

1 MR. FERRIGNO: You can't -- yeah.
 2 MR. BAGNALL: You're going to claim privilege,
 3 okay.
 4 BY MR. BAGNALL:
 5 Q What, if any, difficult issues arose in the
 6 creation of Exhibit 34?
 7 MR. FERRIGNO: If an issue arose that you dealt
 8 with or Mr. Hull dealt with you can -- where you had
 9 conversation just with Mr. Hull you can describe that.
 10 If there was an issue raised by Seward & Kissel --
 11 THE WITNESS: Right. You said what difficult
 12 issues arose?
 13 BY MR. BAGNALL:
 14 Q If anyone. Let me ask it --
 15 A No.
 16 Q -- a different way. Were there any difficult
 17 issues that came up in the creation of Exhibit 34?
 18 A No, sir.
 19 Q Okay. Were there -- were there any
 20 controversial issues that came up in the creation of
 21 Exhibit 34?
 22 A No, sir.
 23 Q Okay. Could you please turn to the document
 24 that is marked Page 1. And if you'll recall from our
 25 last time together, the bottom right hand corner of each

1 page has a Bates stamp. SEC -- on the front page is
 2 SEC-KRFS-E-0002356. For ease of reference I'm going to
 3 just refer to the last three letters -- excuse me, three
 4 numbers of the Bates stamp; so if you could turn to the
 5 page ending 360, and let me know when you're there,
 6 please.
 7 A I'm there.
 8 Q Okay. Do you see that GISF's managing member,
 9 about middle of the page, is identified as Geier Capital,
 10 LLC? Do you see that?
 11 A Yes, sir.
 12 Q Did that ever change?
 13 A No, sir.
 14 Q Okay. So Geier -- Geier Capital was always the
 15 managing member of GISF?
 16 A Yes, sir.
 17 Q Okay. Was -- was it always -- do you see it
 18 also says in the first line, "The managing member of the
 19 company is Geier Capital, LLC, a Georgia limited
 20 liability company." Do you see that?
 21 A I do see that.
 22 Q Did -- did that ever change? And when I say
 23 "that" I mean, did -- was Geier Capital ever something
 24 other than a Georgia LLC?
 25 A Yes, sir, it was.

1 Q Okay. And when did that happen?
 2 A In December of 2010.
 3 Q Okay.
 4 A We formed a Delaware LLC, to my understanding.
 5 Q Okay. And why? Why did you form a Delaware
 6 LLC?
 7 A I do not know.
 8 Q Okay. Were GISF's investors ever told that the
 9 managing member of GISF had changed from a Georgia LLC to
 10 a Delaware LLC?
 11 A Not to my knowledge.
 12 Q Okay. And why -- why weren't they involved --
 13 notified?
 14 A I would imagine that was not a material change.
 15 Q Okay. And who determines whether it's a
 16 material change? Whether something is a material change?
 17 A In consultation with counsel.
 18 Q Okay. Did you discuss that change with
 19 counsel?
 20 A Seward & Kissel formed that LLC.
 21 Q Okay. So Seward & Kissel formed the Delaware
 22 Geier Capital?
 23 A To my knowledge, yes.
 24 Q Okay. And who communicated to them that a new
 25 LLC was to be created?

1 MR. FERRIGNO: You can identify the party, just
 2 don't get into the discussion.
 3 THE WITNESS: I do not recall.
 4 MR. BAGNALL: Okay.
 5 BY MR. BAGNALL:
 6 Q What -- what did -- what was Seward & Kissel
 7 told about why a new entity needed to be created?
 8 A I don't recall.
 9 Q Okay. So are you --
 10 MR. FERRIGNO: Privilege.
 11 MR. BAGNALL: Okay.
 12 MR. FERRIGNO: Yeah.
 13 MR. BAGNALL: So he -- but he said "I don't
 14 recall," so --
 15 MR. FERRIGNO: Well, okay. If he does
 16 recall --
 17 MR. BAGNALL: If you want to --
 18 MR. FERRIGNO: -- he -- it's privileged.
 19 MR. BAGNALL: Okay.
 20 BY MR. BOHR:
 21 Q A question; Mr. Gibson, where Mr. Ferrigno has
 22 asserted the attorney/client privilege, are you agreeing
 23 that you want to follow his advice and assert the
 24 attorney/client privilege?
 25 A Yes, sir.

1 Q And can we assume for the rest of this
2 testimony that where he asserts the privilege you're
3 agreeing with him that you want to follow his advice to
4 assert the privilege?
5 A Yes, sir.
6 Q Thank you.
7 BY MR. BAGNALL:
8 Q Unless you tell us otherwise?
9 A Yes, sir.
10 Q Okay. All right, so just to be very clear on
11 my last question, you're asserting advice – you're
12 asserting attorney/client privilege to what was
13 communicated to Seward & Kissel about the reason for
14 creating Geier Capital Delaware; is that right?
15 A Yes, sir.
16 Q Okay. Did GISF's investors approve of Geier
17 Capital Delaware being substituted for Geier Capital
18 Georgia?
19 A Not formally. No, sir.
20 Q Okay. Did they – did GISF's investors consent
21 to that informally?
22 A Not to my knowledge.
23 Q Okay. Could they consent if they were never
24 aware of it?
25 A Presumably no.

1 Q Okay. Was a formal effort undertaken to
2 substitute Geier Capital Delaware for Geier Capital
3 Georgia?
4 A I would –
5 MR. FERRIGNO: Do you understand the question,
6 by what you mean by – what the staff means –
7 MR. BAGNALL: Do you understand –
8 MR. FERRIGNO: – by "formal"?
9 MR. BAGNALL: – my question?
10 THE WITNESS: I understood it to mean was there
11 a tactical or underlying basis for it, other than in an
12 administrative manner, and –
13 BY MR. BAGNALL:
14 Q No, I'm asking what actions did you take to
15 substitute Geier Capital Delaware from Geier Capital
16 Georgia.
17 A I do not recall.
18 BY MR. BOHR:
19 Q For example, was the LLC agreement of Geier
20 International Strategies Fund amended? Were there any –
21 or were there any supplemental communications to the
22 investors? Or were any documents that referred to Geier
23 Capital Georgia amended to reflect Geier Capital
24 Delaware?
25 A None of those occurred.

1 Q Okay.
2 BY MR. BAGNALL:
3 Q And Mr. Bohr referred to an LLC agreement, but
4 the document that I'm thinking of maybe called an GISF –
5 and when I say "GISF" do you understand me to mean Geier
6 International Strategies Fund?
7 A Yes, sir.
8 Q Okay. And can we agree that if I use that
9 acronym throughout the day, you'll understand that to
10 mean Geier International Strategies Fund?
11 A Yes, sir.
12 Q Okay. And to start my question over so it's a
13 little bit more clear; Mr. Bohr referred to an LLC
14 agreement, but I'm familiar with a document called an
15 Operating Agreement for GISF. Are you familiar with
16 that, as well?
17 A Yes, sir.
18 Q Okay. Was GISF's operating agreement ever
19 amended to formally substitute Geier Capital Delaware for
20 Geier Capital Georgia?
21 A Not to my knowledge, no, sir.
22 Q Do you see on the same page that the investment
23 manager, Geier Group – is identified as Geier Group,
24 LLC, a Georgia Limited Liability Company?
25 A Yes, sir.

1 Q Okay. Did that ever change?
2 A My understanding that is that Geier Group was
3 dissolved in April of 2011 and was not subsequently
4 replaced. And that the management of the fund thereafter
5 was exclusively carried out by Geier Capital.
6 Q Okay. And were GISF's investors ever notified
7 that Geier Group was no longer serving as GISF's
8 investment manager?
9 A Not to my knowledge. No, sir.
10 Q Was the confidential private offering –
11 operating – excuse me; the confidential private offering
12 memorandum for GISF ever amended to reflect that change?
13 A Not to my knowledge. No, sir.
14 Q Was GISF's operating agreement ever amended to
15 reflect the fact that Geier Group was no longer serving
16 as the fund's investment manager?
17 A Not to my knowledge. No, sir.
18 Q Okay. Did you communicate with counsel about
19 the need to dissolve Geier Group?
20 A I did not know that Geier Group had been
21 dissolved until this investigation.
22 Q Okay. And did – did you – did anybody else,
23 for example Mr. Hull, communicate with counsel about the
24 need to dissolve Geier Group?
25 A Not outside – well, one of his counsels, I

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1 imagine, yes, but I --

2 MR. FERRIGNO: Well --

3 THE WITNESS: But I don't know.

4 BY MR. BAGNALL:

5 Q What counsel are you referring to?

6 A Wayne Grovenstein.

7 Q Okay. And but you don't know for a fact

8 whether Mr. Hull consulted with Mr. Grovenstein on this

9 topic; is that right?

10 A I do not.

11 Q And when I say "this topic," I mean the need to

12 dissolve Geier Group, LLC.

13 A Yes, sir.

14 Q And the removal of Geier Group as the

15 investment manager for GISF, as well?

16 A Correct.

17 Q Okay.

18 MR. FERRIGNO: Had Geier Group ever been

19 formally retained to act as the investment manager?

20 THE WITNESS: No.

21 MR. BAGNALL: What do you mean "formally

22 retained," Mr. Ferrigno? What --

23 MR. FERRIGNO: Engaged. Is there an agreement?

24 Is there an agreement that you've seen where

25 Geier Capital or the fund engages Geier Group?

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1 THE WITNESS: No, there is not one.

2 MR. BAGNALL: Okay.

3 BY MR. BAGNALL:

4 Q Were the -- GISF's investors ever told that the

5 fund never formally engaged Geier Group to be the

6 investment manager of the fund?

7 A Not to my knowledge, no, sir.

8 Q Okay. Why not?

9 A My understanding from the time that these

10 entities were formed, that Geier Capital was the primary

11 manager of the fund, and that the exclusive basis for

12 having a second entity was for -- from a tax perspective

13 for the managing members of the fund in order to achieve

14 the potential to treat certain gains as carried interest.

15 And insofar as that was the only basis for having a

16 second entity, it did not -- it doesn't seem to me to be

17 a material issue to investors.

18 Q Okay. Where -- what you just testified do,

19 where is that described in Exhibit 34?

20 A It would not be.

21 Q Okay. What about in GISF's operating

22 agreement, where is the tax consequences of the Geier

23 Capital and Geier Group entities described to the GISF's

24 investors?

25 A It doesn't relate to the limited partners, it

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1 only relates to the general partners of the fund, and so

2 it is not in these documents.

3 Q Okay. So just to be clear, it's not anywhere

4 in the GISF operating agreement, either, is that right?

5 A That's correct. Yes, sir.

6 Q Okay. And why wouldn't it matter to the GISF

7 investors who the identity of their investment manager

8 is?

9 A Insofar as the ownership and management of the

10 entities were similar, I would imagine it would not

11 matter.

12 Q What's your basis for testifying to that?

13 A How I would -- what would matter to me.

14 Matters to me who owns and who operates the entity.

15 Q Okay. But -- but if -- don't these documents

16 describe Geier Group as being the investment manager for

17 GISF?

18 A Yes, sir. It does.

19 Q Okay. And so it's -- it's not material that

20 that would be changed because they're not really the

21 entity that's managing the fund; is that your testimony?

22 Do I have that right?

23 A It would be my view that whether Geier Capital

24 or Geier Group is managing the fund would be immaterial.

25 Q Okay. Would be immaterial?

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1 A "Immaterial," yes, sir.

2 Q In other words not material? Just so that

3 comes across on the record.

4 A Yes, sir. Correct.

5 Q Okay. And why would those things not be

6 material?

7 A Because the ownership and management of those

8 entities are the same.

9 Q Okay.

10 BY MR. BOHR:

11 Q Do you have any other basis for your

12 understanding as to why this is not material?

13 A No, sir.

14 MR. BAGNALL: Okay.

15 BY MR. BAGNALL:

16 Q When you say the ownership and management of

17 these entities are the same, where is that described in

18 Exhibit 34? The fact that Geier Capital and Geier Group

19 are owned and managed by the same people?

20 A I don't believe that is described.

21 Q Okay. And what about in the GISF operating

22 agreement, where would that fact be described?

23 A It would not be.

24 Q Okay. So how would GISF's investors know that

25 the Geier Capital and Geier Group are owned and managed

1 by the same people?
 2 A I couldn't speculate as to why they would not
 3 make that presumption. But I would assume they would,
 4 based on my judgment.
 5 Q I'm sorry; say --
 6 A That was unclear. If I applied my judgment and
 7 assumed that they had similar judgment I would draw that
 8 conclusion. But I can't be sure.
 9 Q Do GISF's investors all have the same judgment
 10 as you?
 11 A No, sir.
 12 Q Okay. So why then was what you just testified
 13 to an effective way of determine whether GISF's investors
 14 would consider this material information?
 15 A Because I do believe they would have the same
 16 judgment as I do in this context.
 17 Q Okay. And why is that the case that they would
 18 have the same judgment as you in this context?
 19 A Because I would say that it is generally
 20 unlikely for two management entities to have differing
 21 ownership and management structures.
 22 Q And why would that be unusual?
 23 A In the context of this, in that they are
 24 familiar with Jim Hull and have a preceding commercial
 25 relationship with him.

1 Q Okay. But to be clear, your -- the basis for
 2 these -- your most recent answers are an assumption; is
 3 that right?
 4 A Yes, sir.
 5 Q Okay. You're -- you don't know for sure
 6 whether the investors were aware -- either whether they
 7 were aware of this or whether they would have thought it
 8 was material; is that right?
 9 A Those are both correct. Yes, sir.
 10 Q Okay. Could you please turn to the page
 11 ending --
 12 MR. BOCKIN: George, before we move on --
 13 MR. BAGNALL: Sure.
 14 MR. BOCKIN: -- I have a question for you.
 15 BY MR. BOCKIN:
 16 Q Could you look at the same paragraph that we
 17 were just looking at, "Investment Manager" at the bottom
 18 of 360? Do you see the line in the investment manager
 19 paragraph where it says, "The investment manager's
 20 registered in the State of Georgia as an investment
 21 advisor."
 22 A Yes, sir.
 23 Q Was Geier Capital registered in the State of
 24 Georgia as an investment advisor?
 25 A Not to my knowledge. No, sir.

1 Q Were the investors made aware that the
 2 representation that they had a registered investment
 3 advisor in the State of Georgia no longer existed when
 4 Geier Capital replaced Geier Group?
 5 A No, sir.
 6 Q Were you registered as an investment advisor in
 7 the State of Georgia?
 8 A I do not believe so. No, sir.
 9 We had advice from counsel that as long as we
 10 had only one client we did not need to -- we did not have
 11 that requirement.
 12 Q I understand that, but I want to make sure your
 13 testimony's clear here. When the investors signed this
 14 document, they believed they had a registered investment
 15 advisor in the State of Georgia; isn't that right?
 16 A Yes, sir.
 17 Q But when you replaced Geier Group with Geier
 18 Capital they no longer had a registered investment
 19 advisor in the State of Georgia; correct?
 20 A That would be my understanding. Yes, sir.
 21 BY MR. BAGNALL:
 22 Q Could you please turn to the page ending 366
 23 and focus on Paragraph 4 at the bottom of that page
 24 titled "Management," and let me know when you're there.
 25 A Yes, sir.

1 MR. BOHR: And again, this is in Exhibit 34,
 2 for the record.
 3 BY MR. BAGNALL:
 4 Q So again, the -- this portion of the
 5 Confidential Private Offering Memorandum identifies for
 6 GISF's investors that the company -- do you understand
 7 "the company" to be a reference to Geier International
 8 Strategies Fund, Mr. Gibson?
 9 A Yes, sir.
 10 Q Okay. Is managed by its managing member, Geier
 11 Capital, LLC, a Georgia Limited Liability Company. Do
 12 you see that?
 13 A Yes, sir.
 14 Q Okay. And it -- it says, again, in the second
 15 sentence that, "Geier Group, LLC, a Georgia Limited
 16 Liability Company, serves as the investment manager and
 17 is responsible for certain administrative and investment
 18 advisory matters." Do you see that?
 19 A Yes, sir.
 20 Q Okay. Was this section of the confidential
 21 private offering memorandum ever amended to reflect the
 22 changes that you testified to a moment ago/
 23 A Not only was this section not changed, but I
 24 would stipulate that no section was ever changed.
 25 Q Okay. So there's never been an amendment to

1 any section of Exhibit 34; is that right?
 2 A Not to my knowledge.
 3 Q Okay.
 4 MR. SEMLER: George, I have a question.
 5 MR. BAGNALL: Please.
 6 BY MR. SEMLER:
 7 Q To back to an answer you gave a minute ago
 8 regarding the Page 360 of the offering memorandum, and
 9 you were referring to the investment manager being
 10 identified as Geier Group, a Georgia Limited. You
 11 referred to the advice of counsel that received on that
 12 subject; who – what counsels gave you that advice?
 13 A Seward & Kissel.
 14 Q Okay. And could you tell us when that was?
 15 A That was at – in December of 2009.
 16 Q And which attorney at Seward & Kissel told you
 17 that?
 18 A David Mullé and Steve Nadel.
 19 Q Okay. Could you tell us exactly what you told
 20 them in order to elicit that conversation?
 21 A I'll have to assert privilege.
 22 MR. FERRIGNO: That's privileged.
 23 BY MR. SEMLER:
 24 Q But didn't you just earlier testify as to the
 25 substance of that conversation?

1 MR. FERRIGNO: No.
 2 THE WITNESS: No.
 3 BY MR. SEMLER:
 4 Q You told us what advice you got, didn't you?
 5 You said you were advised by counsel; isn't that correct?
 6 MR. FERRIGNO: No. Well, we're asserting
 7 privilege as to the communications that underlie any
 8 actions taken with counsel.
 9 MR. SEMLER: Isn't that inconsistent with his
 10 prior statement that he received advice of counsel?
 11 MR. FERRIGNO: We -- we don't believe so.
 12 MR. SEMLER: Okay. Maybe we can have -- does
 13 the reporter have the capacity to play back testimony?
 14 COURT REPORTER: I could research it and play
 15 it back.
 16 MR. SEMLER: Maybe we can do that a little bit
 17 later, find that.
 18 So the response is that he's being instructed
 19 not to provide any additional information about the
 20 advice he received from counsel?
 21 MR. FERRIGNO: That's right.
 22 MR. SEMLER: Okay.
 23 BY MR. BAGNALL:
 24 Q So if you received advice from counsel that you
 25 didn't need to be registered if you were advising only

1 one client, why then did you register in Georgia
 2 initially?
 3 A I would not understand why.
 4 Q Okay. Did -- let me back up just to, sort of,
 5 lay the foundation. Do you know whether Geier Group ever
 6 registered with the State of Georgia as an investment
 7 advisor?
 8 A I believe so, but I do not recall with
 9 certainty.
 10 Q Okay. So let me ask my first question again
 11 just to clear. Why -- why did you receive advice that
 12 you didn't need to be registered as an investment advisor
 13 would you take the step to have Geier Group registered as
 14 an investment advisor in Georgia?
 15 A It wouldn't have been, to my knowledge. My
 16 understanding at this time was that we were not
 17 registering and that we had no obligation to do so.
 18 Q Did you read Exhibit 34 when it was signed?
 19 A I did.
 20 Q Okay. So were you aware at the time that it
 21 was signed the Geier Group was identified as registered
 22 in the State of Georgia as an investment advisor?
 23 A I would have read that.
 24 Q Okay. So then what -- how can you testify --
 25 help me understand; how you can testify that your

1 understanding that -- was that it wasn't registered in
 2 the State of Georgia as an investment advisor -- and I --
 3 when I say "it" I mean Geier Group -- and then also that
 4 you had read
 5 that -- read the Exhibit 34 where -- wherein that entity
 6 is identified as being a registered investment advisor in
 7 the State of Georgia?
 8 A That would be an oversight on my part.
 9 Q An oversight in the creation of Exhibit 34?
 10 A Correct.
 11 Q Okay. Are you aware of any other oversights
 12 you've had with respect to Exhibit 34?
 13 A No, sir.
 14 Q Okay. Could you please to the page of Exhibit
 15 34 ending in 378? And focusing on the section "Potential
 16 Conflicts of Interest," do you see that?
 17 A Yes, sir.
 18 Q How did this section specifically, this section
 19 titled "Potential Conflicts of Interest" come to be
 20 included in Exhibit 34?
 21 MR. FERRIGNO: Again, you can -- if you can
 22 respond without disclosing an attorney/client
 23 communication, you can -- you're permitted -- you can go
 24 forward. But don't disclose any discussions with
 25 counsel.

1 THE WITNESS: In order to be as responsive as I
 2 can be, I would say that there was a basis for included a
 3 robust conflicts clause based on my discussions with Jim
 4 in order to establish a severe alignment of interest.
 5 But beyond that, I would have to assert privilege.
 6 MR. BAGNALL: Okay.
 7 BY MR. BAGNALL:
 8 Q And is that with — and are you — the
 9 alignment of interest that you just testified to, is that
 10 the same alignment of interest that you testified at the
 11 outset today?
 12 A Yes, sir.
 13 Q Okay. Who drafted this section of Exhibit 34?
 14 A David Mullé is my understanding.
 15 Q Okay. Did you revise it?
 16 MR. FERRIGNO: Again —
 17 THE WITNESS: I would have to assert to
 18 privilege on that.
 19 MR. BAGNALL: Yeah, okay.
 20 BY MR. BAGNALL:
 21 Q Did Mr. Hull revise the potential conflicts of
 22 interest section that Mr. Mullé drafted initially?
 23 A Not to my knowledge.
 24 Q Okay. Did anybody else revise Exhibit 30 —
 25 "Potential Conflicts of Interest" section of Exhibit 34?

1 A I would have to assert privilege.
 2 Q Okay. Did you — what did you tell
 3 specifically to your lawyers at Seward & Kissel about the
 4 reason that you needed this potential conflicts of
 5 interest section?
 6 A I would have to assert privilege.
 7 Q Okay. To the extent you know, what did Mr.
 8 Hull communicate to the lawyers at Seward & Kissel about
 9 the reason that this potential conflicts of interest
 10 section was needed in Exhibit 34?
 11 A I would have to assert privilege.
 12 (Counsel confer.)
 13 BY MR. BAGNALL:
 14 Q Do you know whether Mr. Hull spoke to Seward &
 15 Kissel about the potential conflicts of interest section
 16 in Exhibit 34?
 17 A I do not.
 18 Q Okay. Did you communicate to your attorneys at
 19 Seward & Kissel that you needed this potential conflicts
 20 of interest section in Exhibit 34 to allow you to trade
 21 on the market effect of the investment advice that you
 22 provided to GISF?
 23 A I would have to assert privilege.
 24 Q Okay. Did you tell your attorneys at Seward &
 25 Kissel that you needed the potential conflicts of

1 interest section of Exhibit 34 so that you could treat
 2 certain GISF investors more favorably than others?
 3 A I would have to assert privilege.
 4 Q Okay. Did you tell your attorneys at Seward &
 5 Kissel that you needed the potential conflicts of
 6 interest section of Exhibit 34 so that you would be able
 7 to front run GISF?
 8 A I would have to assert privilege.
 9 Q Okay. Mr. Gibson, do you know what I mean when
 10 I say "front run"?
 11 A I do.
 12 Q Okay. What does front running mean to you?
 13 A In the context of a representative knowing
 14 about a client order and placing a trade in advance of
 15 that order in order to benefit themselves.
 16 Q Okay. And now I was asking a moment ago about
 17 your communications to Seward & Kissel, I'm turning it
 18 around now and asking about Seward & Kissel's
 19 communications to you, okay?
 20 A Okay.
 21 Q Do you understand?
 22 Did your attorneys at Seward & Kissel tell you
 23 that the potential conflicts of interest section in
 24 Exhibit 34 would allow you to trade on the market effect
 25 of the investment advice to you provided to GISF?

1 A I would have to assert privilege.
 2 Q Okay. Did your attorneys at Seward & Kissel
 3 tell you that the potential conflicts of interest section
 4 in Exhibit 34 would allow you to treat certain GISF
 5 investors more favorably than others?
 6 A I would have to assert privilege.
 7 Q Okay. Did your attorneys at Seward & Kissel
 8 tell you that the potential conflicts of interest
 9 provision in Exhibit 34 allowed you to engage in front
 10 running transactions in connection with your investment
 11 advice provided to GISF?
 12 A I would have to assert privilege.
 13 Q Okay.
 14 BY MR. BOHR:
 15 Q Did Seward & Kissel tell you that the potential
 16 conflicts of interest section in Exhibit 34 would allow
 17 you to treat certain GISF investors differently from
 18 other GISF investors?
 19 A I would have to assert privilege.
 20 Q Asking the same question, did you tell Seward &
 21 Kissel that you needed a robust conflicts clause in order
 22 to allow you to treat certain GISF investors differently
 23 from other GISF investors?
 24 A I would have to assert privilege.
 25 BY MR. BAGNALL:

1 Q Could you please turn now, unless – Mr.
 2 Gibson, could you please turn to the page ending 387 of
 3 Exhibit 34 and let me know when you're there.
 4 A I'm there.
 5 Q Okay. Do you see the section titled
 6 "Dissolution of the" – excuse me, "Amendment of
 7 Operating Agreement." Do you see that?
 8 A Yes, sir.
 9 Q I think you testified before that this
 10 document, Exhibit 34, was never amended. But was this
 11 section of Exhibit 34, the amendment of the operating
 12 agreement, ever implemented in some way that – in
 13 which – different terminology was used? So this
 14 document was changed you didn't consider it an amendment?
 15 A I'm sorry, can you ask that question –
 16 Q Yeah, sure. I just want to – I want to make
 17 sure that there isn't a situation of semantics going on.
 18 So you've testified very clearly that Exhibit 34 was
 19 never amended, right? Would you agree with that?
 20 A Yes, sir.
 21 Q Okay. But was it ever – was it ever revised
 22 by another name? So were changes made to this document
 23 and you called it something other than an amendment?
 24 A Yes, sir.
 25 Q And how was it changed?

1 A I would say that to the degree that the
 2 management entities were adjusted, that that would be a
 3 change that was not formally reflected in a change of the
 4 document.
 5 Q Okay. Do you see the next section,
 6 "Dissolution of the Company" on the same page, Mr.
 7 Gibson?
 8 A Yes, sir.
 9 Q Okay. And I'm just going to read it into the
 10 restraining order. It says, "The company may be
 11 dissolved at any time by the managing member, whereupon
 12 its affairs would be wound up by a managing member. The
 13 retirement, dissolution, bankruptcy or insolvency of the
 14 managing member will dissolve the company unless (i) at
 15 such time there is another managing member who agrees to
 16 continue the business of the company or (ii) an entity
 17 controlled by Chris Gibson is substituted as managing
 18 member to continue the business of the company. If there
 19 is no remaining managing member who agrees to continue
 20 the business of the company, or an entity controlled by
 21 Chris Gibson is not substituted as managing member, the
 22 affairs of the company will be promptly wound up by the
 23 managing member, or if the managing member's unavailable
 24 by the person previously designated by the managing
 25 member, or if the managing member has made no such

1 designation, a person selected by a majority in interest
 2 of the capital accounts of the members. Such person will
 3 take all necessary – all steps necessary or appropriate
 4 to wind up the affairs of the company as promptly as
 5 practical. Neither the admission of members or the
 6 retirement, bankruptcy, death, dissolution, or incenity
 7 of any of member will dissolve the company."
 8 Did I read that correctly, Mr. Gibson?
 9 A Yes, sir.
 10 Q Okay. When Geier Capital Georgia was
 11 dissolved, why didn't that dissolve GISF?
 12 A Well because at that time we decided to
 13 continue the business.
 14 Q Okay. Was – it says, "The retirement,
 15 dissolution, bankruptcy or insolvency of the managing
 16 member will dissolve the company, unless at such time
 17 there is another managing member who agrees to continue
 18 the business of the company or (2) an entity controlled
 19 by Chris Gibson is substituted by its managing member to
 20 continue the business of the company."
 21 Did either of those two conditions occur?
 22 A So the second condition occur (sic).
 23 Q And so the second condition is an entity
 24 controlled by Chris Gibson is substituted as managing
 25 member to continue the business of the company; is that

1 right? That's what happened, you're saying?
 2 A Well, I would say that it's Number 1, actually.
 3 Q Okay. So at such time there is another
 4 managing member who agrees to continue the business of
 5 the company?
 6 A Correct. That – and that other managing
 7 member included me.
 8 Q Okay. And is – is that – who is that other
 9 managing member?
 10 A Geier Capital.
 11 Q Okay. And it says, "Is substituted as managing
 12 member." So what needs to occur in order for one
 13 managing member to be substituted for another?
 14 A My understanding is that the managing member,
 15 in his sole discretion, had that authority without
 16 informing investors.
 17 Q And what's the basis for your – for that
 18 understanding?
 19 A The proceeding clause, "Amendment of the
 20 Operating Agreement."
 21 Q Okay. And what – what specifically? Read
 22 into the record, please, the portion of the Amendment of
 23 the Operating Agreement section that forms the basis of
 24 your testimony.
 25 A Specifically that it's not a material adverse

1 effect, so "The operating agreement would be amended by
 2 the managing member in its sole discretion in any
 3 manner -- manner that does not materially, adversely
 4 affect any member."
 5 Q Okay. And did you seek any advice on whether
 6 switching from a Georgia LLC to a Delaware LLC would
 7 affect the GISF investors?
 8 A I did not because I wasn't aware at the time
 9 that that happened.
 10 Q Okay. Did anybody in connection with Geier
 11 Capital Georgia seek advice on whether being
 12 substitute -- it being substituted out for a Delaware LLC
 13 would affect the GISF investors?
 14 A Not to my knowledge. No, sir.
 15 Q Okay.
 16 MR. BOCKIN: Can I have a follow-on question,
 17 please?
 18 MR. BAGNALL: Please.
 19 BY MR. BOCKIN:
 20 Q Did you consider it not material that a
 21 registered investment advisor was being replaced with a
 22 non-registered investment advisor?
 23 A In retrospect that does not seem material to
 24 me, no, sir.
 25 Q It was not material at all that -- to you that

1 you have originally told the investors that there was a
 2 registered investment advisor that was managing their
 3 funds?
 4 A No, sir.
 5 (Counsel confer.)
 6 BY MR. BAGNALL:
 7 Q One more. If you could turn to the following
 8 page, Mr. Gibson, the page ending 388.
 9 A Yes, sir.
 10 Q Do you see that the first section on this page,
 11 "Reports To Members," do you see that?
 12 A Yes, sir.
 13 Q "The members will be advised at least quarterly
 14 as to the unaudited performance of the company. The
 15 books and records of the company will be audited at the
 16 end of each fiscal year by auditors selected by the
 17 managing member." Do you see that? Did I read that
 18 correctly?
 19 A Yes, sir.
 20 Q Okay. Were these reports always made to GISF's
 21 investors?
 22 A Up until when -- I would say yes, through the
 23 end of their being wound down, yes.
 24 Q And you -- can you use dates instead of events,
 25 please?

1 A Yes, sir. My understanding is that the
 2 remaining limited partners were -- exited the fund in
 3 January of 2012.
 4 Q Okay. And so the reports required by this
 5 section of Exhibit 34 were always made at the times they
 6 were said they were going to be made, until January of
 7 2012; is that right?
 8 A That's my understanding.
 9 Q Okay. And at -- in January of 2012, who was
 10 the managing member of GISF?
 11 A In January of 2012?
 12 Q Yes, sir.
 13 A Geier Capital.
 14 Q Okay. Geier -- which Geier Capital?
 15 A Delaware.
 16 Q Okay. Does Geier Capital Delaware exist today?
 17 A Not to my knowledge. No, sir.
 18 Q Okay.
 19 A I think it was wound down.
 20 Q And when was Geier Capital Delaware wound down?
 21 A I don't recall.
 22 Q Okay. After January of 2012, who -- what
 23 investors, if any, remained in GISF?
 24 A Following September of 2011 we did not charge
 25 fees and my understanding is we converted to an

1 investment partnership. The --
 2 Q I'm sorry; before you go on, when did you
 3 convert to an investment partnership?
 4 A My understanding is in -- is after we stopped
 5 charging fees, which would have been September of 2011.
 6 Q Okay. And how was that change effected?
 7 A Insofar as we stopped charging fees.
 8 Q Okay. And why -- why would stopping charging
 9 fees convert GISF into an investment partnership?
 10 A It would not. I'm confused.
 11 Q Okay. So why did you testify a moment ago that
 12 you -- that GISF was converted into an investment
 13 partnership?
 14 A Only to the degree that we stopped charging
 15 fees.
 16 Q Okay. Were GISF's investors ever notified that
 17 GISF had been converted into an investment partnership?
 18 A No.
 19 Q Okay. Are you -- just to be clear for the
 20 record, are you -- is it no longer your testimony, you
 21 would like to change your testimony that --
 22 A Yes.
 23 Q -- GISF was converted into an investment
 24 partnership?
 25 A Yes, I mistakenly spoke.

1 Q Okay. Okay. Did you ever hear from any GISF
 2 investors with complaints that you weren't communicating
 3 with them enough about the fund?
 4 A No. Not to my knowledge.
 5 Q Okay.
 6 BY MR. BOHR:
 7 Q Mr. Gibson, I would like to turn to the page of
 8 Exhibit 34 ending in 360, it's the "Summary" page. And
 9 it has a blurb about the managing member and the
 10 investment manager in the middle of that page in Exhibit
 11 34. Do you see that?
 12 A Yes, sir.
 13 Q Why doesn't Exhibit 34 disclose that you're
 14 only a 50 percent owner of Geier Group and Geier Capital?
 15 MR. FERRIGNO: Again, don't disclose any
 16 communications with counsel --
 17 THE WITNESS: I --
 18 MR. FERRIGNO: -- as part of your response.
 19 THE WITNESS: I do not know.
 20 BY MR. BOHR:
 21 Q Now, for the clarity of the record, do you not
 22 know at all? Or do you have some information that's just
 23 privileged?
 24 A I don't have any information, including what
 25 would be privilege -- what would be privileged.

1 Q I would like to ask a similar question. Why
 2 doesn't Exhibit 34 disclose that Mr. Hull owned 35
 3 percent of Geier Capital and Geier Group and Mr. John
 4 Gibson owned 15 percent of those two entities,
 5 respectively?
 6 A I do not know.
 7 Q You mentioned Steven Nadel and David Mullé.
 8 You also -- of Seward & Kissel. You also mentioned a
 9 Kevin Neubauer, and you described him as more or less a
 10 junior member of the team. Do you know his role or
 11 title?
 12 A I believe he was an associate.
 13 Q Okay. Were there any other attorneys at Seward
 14 & Kissel involved in the formation of Geier International
 15 Strategies Fund?
 16 A Not to my knowledge.
 17 Q And to be clear, were there any other attorneys
 18 at Seward & Kissel involved in the drafting of the
 19 confidential private offering memorandum, the
 20 confidential -- the limited liability company operating
 21 agreement, or the subscription paperwork?
 22 A Not to my knowledge, no, sir.
 23 Q How many -- I would like to ask you about
 24 Exhibit 34, the confidential private offering memorandum.
 25 How many revisions of this document were there before it

1 was finalized?
 2 A I would have to assert privilege.
 3 Q You mentioned that in addition to the loan Mr.
 4 Hull made to you, he also saw having outside accounts as
 5 being part of establishing an alignment of interest. Did
 6 I understand that testimony correctly?
 7 A Yes.
 8 Q Can you explain that in greater detail?
 9 A Insofar as adding to our position, at times
 10 that we were able to do so, that would further establish
 11 an alignment of interest.
 12 Q And do I understand you correctly to mean that
 13 having outside accounts that were also investing in TRX
 14 is part of your attempt, as you describe it, to establish
 15 an alignment of interest?
 16 A Yes, sir.
 17 Q Is it also possible that having outside
 18 accounts invested in TRX where you're engaging in
 19 different transactions from the fund is not an alignment
 20 of interest?
 21 A It would be possible that not all trades
 22 outside of the fund were exclusively and singularly in an
 23 effort to establish an alignment of interest. Yes, sir.
 24 Q You mentioned that you wanted to have a robust
 25 conflicts clause, I believe that was the phrase that you

1 used, "robust conflicts clause," is that -- did I
 2 understand that -- did I quote you correctly?
 3 A I believe so. Yes, sir.
 4 Q And you wanted to have the robust conflicts
 5 clause in order to further a several alignment of
 6 interest. Did I understand you correctly in that -- to
 7 that extent, as well?
 8 A Yes, sir.
 9 Q Did you believe that the potential conflicts of
 10 interest section on Page 378 of Exhibit 34 embodies the
 11 robust conflicts clause that you sought?
 12 A Yes, sir.
 13 BY MR. BAGNALL:
 14 Q The conflicts clause, the potential conflicts
 15 of interest clause that Mr. Bohr just referenced on Page
 16 378 of Exhibit 34, was that section included in Seward &
 17 Kissel's template confidential private offering
 18 memorandum?
 19 A I would have to assert privilege.
 20 Q Okay. Did Seward & Kissel add the potential
 21 conflicts of interest section to a template that it used
 22 to draft Exhibit 34?
 23 A I would have to assert privilege.
 24 Q Okay. I asked you a series of questions about
 25 your conversations with Seward & Kissel for which you

1 asserted privilege. Did you have any communications with
2 attorney other than Seward & Kissel attorneys about
3 Exhibit 34?

4 A I may have. I cannot state with certainty, but
5 I may have.

6 Q What attorneys might you have communicated
7 with?

8 A Wayne Grovenstein.

9 Q Okay. So then just to be clear, did you -- did
10 you communicate with Mr. Grovenstein about the need to
11 have the potential conflicts of interest section in
12 Exhibit 34?

13 A I would have to assert privilege.

14 Q Okay. Did you tell Mr. Grovenstein that you
15 needed the potential conflicts of interest section in
16 Exhibit 34 so that you could trade on the market effect
17 of the investment advice you provided to GISF?

18 A I would have to assert privilege.

19 Q Okay. Did you tell Mr. Grovenstein that you
20 needed the potential conflicts of interest section of
21 Exhibit 34 so that you could treat certain GISF investors
22 more favorably than others?

23 A I would have to assert privilege.

24 Q Did you tell Mr. Grovenstein that you needed
25 the potential conflicts of interest section of Exhibit 34

1 so that you could front run GISF in your personal
2 trading?

3 A I would have to assert privilege.

4 Q Okay. Again, as we did before I'm going to
5 turn this around; did Mr. Grovenstein tell you that the
6 potential conflicts of interest section in Exhibit 34
7 would allow you to trade on the market effect of the
8 investment advice you provided to GISF?

9 A I would have to assert privilege.

10 Q Did Mr. Grovenstein tell you that the potential
11 conflicts of interest section in Exhibit 34 would allow
12 you to treat certain GISF investors more favorably than
13 others?

14 A I would have to assert privilege.

15 Q Did Mr. Grovenstein tell you that the potential
16 conflicts of interest section of Exhibit 34 would allow
17 you to front run GISF in your personal trading?

18 A I would have to assert privilege.

19 Q Okay.
20 MR. BAGNALL: Anything more, Paul?

21 MR. BOHR: I think I have one more.

22 BY MR. BOHR:

23 Q You -- I want to return to the issue of the
24 robust conflicts clause, and I want to ask you how does a
25 robust conflicts clause further or promote having a

1 ~~several alignment of interest?~~

2 A Very simply my having leverage through borrowed
3 money to other investors whereby the performance of the
4 fund is -- affects me more greater -- affects me in a
5 greater manner than other investors; that's a desirable
6 alignment of interest. However, in order to maintain
7 that I would have to be able to take positions to manage
8 that risk.

9 BY MR. BOCKIN:

10 Q Your father, John Gibson, is an attorney;
11 correct?

12 A Yes, sir.

13 Q Did you have any discussions with John Gibson
14 about the potential conflicts of interest paragraph that
15 we've been discussing on SEC ending in Bates 378?

16 A No.

17 BY MR. BOHR:

18 Q Did -- Mr. Bagnall asked you a series of
19 questions about your communications with Seward & Kissel.
20 Then he asked you them again with -- with respect to Mr.
21 Wayne Grovenstein. I'm wondering, are there any other
22 attorneys, besides Seward & Kissel and Wayne Grovenstein
23 or your father, with whom you had communications about
24 the potential conflicts of interest provision in Exhibit
25 34?

1 A Not to my knowledge or recollection. No, sir.
2 MR. BAGNALL: I'll take back Exhibit 34,
3 please. Thank you.

4 BY MR. BAGNALL:

5 Q Okay, Mr. Gibson, I'm going to hand you what's
6 been previously marked as Exhibit 35. Can you look it
7 over and let me know when you're done, please?

8 A Yes, sir. I'm ready.

9 Q Okay. How was Exhibit 35 created, Mr. Gibson?
10 What was the process?

11 MR. FERRIGNO: Careful about privilege.

12 THE WITNESS: In this context I would have to
13 assert privilege with -- with everything. There were no
14 discussions outside of those directly with counsel.

15 MR. BAGNALL: Okay.

16 BY MR. BAGNALL:

17 Q And what counsel was involved in the creation
18 of Exhibit 35?

19 A Steven Nadel, David Mullé, and Kevin Neubauer
20 at Seward & Kissel.

21 Q And any other attorneys involved?

22 A I do not recall but it may have been Wayne
23 Grovenstein.

24 Q Okay. Any others?

25 A No, sir.

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1 Q Who specifically did you deal with in the
2 creation of Exhibit 35?
3 A Steven Nadel, David Mullé, and Kevin Neubauer.
4 Q Okay. Were there any difficult issues that
5 arose in the creation of Exhibit 35?
6 A I would have to assert privilege.
7 Q Okay. Were there any controversial issues that
8 arise in the creation of Exhibit 35?
9 A I would have to assert privilege.
10 Q Okay. Could you please turn the page ending
11 071 of Exhibit 35, and focus on Article 3, "Management of
12 the Company," Section 301, "Management of the Company."
13 Do you see it?
14 A Yes, sir.
15 Q Okay. It says, "The company shall be managed
16 by the managing member who shall have the discretion of
17 making investments on behalf of the company and of
18 exercising the powers set forth in Section 302. The
19 managing member may appoint such agents of the company as
20 it deems necessary, who shall hold such offices and
21 shall, under the direction of the managing member,
22 exercise such powers of the managing member in the
23 management of the company and perform such duties in
24 connection therewith, as shall be determined from
25 time-to-time by the managing member. The managing member

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1 shall devote so much of its time and efforts to the
2 affairs of the company, as may in its judgment, be
3 necessary to accomplish the purposes of the company.
4 Nothing herein contained shall prevent the managing
5 member or any of its affiliates or employees or any other
6 member from conducting any other business, including any
7 business within the securities industry, whether or not
8 such business is in competition with the company.
9 Without limiting the generality of the foregoing, the
10 managing member or any of its affiliates or employees may
11 act as an investment advisor or investment managers for
12 others in managed funds or capital for others, and may
13 serve as an officer, director, consultant, partner or
14 stock holder of one or more investment funds,
15 partnerships, securities firms, or advisory firms. It is
16 recognized that in effecting transactions it may not
17 always be possible or consistent with the investment
18 objectives of the various persons or entities described
19 above and of the company to take or liquidate the same
20 investment positions at the same time or at the same
21 prices."
22 Did I read that Section 3.01 correctly, Mr.
23 Gibson?
24 A Yes, sir.
25 Q Okay. When it says that "GISF shall be managed

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1 by the managing member," who or what is that referring
2 to?
3 A Geier Capital.
4 Q Which Geier Capital?
5 A I would understand it to be Geier Capital
6 Georgia, up until the formation of Geier Capital
7 Delaware, and thereafter Geier Capital Delaware.
8 Q What – what specific section of 301 describes
9 for you the change from Geier Capital Georgia to Geier
10 Capital Delaware?
11 A It does not.
12 Q Okay. So how – how would your understanding
13 of this document, this Section 301 of Exhibit 35, comport
14 with what you just testified to?
15 A I think it's consistent.
16 Q How so?
17 A I don't see anything in Section 3.01 that is
18 inconsistent with what I said.
19 Q Okay. So let me – let me ask it a different
20 way. When – if you turn to the last page here, Page 091
21 of Exhibit 35, there's several signatures on the
22 document. So when Mr. Hull signed this document, and
23 there's a date there, January 19, 2010, and he read
24 section 3.01, how would Mr. Hull have understood that
25 there was a change or a pending or upcoming change from

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1 Geier Capital Delaware to Geier Capital Georgia?
2 A Based upon this language, he would not.
3 Q Okay. How did Section 3.01 come to be included
4 in Exhibit 35?
5 A I would have to assert privilege.
6 Q Okay. Did you request of your attorneys at
7 Seward & Kissel that they include Section 3.01?
8 A I would have to assert privilege.
9 Q Did your attorneys at Seward & Kissel tell you
10 that you should include Section 3.01?
11 A I would have to assert privilege.
12 Q Did – was Section 3.01 included in the
13 template, off the shelf, that Seward & Kissel used to
14 draft Exhibit 35?
15 A I would have to assert privilege.
16 Q Okay. Who drafted Section 3.01?
17 A I would have to assert privilege.
18 Q Okay. Did you revise Section 3.01?
19 A I would have to assert privilege.
20 Q Did anyone else revise Section 3.01 to your
21 knowledge?
22 A Did anyone else, I would have to –
23 Q Other than you.
24 A I would have to assert privilege.
25 Q Okay. Did Mr. Hull request section 3.01 be

1 included in Exhibit 35?
 2 A I would say that -- not specifically to my
 3 recollection, but that the substance of section 3.01
 4 would be consistent with some of the themes that he
 5 described as guideposts to which I have eluded earlier in
 6 our discussion today.
 7 Q Did -- did anybody else, other than Mr. Hull,
 8 suggest items to you that were included and embodied in
 9 Section 3.01 here of Exhibit 35?
 10 A I would have to assert privilege.
 11 Q Okay. Did you communicate -- I apologize if
 12 this is redundant. Other than Seward & Kissel did you
 13 communicate with anybody else, any other attorneys,
 14 rather, about Section 3.01 of Exhibit 35?
 15 A Not to my recollection, but I may have spoken
 16 with Wayne Grovenstein about it.
 17 Q Other than Mr. Grovenstein, did you communicate
 18 with any other attorneys about Section 3.01 of Exhibit
 19 35?
 20 A No, sir. Not to my recollection.
 21 Q Did you communicate with your father in his
 22 capacity as an attorney regarding Section 3.01 of Exhibit
 23 35?
 24 A I did not talk to my father about this.
 25 Q Okay. Did you tell your attorneys at Seward &

1 Kissel that you needed Section 3.01 included in Exhibit
 2 35 so that you could trade on the market effect of the
 3 investment advice that provided to GISF?
 4 A I would have to assert privilege.
 5 Q Did you tell your attorneys at Seward & Kissel
 6 that you wanted to include Section 3.01 in Exhibit 35 so
 7 that you could treat certain GISF investors more
 8 favorably than others?
 9 A I would have to assert privilege.
 10 Q Did you tell your attorneys at Seward & Kissel
 11 that you wanted to include Section 3.01 in Exhibit 35 so
 12 that you could front run GISF in your personal trading?
 13 A I would have to assert privilege.
 14 Q Okay. Turning this around, did any of your
 15 attorneys at Seward & Kissel tell you that Section 3.01
 16 of Exhibit 35 would allow you to trade on the market
 17 effect of the investment advice that you provided to
 18 GISF?
 19 A I would have to assert privilege.
 20 Q Did any of your attorneys at Seward & Kissel
 21 tell you that Section 3.01 of Exhibit 35 would allow you
 22 to treat certain GISF investors more favorably than others?
 23 A I would have to assert privilege.
 24 Q Did any of your attorneys at Seward & Kissel
 25 tell you that Section 3.01 of Exhibit 35 would allow you

1 to front run GISF in your personal trading?
 2 A I would have to assert privilege.
 3 Q Okay. Shifting now to Mr. Grovenstein, did you
 4 tell Mr. Grovenstein that you needed Section 3.01 in
 5 Exhibit 35 so that you could trade on the market effect
 6 of the investment advice that you providing to GISF?
 7 A I would have to assert privilege.
 8 Q Did you tell Mr. Grovenstein that you needed
 9 Section 3.01 in Exhibit 35 so that you could treat
 10 certain GISF investors more favorably than others?
 11 A I would have to assert privilege.
 12 Q Did you tell Mr. Grovenstein that you needed
 13 Section 3.01 in Exhibit 35 so that you could front run
 14 GISF in your personal trading?
 15 A I would have to assert privilege.
 16 Q Okay. And again turning it around, did Mr.
 17 Grovenstein tell you that Section 3.01 of Exhibit 35
 18 would allow you to trade on the market effect of the
 19 investment advice that you provided to GISF?
 20 A I would have to assert privilege.
 21 Q Did Mr. Grovenstein tell you that Section 3.01
 22 of Exhibit 35 would allow you to treat certain GISF
 23 investors more favorably than others?
 24 A I would have to assert privilege.
 25 Q Did Mr. Grovenstein ever tell you that Section

1 3.01 of Exhibit 35 would allow you to front run GISF in
 2 your personal trading?
 3 A I would have to assert privilege.
 4 Q Okay.
 5 MR. BAGNALL: Does anybody have any further
 6 questions on this?
 7 (No response.)
 8 MR. BAGNALL: Okay.
 9 BY MR. BAGNALL:
 10 Q Mr. Gibson, could you please turn to the page
 11 ending 073, it's the following page of Exhibit 35, and
 12 I'm sorry to do this to you, but what I'm going to be
 13 asking about is a subsection of Section 3.02, which
 14 actually begins on the prior page, the page ending 071 of
 15 Exhibit 35.
 16 In the subsection I would like to direct you to
 17 "L," as in Larry. And 3. -- Section 3.02 says, "The
 18 Powers of Managing Member. The managing member shall
 19 have the following powers on behalf of the company to be
 20 exercised in accordance with Section 3.01." And
 21 following what I just read a moment ago, which -- by the
 22 way, did I read that correctly, Mr. Gibson?
 23 A Yes, sir.
 24 Q Okay. Following in Subsection L, says, "To
 25 retain Geier Group, LLC or such other entity as the

1 managing member will determine from time-to-time in its
 2 sole discretion to serve as the company's investment
 3 manager – the investment manager."
 4 Do you see that?
 5 A Yes, sir.
 6 Q Did I read that correctly?
 7 A Yes, sir.
 8 Q Okay. Did – did you or anybody else retain
 9 Geier Group to serve as the investment manager for GISF?
 10 A No, sir.
 11 Q Okay. So do you read this Section 3.02 to
 12 require you to retain Geier Group?
 13 A To require us to retain Geier Group, I do not
 14 read it that way.
 15 Q Okay. How do you read it?
 16 A I read it as the managing member shall have the
 17 right to retain any entity the managing member
 18 determines.
 19 Q Did – was any other entity, other than Geier
 20 Group, ever retained to serve as the investment manager
 21 for GISF?
 22 A I believe Geier Capital was the investment
 23 manager following the dissolution of Geier Group.
 24 Q Was there a – an engagement –
 25 A No.

1 Q An agreement or a contract between GISF and
 2 Geier Capital reflecting the fact that Geier Capital had
 3 been retained to serve as the investment manager for
 4 GISF?
 5 A No, sir.
 6 Q Okay. Any other writing of any kind?
 7 A No, sir.
 8 Q Okay. Could you turn, please, to the following
 9 page, the page ending in 075, "Expenses of the Company,
 10 Organizational Expenses," and it says, "The investment
 11 manager is responsible for and pays." Do you see that?
 12 A Yes, sir.
 13 Q And what follows – who – who's the investment
 14 manager?
 15 A Geier Capital.
 16 Q And how do you know Geier Capital's the
 17 investment manager?
 18 A That was my understanding.
 19 Q Okay. How is that your understanding?
 20 A That the managing member had the sole right to
 21 determine who would serve as the investment manager, and
 22 that Geier Capital was the consistent legal entity that
 23 we utilized.
 24 Q Okay. So is another way to say that the Geier
 25 Capital is the investment manager until and unless it

1 designated that duty to some other entity or person?
 2 A I think that's a fair assumption. Yes, sir.
 3 Q Okay. And so – and then is it also fair to
 4 say that your testimony today is that that designation
 5 never occurred?
 6 A That's correct.
 7 Q So Geier Capital always retained the
 8 responsibility to serve as the investment manager for
 9 GISF then?
 10 A Yes, sir.
 11 Q Okay. Was what I just said and what you agreed
 12 to, was that ever communicate to GISF in – GISF's
 13 investors?
 14 A Not formally. No, sir.
 15 Q Was it ever communicated to GISF's investors
 16 informally?
 17 A No, sir.
 18 Q Okay.
 19 A Not to my knowledge.
 20 Q Okay. It says on section – in Section 4.01
 21 that "The investment manager is responsible for and pays
 22 or causes to be paid overhead expenses, including the
 23 following: office rent; furniture and fixtures;
 24 stationary; secretarial, internal administrative
 25 services; salaries and bonuses; entertainment expenses;

1 employee insurance; and payroll taxes." Do you see that?
 2 A Yes, sir.
 3 Q From what activities would those expenses be
 4 incurred?
 5 A The management of the fund.
 6 Q Okay. And so the office rent would be for what
 7 individuals or what entity, for example?
 8 A Geier Capital.
 9 Q Okay. So you've said a couple times and just a
 10 moment ago that Geier Capital, sort of, always served as
 11 the investment manager for GISF. But in practice,
 12 thinking back to 2010 and 2011, was Geier Group ever
 13 used? Was the corporate form ever used?
 14 MR. FERRIGNO: Corporate form?
 15 BY MR. BAGNALL:
 16 Q An LLC. Are you aware of Geier Group ever
 17 having a form other than an LLC?
 18 A No, sir.
 19 Q Okay. So was Geier Group, in practice, serving
 20 as the investment manager?
 21 A Yes.
 22 Q Okay. And during what period of time was Geier
 23 Group serving in a – as a de facto, at least, investment
 24 manager to GISF?
 25 A From the point of inception of the fund until

1 it's dissolution.

2 Q Okay. And so based on what you testified to a

3 moment ago then, was it doing so without authority to act

4 as the investment advisor of the fund?

5 A Without a formal agreement, yes.

6 Q Okay.

7 A Or with the authority of Geier Capital?

8 Q So it was -- it was -- let me just make sure I

9 understand. Geier Group was serving as a de facto

10 investment advisor because it had the authority to do so

11 from Geier Capital?

12 A It was given the authority to do so by Geier

13 Capital, yes.

14 Q Even though it was not -- that authority wasn't

15 given in a formal way?

16 A Correct.

17 Q Okay. And why was Geier Group being used as a

18 de facto investment manager if authority had never been

19 granted?

20 A My understanding is that a formal agreement was

21 not required.

22 Q Okay. And why -- what's the basis for that

23 understanding?

24 A The fact that it's in Geier Capital's sole

25 discretion to make that determination.

1 Q Okay. And so is your understanding based on

2 your own read of -- of the offering documents for GISF?

3 Or did you receive that advice from somebody else?

4 A I would have to assert privilege.

5 Q Okay. Well, you can assert privilege to the

6 fact of the advice that's given, but not to whether or

7 not you received the advice generally. So what I'm

8 asking you is did you receive advice telling you what you

9 just testified to?

10 MR. FERRIGNO: Just a second. You can't

11 disclose communications with counsel. And what you have

12 to be careful about is if the question is asked in a

13 particular way, if you say yes or no to it, you would be

14 disclosing the advice itself. So --

15 MR. BAGNALL: Are you suggesting that's what's

16 happening here?

17 MR. FERRIGNO: Yes.

18 MR. BAGNALL: Okay. So you're saying --

19 MR. FERRIGNO: If you frame the question in a

20 particular way you will get the advice just by saying yes

21 or no.

22 MR. BAGNALL: Okay.

23 MR. FERRIGNO: That's the problem.

24 MR. BAGNALL: Okay.

25 BY MR. BAGNALL:

1 Q So, then you'll just let stand then your answer

2 to my most recent question is that you're refusing to

3 testify -- not refusing to testify, but not testifying

4 because the answer is covered by attorney/client

5 privilege; is that right?

6 MR. FERRIGNO: He's asserting the privilege.

7 BY MR. BAGNALL:

8 Q Is that -- is that a fair assessment of what

9 just happened?

10 A Yes, sir.

11 Q Okay. When the -- you see here on the third

12 line of Section 4.01, the last three words, "salaries and

13 bonuses."

14 MR. FERRIGNO: Just a second. Could you --

15 which page are you on?

16 MR. BAGNALL: Oh, sorry, the page ending 075 of

17 Exhibit 35, Section 4.01.

18 BY MR. BAGNALL:

19 Q It's the last three words of the third line,

20 describing certain -- as expenses of the investment

21 manager, "salaries and bonuses." Do you see that?

22 A Yes, sir.

23 Q Who's salaries and bonuses were the expense of

24 the investment manager?

25 A We did not have either.

1 Q So nobody got salaries and none of you got

2 bonuses?

3 A That's correct.

4 Q Okay. Did -- did anybody receive any payment

5 of any kind for serving as the investment and --

6 investment manager for GISF?

7 A No. The fund paid management fees.

8 Q Um-hmm.

9 A But the management entities did not pay those

10 fees as salaries or bonuses. They did accrue to the

11 capital accounts of the various individuals.

12 Q Okay. So was there never -- there was never a

13 time when -- and when you say "the individuals," do you

14 mean you, Mr. Hull and your father?

15 A Yes, sir.

16 Q Okay. Was there ever a time when you took

17 money out of Geier Group?

18 A For other than expenses, for like a salary?

19 Q Sure. Yes.

20 A For a bonus? No.

21 Q Okay. Did you ever use Geier Group funds to

22 reimburse salary that was paid to you from another

23 source?

24 A Not to my recollection. No, sir.

25 Q Okay. For the management fees that were paid

1 by GISF to Geier Group, to what portion, if any, were you
2 entitled?

3 A Fifty percent.

4 Q Okay. And did you have the choice to take that
5 money out of Geier Group if you wanted to?

6 A Yes.

7 Q Okay. Did you do that ever?

8 A Not only did we not take money out, we also
9 kept it invested in the fund as opposed to a cash
10 liability.

11 Q How – how did you keep Geier Group's assets
12 invested in GISF?

13 A Any funds that were paid as management fees, we
14 had the option to either take them out as cash into a
15 bank account in the name of Geier Group or Geier Capital,
16 keep them as a cash liability to the fund or have them
17 immediately accrue to a capital account in the name of
18 Geier Capital or the names of the individuals underlying
19 Geier Capital.

20 Q Sorry; Geier Capital or Geier Group?

21 A It's actually Geier Capital is the name of the
22 entity that was in the – was one of the capital
23 accounts.

24 Q In the fund?

25 A Correct.

1 Q Okay. Did GISF ever send funds to Geier
2 Group's Schwab account?

3 A Did – so – just to clarify the answer to your
4 previous question –

5 Q Sure.

6 A – GISF paid Geier Group within the fund and
7 then Geier Group sent money to Geier Group's bank
8 account. But as a – just a clarification.

9 Q And so Geier Group directed GISF to send its
10 own money to its own bank account; is that right?

11 A Yes, sir.

12 Q Through whom did Geier Group act in that – in
13 that respect?

14 A Through whom?

15 Q Yes, sir.

16 A I'm not sure I understand the question.

17 Q What human being caused the financial
18 institutions to take these actions?

19 A At my direction.

20 Q Okay, it was you. Did you tell KRFS that
21 Geier – that this arrangement – so let me back up. Do
22 you what I mean when I say "KRFS"?

23 A Kaufman Rossin Fund Services.

24 Q Do you understand that to be the entity that
25 served as the fund administrator for GISF?

1 Q Okay. So there were funds that were paid to
2 Geier Group that we held in the Geier Capital account?

3 A Whether they were ever paid to – to the degree
4 that they were paid to Geier Group, then they would have
5 been gone – then they accrued to a Geier Capital
6 account. I'm not sure formally whether they were paid to
7 Geier Group initially.

8 Q Okay. Did – are you aware of Geier Group
9 holding any accounts at any financial institutions?

10 A Yes, sir. I believe Geier Group had a bank
11 account.

12 Q Where? At what bank?

13 A At Regions Bank, I believe.

14 Q Did it hold any other financial accounts?

15 A No, sir.

16 Q Did Geier Group have an account at Charles
17 Schwab?

18 A Yes, sir.

19 Q Did GISF ever send funds to Geier Group's
20 account at Regions Bank?

21 A Yes.

22 Q What for?

23 A To pay expenses.

24 Q Anything else?

25 A No.

1 A Yes, sir.

2 Q Were they responsible for maintaining, sort of,
3 a record of what was occurring in the accounts of GISF?

4 A Yes, sir.

5 Q Okay. Did you tell KRFS that Geier Group was
6 being paid management fees that were held in an account
7 at Geier Capital and being directed by Geier Group to
8 banks like Regions Bank?

9 A KRFS formally carried out all of those
10 transfers themselves.

11 Q Okay. So you – so when you wanted to transfer
12 money, you sent an order to KRFS?

13 A That's correct.

14 Q you didn't send it to, say, Garwood?

15 A Not to my knowledge.

16 Q Okay. And so – so just to be clear, did KRFS
17 know that Geier Group was holding money in GISF in an
18 account that was titled "Geier Capital"?

19 A As far as KRFS understand, I don't – I think
20 that they – yes, they would have because they processed
21 expenses that we described under Geier Group and they
22 moved – they effected the accounting chain – to move
23 management fees into the Geier Capital account. So I
24 think yes.

25 Q So why – why not have an account in Geier

1 Group's name at GISF?
 2 A That's an interesting question to which I don't
 3 know the answer.
 4 Q Okay. Did KRFS ever ask you why there was no
 5 act for Geier Group?
 6 A I do not recall a discussion as to why the sole
 7 management entity capital account was designated Geier
 8 Capital.
 9 Q Was -- so is it fair to say then that money in
 10 Geier Capital's account at GISF was co-mingled with money
 11 that belonged to Geier Group?
 12 A Yes.
 13 Q What records, if any, were kept to be able to
 14 untangle that co-mingling?
 15 A There was, I mean, a full accounting.
 16 Q How so? What do you mean?
 17 A When there's a record of any time money moved.
 18 Q Where was that record kept?
 19 A Kaufman Rossin Fund Services.
 20 Q And were each entry in Kaufman -- KRFS records
 21 indicated if it was a movement for Geier Group or Geier
 22 Capital?
 23 A The only capital account at KRFS was in Geier
 24 Capital. And the only expenses that KRFS approved were
 25 in the name of Geier Group. Those -- so there was never

1 movement of funds within the KRFS purview between Geier
 2 Group and Geier Capital, but they did process expenses
 3 under the name of Geier Group.
 4 Q Was there ever any movements in -- from the
 5 Geier Capital account to, say, your account?
 6 A Yes.
 7 Q Okay. And when did that occur?
 8 A I do not recall specifically.
 9 Q Why did that occur?
 10 A And I -- I am not quite that sure that did
 11 occur, but I imagine it would have occurred. To the
 12 degree that we had funds that we contemplated investment
 13 in Geier Capital, that we contemplated holding for some
 14 period of time, it would have been customary for us to
 15 allocate it to the respective members of Geier Capital.
 16 Q So does that mean that for example after 2010
 17 when Geier Capital received an incentive payment from
 18 GISF, that that money first went into Geier Capital's
 19 account and then was distributed to your account? In 50
 20 percent, 35 percent, 15 percent to your account, Jim
 21 Hull's account and your father's account respectively?
 22 A That definitively happened, yes.
 23 Q Okay. And so once that distribution occurred
 24 from Geier Capital's account to your personal account,
 25 did you have control over that money?

1 A Yes, sir.
 2 Q You personally did?
 3 A Yes, sir.
 4 Q Okay. Did you -- does that mean you had the
 5 authority to invest it in GISF if you wanted to?
 6 A Yes, sir.
 7 Q Does that mean you had the authority to
 8 withdraw it from GISF if you wanted to?
 9 A Yes, sir.
 10 Q Okay. Was there anything that restricted your
 11 authority to move that money at all? Once -- and when I
 12 say "that money," I mean the money -- your pro rata share
 13 of the incentive fee that was paid to Geier Capital and
 14 then distributed to you after the books for 2010 was --
 15 were closed?
 16 A Legally, no. Practically I did not have that
 17 authority to withdraw that money for personal use, no.
 18 Q Okay. And why do you say "practically" you
 19 didn't have that authority?
 20 A Because that would have been inconsistent with
 21 maintaining the alignment of interest I understood to be
 22 critical to my relationship with Jim and the other
 23 investors.
 24 Q And why is that? Why would that -- how would
 25 that be -- sorry to -- if I get this wrong, but how would

1 that be, sort of, counter to that alignment of interest?
 2 A It would be an example of me diversifying funds
 3 away from the fund, which would in turn imply a lower
 4 alignment of interest than I could otherwise have
 5 maintained.
 6 Q Okay. So if you diversified in your personal
 7 accounts, that decreased your alignment of interest; is
 8 that what you're saying?
 9 A I'm not sure what you mean by that. Does
 10 that -- to the degree I took money out and bought, you
 11 know, apartment, or another investment that was not what
 12 we were doing in GISF, that would be an example of me
 13 diversifying and not maintaining an alignment of interest
 14 that I could otherwise maintain the magnitude of which I
 15 could otherwise maintain.
 16 Q Okay. And just while we're on this topic, if
 17 you focus again to Exhibit 35 in front of you, Section
 18 4.03, "Management Fee to the Investment Manager. The
 19 investment manager will receive a management fee in
 20 advance as of the beginning of each calendar quarter in
 21 an amount equal to
 22 .0 -- 0.25 percent, i.e. 1 percent per annum, of each
 23 member's capital account for management fee."
 24 Did I read that correctly?
 25 A Yes, sir.

1 Q Other than my stutter.

2 A Yeah.

3 Q Is that an accurate description of how

4 management – GISF paid management fees?

5 A Yes, sir.

6 Q Okay. Up until the time in I believe it was

7 September 2011 when the collection of management fees was

8 suspended; is that – is that fair to say?

9 A Yes, sir.

10 Q Okay. So is it – just I understand and I

11 apologize if this is redundant, the mechanism by which

12 those management fees were paid was done – essentially

13 all internal at KRFS? Money was reallocated from the

14 limited partners accounts to Geier Capital's account?

15 A A bookkeeping entry, correct. Yes, sir.

16 Q Okay. And that occurred at the beginning of

17 each quarter?

18 A Yes, sir.

19 Q Okay. And what were the – were those

20 management fees being paid for?

21 A Services rendered by the managing member.

22 Q Okay. And were they advisory services?

23 Investment advisory services that were being rendered?

24 A There was services to operate the fund

25 consistent with the operating agreement and the

1 confidential information memorandum.

2 Q Okay. And were any – was the payment that you

3 just – that were described, that were just – strike

4 that, let me start over.

5 Were the management fees that were paid for the

6 services rendered, did any of the services that were

7 provided include investment advisory services?

8 A In the capacity as an investment manager

9 registered with the state, no.

10 Q What do you mean by that?

11 A I mean that we didn't have an obligation to

12 register as an investment advisor and that we only

13 rendered advice to a single entity, the fund.

14 Q But what – I'm not asking you about

15 registration. I'm asking if – if any portion of the

16 services that were rendered to GISF in return for these

17 management fees, if any portion of that was the provision

18 of the investment advisory services?

19 A To the fund, yes.

20 Q Okay. And so just to be clear, some portion of

21 the management fees, at least, was being paid for the

22 provision of investment advisory services to GISF?

23 A Yes, sir.

24 Q Okay. Could you please turn to page ending

25 085, which includes Article 9, "Term and Dissolution of

1 the Company."

2 A Yes, sir.

3 Q And specifically, Section 9.02, "Dissolution of

4 the Company. The company may be dissolved at any time by

5 the managing member, whereupon its affairs will be wound

6 up by the managing member. The retirement, dissolution,

7 bankruptcy or insolvency of the managing member will

8 dissolve the company unless (i) at such time there is

9 another managing member who agrees to continue the

10 business of the company or (ii) an entity controlled by

11 Chris Gibson is substituted as managing member to

12 continue the business of the company."

13 Did I read that correctly?

14 A Yes, sir.

15 Q Is it fair to say that that language mirrors

16 the language in the similarly named provision in Exhibit

17 34?

18 A Yes, sir.

19 Q Okay. And is your testimony from – that you

20 gave related to Exhibit 34, is it applicable here, as

21 well?

22 A Yes, sir.

23 Q Okay. So for example, is it your understanding

24 that GISF was not or should not have been dissolved

25 pursuant to Section 9.02, Exhibit 35, when Geier Group –

1 Geier Capital Delaware was dissolved because Geier

2 Capital Delaware was substituted in for it?

3 MR. BOHR: You said "Delaware" twice.

4 MR. BAGNALL: Let – let me – let me ask that

5 question again.

6 BY MR. BAGNALL:

7 Q So is it – is it your understanding that

8 pursuant to Section 9.02 of Exhibit 35, that GISF was not

9 dissolved when Geier Capital Georgia was dissolved

10 because Geier Capital Delaware was substituted for Geier

11 Capital Georgia?

12 A Yes, sir. That's correct.

13 Q Okay. And in all respects, your testimony on

14 this provision, similar provision in Exhibit 34, is the

15 same here in connection with Exhibit 35?

16 A Yes, sir.

17 Q Okay. And if you could turn to the page

18 ending – did you seek any – the advice of anyone to

19 support your understanding that when Geier Capital

20 Delaware was substituted for Geier Capital Georgia it

21 would not cause GISF to be dissolved?

22 A I wasn't aware of the dissolution of Geier

23 Capital Georgia. But to the degree I did, it would – I

24 would have to assert privilege.

25 Q Okay. If you could then turn page – to the

1 page ending 089 of Exhibit 35, please. This is – this
2 page includes Article 11, "Miscellaneous Provisions," and
3 specifically Section 11.03, "Reports to Members," where
4 "The company shall furnish to members unaudited reports
5 the performance of the company promptly after the end of
6 each fiscal quarter, and the audited financial statements
7 of the company prepared by the company's independent
8 certified accounts promptly after the end of each fiscal
9 year."

10 Did I read that correctly?

11 A Yes, sir.

12 Q Does that – is it fair to say that that is
13 similar – consistent with the similarly named section in
14 Exhibit 34, the "Reports to Members"?

15 A Yes, sir.

16 Q Is your test – would your testimony about
17 Section 11.03 of Exhibit 35 be different in any way than
18 your testimony about the similar provision in Exhibit 34?

19 A No, sir.

20 Q Okay. And on this same page, Section 11.04,
21 "Amendment of Agreement," do you see that section, Mr.
22 Gibson?

23 A Yes, sir.

24 Q Okay. Was this operating agreement ever
25 amended pursuant to Section 11.04?

1 A My understanding is it would have been to the
2 degree the managing member changed.

3 Q Okay. And was that – does that mean that
4 there was a written revision to Exhibit 35 that exists
5 somewhere?

6 A No, there's not a written revision to –

7 Q Okay. So this is –

8 A – Exhibit 35.

9 Q You're saying that the agreement was amended by
10 action? Or how – how was it amended if there's no
11 different writing, let me ask it that –

12 A I misunderstood your question then. If you're
13 asking if this document was amended, then the answer is
14 no.

15 Q Okay. Yeah, that's my – let me ask it again
16 to be clear. So was Exhibit 35, the document, ever
17 revised or amended pursuant to Section 11.04?

18 A No. I'm – what confused me is when you said
19 "pursuant to," I thought you were saying – anyway, no.

20 Q Okay. And was – as I asked you before, in
21 connection with Exhibit 34, was Exhibit 35 ever changed
22 in any way, other than what you would describe as an
23 amendment to the document?

24 MR. FERRIGNO: I'm sorry; say that again?

25 MR. BAGNALL: Sure.

1 BY MR. BAGNALL:

2 Q So other – so this is again to avoid like we
3 did with Exhibit 34, to avoid semantics, was there ever a
4 change to Exhibit 35 that would – you would classify as
5 something other than an amendment?

6 A No.

7 Q Okay. So your only – what you were testifying
8 to a moment ago, a change, so Exhibit 35 did change in
9 that there was a substitution of the managing member from
10 a Georgia LLC to a Delaware LLC?

11 A I don't think that that changed Exhibit 35. I
12 think that pursuant to Section 11.04 a change was
13 affected of the managing member.

14 Q I see. So a managing member was changed, and
15 the authority for making that change was Section 11.04?

16 A Yes, sir.

17 Q And what's the basis – your basis for that
18 understanding?

19 A That the agreement – this agreement – that
20 the managing member had the authority to do that, to the
21 degree it didn't materially adversely affect any member,
22 and to the degree that the ownership and management
23 structures of the two – the preceding and eventual
24 management entity were the same, that could not have a
25 material adverse effect on a member.

1 Q Okay. And is that – is that your personal
2 understanding based on reading the documents? Or did you
3 get – receive advice confirming that understanding?

4 A I would have to assert privilege. And also
5 note that it wasn't aware of that change had been
6 occurred.

7 MR. BAGNALL: Anybody else have any --

8 MR. FERRIGNO: Can we take a short break?

9 MR. BAGNALL: Okay, I'll take back Exhibit 35.
10 And we will take a break. We'll go off the record at
11 10:59 a.m. on December 21, 2015.

12 (A brief recess was taken.)

13 MR. BAGNALL: Back on the record at 11:08 a.m.,
14 December 21, 2015.

15 BY MR. BAGNALL:

16 Q Mr. Gibson, you recall you're under oath?

17 A Yes, sir.

18 Q Okay. And to confirm during the break there
19 were no conversations of substance between you and the
20 staff; correct?

21 A That's correct.

22 MR. BAGNALL: And you agree, Mr. Ferrigno?

23 MR. FERRIGNO: That's correct.

24 MR. BAGNALL: Okay.

25 BY MR. BAGNALL:

1 Q Before our break, Mr. Bockin was asking you
2 about a change insofar as Geier Group had been described
3 in the confidential private offering memorandum, Exhibit
4 34, as a investment advisor registered with the State of
5 Georgia. Do you remember that?

6 A Yes, sir.

7 Q Okay. And he asked you if, and I'm
8 paraphrasing, correct me if this wrong, that whether that
9 change – if the effect that that – the fact that that
10 change had ever been communicated to the investors, and I
11 believe in part of your answer your answer you said no,
12 because it wasn't a material change; is that correct?

13 A Yes, sir.

14 Q Okay. Did you – did you seek advice from
15 anyone to confirm your understanding that a change like
16 that would not be material?

17 A I would have to assert privilege.

18 Q Okay. And is it the attorney/client privilege?

19 A Yes, sir.

20 Q Okay.

21 BY MR. BOHR:

22 Q And pardon me, Mr. Gibson, but in previous
23 instances where you've asserted privilege, all of those
24 privileges were also the attorney/client privilege;
25 correct?

1 A I do.

2 Q In Kingwood, Texas.

3 A That's right.

4 Q What is Administaff Companies II?

5 A That is a human resource and related firm that
6 served Hull Storey Retail Group.

7 Q Okay. And do you see in Box 1, "Wages, Tips
8 and Other Comp," and identified there is \$73,953.51. Do
9 you see that?

10 A Yes, sir.

11 Q For what were you being paid that money?

12 A Consulting work at Hull Storey.

13 Q Okay. So you – so that was – that payment
14 was for consulting work you provided to Hull Storey
15 Gibson?

16 A I – I'm not for sure what the legal; whether
17 it's Hull Storey or Hull Storey Gibson, but either way,
18 yes.

19 Q Okay. And what was that consulting work?

20 A Just being generally available to answer
21 questions.

22 Q About what?

23 A Investment markets, generally.

24 Q Okay. And was that for the benefit of Hull
25 Storey Gibson?

1 A Yes, sir.

2 MR. BAGNALL: Could you please mark this next,
3 maybe – okay, sure.

4 BY MR. BOCKIN:

5 Q While he's marking that, which attorneys did
6 you speak to about this issue that the just brought up?

7 A Seward & Kissel; Steven Nadel, David Mullé and
8 Kevin Neubauer.

9 Q What about Wayne Grovenstein?

10 A No.

11 Q Okay.

12 (SEC Exhibit No. 51 was marked
13 for identification.)

14 BY MR. BAGNALL:

15 Q Mr. Gibson, I'm handing you what's been marked
16 as Exhibit 51 here on the back, okay. Could you please
17 take a look at it and let me know when you're done?

18 A I'm done.

19 Q Okay. Do you recognize this document, Mr.
20 Gibson?

21 A It appears to be a W-2 for me in the year of
22 2010.

23 Q Okay. And do you see in the top left hand
24 portion there, there's a reference to the employer's name
25 as Administaff Companies II, LP?

1 A Yes.

2 Q Was – and was that – were you being paid
3 through Hull Storey Gibson in any way in connection with
4 your efforts for GISF?

5 A That was not my understanding, no.

6 Q Okay. And is that – was there – were there
7 any other reasons that you were being paid this money
8 through Hull Storey Gibson?

9 A No.

10 Q Okay. Do you see in the – where your name is
11 listed, there's an address, 200 Biscayne Boulevard, 27th
12 Floor? Do you see that?

13 A Yes, sir.

14 Q What is that address in Miami, Florida?

15 A That's where I resided that year.

16 Q Okay. So that's – that's a residence?

17 A Yes, sir.

18 Q That's an apartment? Is that right, an
19 apartment?

20 A Yes, sir. Yes, sir.

21 Q Okay. And why were you living in Florida in –
22 whenever this W-2 was sent to you?

23 A I left New York City and state in a misguided
24 attempt to reduce my tax burden at the end of, I guess,
25 2010. And so I'm a little confused as to why this

1 address would be for the 2010 year. I didn't think – I
 2 guess I had this – I got this apartment at the end of
 3 2010.
 4 Q So does – did – in your experience, are W-2's
 5 describing your wages for a tax year sent after that tax
 6 year concludes?
 7 A Correct.
 8 Q So this would have been sent in early 2011; is
 9 that correct?
 10 A Yes, sir.
 11 Q And in early 2011, were you living in Miami,
 12 Florida?
 13 A I was living in the Federation of St. Kitts and
 14 Nevis, and I used a Florida address for my U.S. address.
 15 Q Okay. And is that the – is the Florida
 16 address that's included on this W-2 the Florida address
 17 you used when you were living in St. Kitts?
 18 A Yes, Sir.
 19 Q Okay. So earlier when you testified that that
 20 was a residence, is that not – is that not right?
 21 A It is a resident – a residential apartment.
 22 Q But you didn't live there?
 23 A I didn't spend as much time there as I spent in
 24 St. Kitts.
 25 Q Okay.

1 BY MR. BOHR:
 2 Q At any time did you rent that address in
 3 Florida out to someone else?
 4 A I – I believe so but I would – I would say
 5 that I did but I don't recall definitively.
 6 BY MR. BAGNALL:
 7 Q Did – why did you live in St. Kitts?
 8 A At this time I was fearful of the medium term
 9 future of the stability of the world, and I was seeking
 10 out a second citizenship.
 11 Q And why would a second citizenship help with
 12 the issues caused by the lack of stability in the world?
 13 A St. Kitts is a member of the European Union and
 14 allows for individuals to reside in the E.U., which is a
 15 favorable alternative jurisdiction and place to live.
 16 And to the degree that things went very poorly in the
 17 United States through very terrible economic policy, of
 18 which I was fearful, I liked the idea of having the
 19 opportunity to live elsewhere if that materialized.
 20 Q Okay. Did you gain residency in St. Kitts?
 21 A I did not.
 22 Q Did you ever gain residency in the European
 23 Union?
 24 A No, I did not.
 25 Q Okay. What – what were the outcomes in the

1 United States that you were worried would come to pass
 2 and would require you to leave the country?
 3 A I was worried of hyper-inflation and a collapse
 4 of the U.S. dollar, and associated politic developments
 5 that would, you know, be characterized as a deviation
 6 from the general historical spirit of the United States.
 7 BY MR. BOCKIN:
 8 Q What sort of political outcomes are you
 9 referring to?
 10 A Fascism, you know, non-democratic
 11 eventualities.
 12 Q Did any of the outcomes that you were worried
 13 about ever come to pass?
 14 A Absolutely not.
 15 Q Okay.
 16 BY MR. BAGNALL:
 17 Q Was there ever a time when you had an agreement
 18 with Jim Hull or Hull Storey Gibson that Hull Storey
 19 Gibson would forward you or pay to you in advance the –
 20 your portion of the management fees that you had earned
 21 through Geier Group or Geier Capital and that you would
 22 reimburse Hull Storey Gibson once those fees were paid by
 23 GISF?
 24 A There may have been discussion to that effect,
 25 but that's not my recollection.

1 Q Okay.
 2 BY MR. BOCKIN:
 3 Q What exactly – you testified earlier that you
 4 receive this money for investment advice that you gave to
 5 Hull Storey Gibson. What investment advice did you give
 6 them?
 7 MR. FERRIGNO: Was it investment advice or
 8 consulting services?
 9 THE WITNESS: Yeah, just general market
 10 commentary.
 11 BY MR. BOCKIN:
 12 Q What general market commentary did you provide?
 13 A Guidance on my experience at Deutsche Bank and
 14 the contacts I had in regards to interest rates and
 15 general market forecasting.
 16 Q And who did you provide that advice to?
 17 A Jim Hull.
 18 BY MR. BAGNALL:
 19 Q How much time did you spend giving that advice
 20 in 2010?
 21 A Effectively daily.
 22 Q And what – how were you able to differentiate,
 23 if at all, between the advice you were giving Mr. Hull
 24 daily in connection with the payments that are described
 25 in Exhibit 51, and your – on the one hand, and your work

1 on behalf of GISF on the other?

2 A I would say that the work – the general advice
3 I provided played a role in setting policy for GISF, but
4 not all of GISF's actions were captured within the advice
5 I gave Jim about general market forecasting.

6 For example, you know, the direction of
7 interest rates, he was running a construction company at
8 this point in time and he was submitting multimillion
9 dollar bids that required the use of various commodity
10 inputs and we discussed hedging those commodity inputs,
11 as an example.

12 Q Okay. And I think – would it be fair then to
13 say that Hull Storey Gibson was a client of yours?

14 A Not an investment advisory client, no.

15 Q And so that – that wasn't investment advice?
16 Advice on how to hedge a commodity? How to – how to
17 deal with interest rates? None of those things were –
18 were investment advice?

19 A No, I think they were, you know, general
20 research and you know, we didn't carry out any of that.

21 Q What do you mean you didn't carry out –

22 A We didn't execute any trades on behalf of Hull
23 Storey Gibson.

24 Q So Hull Storey Gibson didn't execute the
25 contracts that you were describing a moment ago?

1 A No, they did not.

2 Q So Hull Storey Gibson wasn't executing
3 construction contracts for which commodities hedging was
4 necessary?

5 A They engaged in agreements for construction.
6 They never took my advice and never bought or sold any
7 futures contracts.

8 Q Okay. Did your advice that you provided
9 regarding on interest rates, were those ever incorporated
10 in any – to any of the agreements that Hull Storey
11 Gibson executed during the time you were consulting for
12 them in 2010?

13 A Not specifically to – not to my knowledge, no.
14 I think it was more, you know, a general view that
15 interest rates, another incorrect view, but I think at
16 this time my view was that interest rates would likely be
17 rising, and that took longer than I had anticipated.

18 Q Did – to your knowledge, did Mr. Hull – was
19 it Mr. Hull that you were communicating these thoughts
20 to? Is that right?

21 A Yes, sir.

22 Q Okay. To your knowledge, did Mr. Hull
23 incorporate the advice you were providing to him to his
24 thinking with respect to his Hull Storey Gibson business?

25 A Yes.

1 Q He did?

2 A I – I would imagine.

3 Q Okay. So –

4 A Because he took the time and so forth to engage
5 in this.

6 Q Okay. So with that in mind, why isn't it that
7 your advice that you provided him with respect to
8 commodities investment advice?

9 A Because I wouldn't characterize it as having a
10 fiduciary responsibility because I – we didn't manage
11 money or affect trades or – and so forth

12 Q Okay. So –

13 A I would say, you know, it was much more akin to
14 people subscribing to a research service and hearing what
15 someone, you know, thinks about, you know, markets.

16 Q Okay.

17 BY MR. BOCKIN:

18 Q Did you provide any investment advice to Jim
19 Hull personally?

20 A Yes.

21 Q Was this money part of that payment for that
22 investment advice that you provided to Jim Hull?

23 A The – not to my – that wouldn't be my
24 understanding, no.

25 Q How can you differentiate when you're talking

1 to Jim Hull about interest rates and commodities, you're
2 talking to him daily, I think you said; how do you
3 differentiate that from this consulting that you're
4 doing, talking about the same things?

5 A Well, they're the same – they are the same
6 thing. I'm not sure what --

7 Q Well, you're talking to him – you're advising
8 him in his individual capacity in his investments;
9 correct?

10 A In that capacity I would say it's the TRX and
11 Geier – related GISF – GISF and then his outside
12 account that pursued a similar strategy; that one I would
13 call investment advice.

14 Q So none of the advice that you gave him that
15 was the result of this consulting agreement carried over
16 into the investment advice that you gave Jim Hull?

17 A As I said, I think that that – those
18 discussions played a role in establishing general views
19 that were then employed to carry out investments. But on
20 a standalone basis, I don't see it as investment advice,
21 no.

22 Q Okay. How do you differentiate? I mean, you
23 didn't give him one set of advice at Hull Storey Gibson
24 and then another set of advice for his individual
25 capacity, did you?

1 A It was different advice, because one was an
2 order to execute trades, and one was simply market
3 forecasting commentary.

4 Q Well, here, let me make it simpler. You had a
5 certain view about what was going to happen with interest
6 rates, for example; correct?

7 A Yes, sir.

8 Q And you talked to Jim Hull about that?

9 A Yes, sir.

10 Q And so how do you differentiate, you know,
11 here's the -- here's what I think's going to happen with
12 interest rates, the consulting for Hull Storey Gibson
13 versus here's what I'm thinking's going to happen with
14 interest rates in your personal capacity?

15 A Because he can use the view I have of interest
16 rates generally to manage his liability structure for his
17 real estate business without involving me in that.

18 But --

19 Q But that also affects his personal investing,
20 doesn't it? Or it could?

21 A What affects his -- I'm sorry; what's your
22 question?

23 Q Your views, your guidance, your counsel on
24 what's going to happen with interest rates could affect
25 Mr. Hull's investments in his personal capacity.

1 Q Are you not running a hedge fund?

2 MR. FERRIGNO: Did you hedge the gold position?

3 THE WITNESS: No, I don't recall hedging
4 anything. And the commodities that we're discussing in
5 the Hull Storey Gibson was oil and coal and you know,
6 various items for which there isn't a -- in some cases
7 financial contracts. And we talked about ways to --
8 hedges that could work that have some correlation to
9 those underlyings. But they are very different.

10 BY MR. BOCKIN:

11 Q Let me make this easy for you. You advised Jim
12 Hull regarding his TRX shares, didn't you?

13 A Yes, sir.

14 Q Okay. And you advised the fund about TRX
15 shares, did you not?

16 A Yes, sir.

17 Q You did hedges in the fund for TRX shares, did
18 you not?

19 A No.

20 Q You never sold a put for TRX shares?

21 A Yes, I sold a put.

22 Q Would that be considered a hedge?

23 A No, I don't -- I don't think so.

24 Q Okay.

25 BY MR. BOHR:

1 A Precisely. I agree. And I said that, you
2 know, everything that I said to him in the capacity as a
3 consultant for the real estate business was relevant in
4 my capacity as his investment advisor.

5 Q So then the question --

6 A But not -- but not vice versa.

7 Q No, my question to you is how do you parse out
8 the payments? If he's getting the same advice about
9 interest rates, he uses part of it for his personal
10 capacity, part of it he's running Hull Storey Gibson, how
11 do you parse out these payments?

12 A Okay, I see what you're saying. Well, I
13 wouldn't be offering advice, you know, specific to -- I
14 think that they are somewhat different. In talking about
15 commodity hedging, generally and how that works, talking
16 about, you know, interest rates and their directionality,
17 insofar as it affects, you know, planning your maturity
18 curve for the real estate business, I think those are --
19 those are different.

20 Q But you, in fact, engaged in commodity hedging
21 within GISF, didn't you?

22 A No.

23 Q Explain how you didn't. Isn't gold a
24 commodity?

25 A Yes.

1 Q Did you ever buy a put in TRX shares for the
2 fund?

3 A For the fund, no.

4 BY MR. BAGNALL:

5 Q Let me ask this question; were -- for --
6 what -- you testified a moment ago that you were Mr.
7 Hull's investment advisor in his personal capacity.

8 A Yes, sir.

9 MR. FERRIGNO: Well, investment advisor or did
10 you say --

11 MR. BAGNALL: He said --

12 MR. FERRIGNO: Did you testify --

13 THE WITNESS: An investment --

14 MR. FERRIGNO: He gave some investment advice.

15 MR. BAGNALL: No, he testified that he was Mr.
16 Hull's investment advisor.

17 MR. FERRIGNO: Is that -- is that what you were
18 talking about?

19 THE WITNESS: We had an advisory relationship.

20 MR. BAGNALL: Okay.

21 BY MR. BAGNALL:

22 Q And were you compensated for that advice that
23 you provided to Mr. Hull in his personal capacity?

24 A No. I think that was as a result of, you know,
25 his overwhelming participation in GISF.

1 Q So was it then agreed formally or informally
2 that the management fees and incentive fees that he was
3 paying in connection with his investment in GISF were
4 sufficient to cover the investment advisory services you
5 provided to him in his personal capacity outside the
6 fund?
7 A Yes, sir.
8 Q Okay.
9 MR. FERRIGNO: But there wasn't a quid pro quo
10 there, though, was there? You were entitled to the fees
11 pursuant to the operating agreement; correct?
12 THE WITNESS: Correct.
13 MR. FERRIGNO: Yeah. You already had that
14 coming to you from GISF?
15 THE WITNESS: Right.
16 BY MR. BAGNALL:
17 Q Could Mr. --
18 A I just -- I mean, I -- I essentially gave it to
19 them gratis.
20 Q Why -- well, that's different than what you
21 just said, right? You just said that there was an
22 agreement, formally or informally that management fees or
23 incentive fees that he was paying in connection with GISF
24 would also cover the advisory services you were
25 providing --

1 A An agreement --
2 Q Hold on, let me finish the question.
3 A I'm sorry. I'm sorry.
4 Q -- in his personal capacity. You said yes to
5 that question. Are you changing that testimony now?
6 MR. FERRIGNO: Do you want to supplement your
7 answer?
8 THE WITNESS: Yeah, I would like to supplement
9 it.
10 BY MR. BAGNALL:
11 Q Please do.
12 A Implied and agreement is that there was a
13 discussion of some form between the two of us, and no,
14 that did not occur. It is my -- it would be in my
15 understanding and that was my understanding that based
16 upon his, you know, commitment to the fund that I was
17 happy to, you know, provide investment advice to him on
18 his personal account.
19 Q Okay. And what -- was Mr. Hull able to
20 withdraw his funds from GISF?
21 A Yes.
22 Q What would have happened if he had done so?
23 A He would receive money in exchange for his -- a
24 reduction in the capital account.
25 Q What would happen -- would GISF have continued

1 to operate?
2 A Presumably I -- if he had withdrawn in full?
3 Q Correct. He had redeemed his entire investment
4 in GISF.
5 A Then I think that that would materially change
6 the nature -- I mean, the fund that it would be very
7 likely that no, that the fund would not continue.
8 Q Okay. So did -- in part did you provide
9 investment advisory services to Mr. Hull outside of the
10 fund to help entice him to keep his money in GISF?
11 A No. I've -- it was -- no.
12 Q So why were you providing free advisory
13 services to Mr. Hull?
14 A Because he was a good client and --
15 Q How was Mr. Hull your client?
16 A He was -- he sought my advice and we maintained
17 a relationship to manage an outside account of his.
18 Q Okay. So when you say "he's a good client,"
19 what do you mean by "good client"?
20 A He's a good person.
21 Q Okay. So you -- so who -- what other
22 individuals did you provide investment advisory services
23 to because they were a good person?
24 A My father.
25 Q Okay.

1 A Giovanni Marzullo and Suejin Jo.
2 Q Okay.
3 A And that would be it.
4 Q Okay. Those are all -- all the people you just
5 mentioned are also investors in GISF or were investors in
6 GISF; correct?
7 A Yes, sir.
8 Q Okay.
9 MR. FERRIGNO: Is Suejin an investor in GISF?
10 THE WITNESS: Only insofar as she's married to
11 Giovanni Marzullo.
12 MR. FERRIGNO: Okay.
13 BY MR. BAGNALL:
14 Q Their names, Suejin Jo and Giovanni Marzullo,
15 both appear on the account for them at GISF; is that
16 correct?
17 A I don't believe so.
18 Q Who's --
19 A I think that only Giovanni Marzullo's name
20 appears.
21 Q Okay. Did you provide investment advisory
22 services to any of Mr. Hull's family members?
23 A No.
24 Q To his children?
25 A No.

1 Q Okay.

2 MR. BAGNALL: Anybody have anything else on

3 Exhibit 51?

4 (No response.)

5 MR. BAGNALL: I'll take back Exhibit 51.

6 BY MR. BOHR:

7 Q Were there any other person -- individuals or

8 entities to whom you provided investment advisory

9 services for any reason?

10 A No, not to my knowledge.

11 Q The persons we described already, did you have

12 documented in any form your investment advisory

13 relationship with them?

14 A No.

15 BY MR. BOCKIN:

16 Q Did that investment advisory relationship begin

17 in 2009, the same time as the fund?

18 A So all of those people had preceded the fund.

19 Q They preceded the fund. So you were providing

20 individual investment advice to all of those people

21 before the fund came into existence?

22 A Yes, sir.

23 BY MR. BOHR:

24 Q Did you get any compensation for giving advice

25 to your father?

1 A No, sir.

2 Q Did you -- investment advice; you understand

3 mean investment advice?

4 A Yes, sir.

5 Q Did you get any compensation for giving

6 investment advice to Giovanni or Suejin Marzullo?

7 A No, sir.

8 Q Did you get any compensation for giving

9 investment advice to Francesca Marzullo?

10 A No, sir.

11 MR. BOHR: Done.

12 (SEC Exhibit No. 52 was marked

13 for identification.)

14 BY MR. BAGNALL:

15 Q Okay, I'm going to hand you now what's been

16 marked as Exhibit 52. Mr. Gibson, could you please take

17 a look at it and let me know when you're done.

18 A I'm ready.

19 Q Okay. Do you recognize Exhibit 52, Mr. Gibson?

20 A This is the year-end audit performed by

21 Rothstein Kass, GISF for the year 2010.

22 Q And you recognize it as such?

23 A Yes.

24 Q Okay. Could you please turn the page? Do you

25 see as we talked about before, the Bates stamp,

1 SEC-STRELITZ-T-P-0000062; could you please turn to the

2 page ending 067?

3 A Okay.

4 Q And it describes on this page "Expenses

5 Management Fee, \$223,351." Do you see that?

6 A Yes.

7 Q Is that the amount of management fees that GISF

8 paid to either Geier Capital or Geier Group in 2010?

9 A Yes, sir.

10 Q And was some portion at least of the services

11 that were provided in return for that money investment

12 advisory services to GISF?

13 A Yes.

14 Q Okay. What -- do you see the third entry under

15 the "Expenses" subsection as "Administrative Fee,

16 \$37,730."

17 A Yes.

18 Q What is that administrative fee?

19 A I believe that's for Kaufman Rossin Fund

20 Services.

21 Q Okay. And then "Professional Fees and Other"

22 is \$107,651. Do you see that?

23 A Yes.

24 Q What are those professional fees and other?

25 A I do not recognize them.

1 Q Okay. Going back to the management fee for a

2 moment, how is that fee paid? How did GISF pay that fee?

3 A A bookkeeping entry. So GISF would have paid

4 \$223,351 in cash. Practically speaking, my recollection

5 is that we immediately converted that into a capital

6 account in the -- alongside the other investors.

7 Q "In the capital account," who's name?

8 A Geier Capital.

9 Q Okay. Did you have the rights to any portion

10 of that money?

11 A Fifty percent.

12 Q So approximately \$111,000?

13 A Yes, sir.

14 Q Give or take.

15 A Yes, sir.

16 Q Did you have the authority to take that

17 approximately \$111,000 out of the fund?

18 A That was my understanding. Yes, sir.

19 Q Okay. And you controlled that money?

20 A Yes, sir.

21 Q Okay.

22 MR. BAGNALL: Does anybody have any other

23 questions on this? Okay, I'll take back Exhibit 52.

24 Could you mark this next, please?

25 (SEC Exhibit No. 53 was marked

1 for identification.)
 2 BY MR. BAGNALL:
 3 Q Okay, Mr. Gibson, I'm going to hand you what's
 4 been marked as Exhibit 53. Could you please take a look
 5 at Exhibit 53 and let me know when you're done?
 6 A I'm ready.
 7 Q What is Exhibit 53, Mr. Gibson?
 8 A The tax return for Geier Capital.
 9 Q For what year?
 10 A 2010.
 11 Q Okay. And you recognize that as such?
 12 A Yes.
 13 Q Okay. Could you please turn to the page ending
 14 253?
 15 A Okay.
 16 Q This is a Summary of Schedule K-1. And there's
 17 an Entry 11(c), that's described as Section 1256,
 18 Contracts and Straddle. Do you see that?
 19 A I do.
 20 Q In the entry under your name, there is 688,529,
 21 presumably dollars; is that right?
 22 A Yes.
 23 Q What is the Section 1256, Contract and
 24 Straddle?
 25 A I believe that Section 1256 contracts are

1 commodity contracts. And Section 1256 is a tax treatment
 2 for, as I understand it, if you own a commodity future
 3 that is of a duration less than a year, but you continue
 4 to roll it, the IRS will allow that to qualify under
 5 Section 1256 to achieve some sort of superior tax
 6 treatment.
 7 Q Um-hmm.
 8 A So I believe that this relates to our interest
 9 in the year 2010 in the Rogers International Commodities
 10 Index Fund.
 11 Q Okay. Do you see on the same page that
 12 you're — underneath the portion of Page 253 of this
 13 Exhibit 53, that is — looks like a table with lines,
 14 there's a — on — just on plain white paper, "Capital
 15 Accounts, Beginning of the Year."
 16 A Um-hmm.
 17 Q "Contributions," under you is \$500.
 18 A Um-hmm.
 19 Q And then "Current Year Increase/Decrease," and
 20 there's an increase of 1,573,642, again presumably
 21 dollars; is that right?
 22 A Yes.
 23 Q Okay. What was the source of that
 24 approximately \$1.5 million increase?
 25 A The performance allocation for the year 2010.

1 Q Okay. And for what was that performance
 2 allocation paid?
 3 A The — it was equal to 15 percent of the gains
 4 of the members of the fund in excess of a 10 percent
 5 annual gain.
 6 Q So — so let me ask it a different way.
 7 Were — did you earn that 1.5 — approximately \$1.5
 8 million in return for the providing investment advisory
 9 services to the fund?
 10 A My understanding is that that's not how that's
 11 considered. That that rather this is a return on
 12 investment is how its typically treated.
 13 Q And so what was your — your investment was
 14 \$500; is that right? Do you see at the top —
 15 A I see the \$500. I'm not sure to what that
 16 refers. I mean, I invested more than \$500 into the fund.
 17 Q And this is Geier Capital, though.
 18 A Oh, all right.
 19 Q It's not GISF.
 20 A I see. I see, yes, sir. That's correct.
 21 That's right.
 22 Q So you invested \$500 into Geier Capital, right?
 23 A That's right.
 24 Q And that year you earned 1.5 — or you had an
 25 increase of 1.5 — approximately 1.5 million?

1 A Yes, sir.
 2 Q That you said was paid as the incentive fee,
 3 right?
 4 A Yes, sir.
 5 Q And I'm asking you what that incentive fee was
 6 paid to you for?
 7 A Right.
 8 Q And — and I don't mean the mechanics of the 15
 9 percent or 10 percent hurdle, I mean, in return for what
 10 were you being paid I — approximately \$1.5 million?
 11 A In the spirit of providing investment services
 12 to the fund.
 13 Q What does that mean, "in the spirit of
 14 providing investment services"?
 15 A I'm trying to answer your question as
 16 accurately as possible. I'm merely saying that I think
 17 that the advice was technically compensated by the
 18 management fees, and that the performance allocation is
 19 related to my participation as a general partner of the
 20 fund, but not necessarily specific to the advice I gave.
 21 Q But you — you're not a general partner of the
 22 fund, are you? Geier Capital is?
 23 A Geier Capital.
 24 Q Okay. So —
 25 A So it accrues to Geier Capital in its — as its

1 role as the general partner of the fund and my ownership
2 of Geier Capital

3 Q Okay. What services was Geier Capital
4 providing to the fund?

5 A It was the managing member. And provided
6 investment services

7 Q Okay. So were there – did it provide any
8 other services, other than investment services?

9 A No.

10 Q Okay. So then is it fair to say then that this
11 approximately \$1.5 million increase in your account there
12 was paid, at least in part, for Geier Capital's providing
13 investment services to GISF?

14 A I think there is a distinction between the
15 management fees and the performance allocation. And I
16 think the management fees cover the investment services
17 that were provided, and that the performance allocation
18 is a benefit of the participation I had in the fund.

19 Q And what forms the basis of that understanding?

20 A I would have to assert privilege.

21 Q Okay. Have you ever heard of this – the money
22 that we've been talking about here on Page 253, as – of
23 Exhibit 53, being referred to as an incentive allocation?

24 A Yes.

25 Q And so what is the – what is being incented?

1 you see in – shaded in grey, "Schedule M2."

2 A Yes, sir.

3 Q And then it says "Analysis of Partners Capital
4 Accounts."

5 A Yes, sir.

6 Q And under – actually, physically under the
7 words "Capital Accounts" four rows, there's an entry next
8 to the Number 3, "Net Income Per Books" of \$3,000,147 –
9 excuse me, let me say that again, \$3,147,283. Do you see
10 that?

11 A Yes, sir.

12 Q What – what was the source of that income to
13 Geier Capital in 2010?

14 A The performance allocation.

15 Q Okay. And – and could you turn the page to –
16 ending 262, and I think you testified before that you
17 were entitled to 50 percent of that performance
18 allocation; is that correct?

19 A Yes, sir.

20 Q And is that memorialized here on this page in
21 Part 2 where it lists you, Christopher M. Gibson, as the
22 50 percent owner of the entity?

23 A Yes, sir.

24 Q Okay.

25 MR. BAGNALL: Okay, does anybody have anything

1 A Participating in the fund. Being an investor
2 in the fund.

3 Q It's not – it's not, to your understanding,
4 incented to provide successful investment advice?

5 A I would say this; that the basis of there being
6 both a management fee and an incentive allocation and
7 that distinction is in order to achieve better tax
8 treatment on the incentive allocation, and that the IRS
9 takes the position that that's not a fee. It's not a fee
10 for services.

11 Q Which one, the performance allocation?

12 A The performance allocation.

13 Q It's -- okay. And what's the -- your basis for
14 that understanding?

15 A I would have to assert privilege.

16 Q Okay. Could you please turn to the page ending
17 261. Do you see in Schedule M2 at the bottom of that
18 page, "Analysis of Partners Capital Accounts."

19 A Yes, sir.

20 Q Box 3, "Net Income/Loss Per Books," there's an
21 entry of \$3,147,283. Okay, let me start over, I see
22 you're lost there.

23 The page ending 261.

24 A Yes, sir, I'm there now.

25 Q Okay. Bottom left hand corner of that page, do

1 else on this?

2 (No response.)

3 MR. BAGNALL: Okay, I'll take back Exhibit 53,
4 please.

5 Okay, could you mark this next in line, please?

6 (SEC Exhibit No. 54 was marked
7 for identification.)

8 BY MR. BAGNALL:

9 Q I'm going to hand you what's been marked as
10 Exhibit 54, Mr. Gibson. Could you please look it over
11 and let me know when you're done?

12 A I'm finished.

13 MR. FERRIGNO: Just a second, let me catch up
14 to you.

15 THE WITNESS: Okay.

16 (Pause.)

17 MR. BAGNALL: You ready?

18 THE WITNESS: Yes, sir.

19 MR. FERRIGNO: Yeah, go ahead.

20 MR. BAGNALL: Okay.

21 BY MR. BAGNALL:

22 Q Do you recognize Exhibit 54, Mr. Gibson?

23 A Yes, sir.

24 Q What is it?

25 A It's an email exchange between myself and the

1 team of individuals managing our account at Kaufman
2 Rossin Fund Services.

3 Q Okay. And if we could just focus on the most
4 recent email in the thread, which is the one at the top
5 of the page ending 988 of Exhibit 54. You wrote,
6 "Fortunately, Geier Capital did not exist in 2009. 2010
7 is its first year and its sole source of revenue was the
8 incentive allocation." And then parenthetically you
9 added, "(It had no expenses and was not an operating
10 entity.)"

11 Do you -- did I read that correctly?

12 A Yes.

13 Q Okay. Does -- does that confirm your memory
14 that the monies that we just -- you testified to in
15 Exhibit 53 came as the incentive allocation? Let me ask
16 that question again more clearly, okay?

17 Does that -- does this confirm, you know, in
18 time, February 2011, that all of the income that we just
19 described -- discussed rather in Exhibit 53 to Geier
20 Capital was payment of the incentive allocation by GISF?

21 A Yes, sir.

22 Q Okay. What did you mean when you wrote in the
23 parenthetical, "was not an operating entity"?

24 A I think that's a very poorly worded phrase. It
25 think all I meant to say was that we were not going to be

1 A For my -- I mean, I -- I was concerned about
2 myself.

3 Q Okay. And why were you concerned about
4 yourself?

5 A Because I had no money and I needed to
6 determine how much -- how I was going to fund this tax
7 liability.

8 Q Okay.

9 MR. BAGNALL: Do you have --

10 MR. BOCKIN: Could I see Exhibit 34, please,
11 George?

12 MR. BAGNALL: Sure.

13 (Pause.)

14 MR. BOCKIN: Do you have the original 35?

15 MR. BAGNALL: The original 35?

16 THE WITNESS: Yes.

17 MR. BAGNALL: Would you like --

18 MR. BOCKIN: Yeah.

19 BY MR. BOCKIN:

20 Q Yeah, please take a look at 35, and I'm going
21 to refer you to Page 075 at the bottom. Now, here this
22 talks about the expenses of the company generally, and I
23 think you testified earlier that Geier Capital was now
24 acting as the investment manager; is that right?

25 A Yes.

1 netting out any expenses for this. And that the basis of
2 this exchange is to determine the estimated tax liability
3 because I recognized I had a large one, and I needed to
4 make a determination as to how I was going to fund that
5 by April when taxes are due. So I think that this is
6 inaccurate to say it was not an operating entity.

7 Q "Inaccurate," as in not accurate?

8 A Correct, not --

9 Q Sometimes -- I'm doing that because sometimes
10 when you read this later the person who transcribes this
11 doesn't hear the "I N" part of that.

12 A I --

13 Q So I just want to make sure it's clear.

14 A I appreciate that, thank you.

15 Not accurate to say it was not an operating
16 entity. It of course was an operating entity, an
17 operating LLC, but I meant to emphasize that insofar as
18 they're trying to make a quick back of the hand, if you
19 will, assessment of our tax liability, they need not be
20 considering substantial expenses that would be netted
21 against this. That basically the gross income is
22 probably equal to the net.

23 Q Okay. And when you -- you described earlier or
24 testified earlier about a large tax bill, were you
25 meaning for yourself personally or for Geier Capital?

1 Q And here you indicate the investment manager's
2 responsible for --

3 A When you say "now," I'm sorry? I apologize
4 but --

5 Q Now, I'm looking at -- in this document.

6 A Uh-huh.

7 Q You -- this document indicates the investment
8 manager's responsible for and pays or causes to be paid
9 overhead expenses, including the following: office rent;
10 furniture and fixtures; stationery; secretary, internal
11 administrative services; salaries and bonuses;
12 entertainment expenses; employee insurance; and payroll
13 taxes. So when you created the operating agreement you
14 indicated that Geier Capital would be paying those
15 expenses; is that right?

16 A Would be in charge of -- of determining who
17 would pay those expenses, yes.

18 Q Well, it says, "Responsible for and pays or
19 causes to be paid," doesn't it?

20 A Or causes to be paid.

21 Q Okay. So you tell -- in this document, the
22 operating agreement, you explain that the investment
23 advisor's going to be responsible for and pay those
24 expenses I just mentioned.

25 MR. FERRIGNO: What you just said --

1 BY MR. BOCKIN:
 2 Q Yes, correct?
 3 MR. FERRIGNO: — or causes to be paid?
 4 BY MR. BOCKIN:
 5 Q Is that what this document indicates?
 6 A Or causes to be paid, yes.
 7 Q Okay. And back to —
 8 MR. BOCKIN: I'm sorry, George, what exhibit
 9 number?
 10 MR. BAGNALL: Thirty — Fifty-four.
 11 BY MR. BAGNALL:
 12 Q Back to Exhibit 54; you're now telling the fund
 13 administrator that Geier Capital had no expenses; is that
 14 correct? Did Geier Capital have no expenses in 2010?
 15 A Geier Capital did not net expenses against that
 16 income, no.
 17 Q So it had no expenses?
 18 MR. FERRIGNO: For purposes of the tax return?
 19 THE WITNESS: For the purposes of the tax
 20 return, correct.
 21 MR. BOCKIN: Okay.
 22 BY MR. BAGNALL:
 23 Q So who did have expenses then? Or what had
 24 expenses then?
 25 A Geier Group.

1 Q And is your testimony then that Geier Group was
 2 allowed to pay those taxes, even though they had never —
 3 it had never been engaged as the investment manager
 4 because Geier Capital allowed it to do so?
 5 MR. FERRIGNO: The — your question said taxes,
 6 I think. Is that what you intended?
 7 MR. BAGNALL: It is not what I intended.
 8 BY MR. BAGNALL:
 9 Q What I'm trying to say is are you — is it fair
 10 to say is it true that Geier Group had these expenses and
 11 not Geier Capital, because Geier Capital allowed it to
 12 pay these expenses because Geier Group had never been
 13 engaged as the investment manager; correct?
 14 A That's correct. Yes, sir.
 15 Q Okay.
 16 MR. FERRIGNO: Well, did the — did Geier Group
 17 have expenses or the fund or both?
 18 THE WITNESS: I would say the managing member
 19 and investment manager had expenses, and the managing
 20 member and investment manager of Geier Capital caused
 21 those expenses to be paid by Geier Group.
 22 MR. BAGNALL: Okay.
 23 BY MR. BAGNALL:
 24 Q But the fact remains, right, that the
 25 investment manager was only the investment manager

1 because Geier Capital allowed it to serve in that
 2 capacity without any formal engagement of the entity,
 3 right?
 4 A Yes, sir.
 5 MR. BAGNALL: And I'll take back 54 unless
 6 anybody else has any questions.
 7 (No response.)
 8 MR. BAGNALL: Could you mark this next, please?
 9 (SEC Exhibit No. 55 was marked
 10 for identification.)
 11 BY MR. BAGNALL:
 12 Q Okay, I'm going to hand you, Mr. Gibson, what's
 13 been marked as Exhibit 55. Can you look at it and let me
 14 know when you're done, please?
 15 A Yes, sir.
 16 Q Okay. What is — what is Exhibit 55?
 17 A It's the tax return for the year 2010 for Geier
 18 Group, LLC.
 19 Q Okay. And on that first page, the page ending
 20 168 of Exhibit 55, in Box 1(a), it's about a third of the
 21 way down, it says "Gross Receipts or Sales," and there's
 22 an entry for \$221,200. Do you see that?
 23 A Yes, sir.
 24 Q For what were those \$221 — \$221,200 paid?
 25 A Management fees from Geier International

1 Strategies Fund for investment advice.
 2 Q Okay. And did — at the time, during all of
 3 2010, did you have the right to 50 percent of those fees?
 4 A Yes, sir.
 5 Q Okay. And do you see, if we could — if I
 6 could have you turn to Page — the page ending 175.
 7 A Yes, sir.
 8 Q This is a part of a document, that at least in
 9 part shows deductions from Form 1065. Do you see that in
 10 the — about a third, again about a third of the way
 11 down?
 12 A Yes, sir.
 13 Q And under the description, the second entry is
 14 Administration, and there's an entry for \$75,000. Do you
 15 see that?
 16 A Yes, sir.
 17 Q What was that paid for?
 18 A I do not recall, but it may have been paid to
 19 Hull Storey Retail Group.
 20 Q For what purpose?
 21 A Reimbursement of that salary.
 22 Q And why would that have been done?
 23 A The — I don't recall.
 24 Q When you say "that salary," are you referring
 25 to the amount that we saw on the W-2 that was issued to

1 you in 2010?
 2 A Yes.
 3 Q Okay. And why would Geier Group be paying Hull
 4 Storey Gibson your salary for services that you provided
 5 to Hull Storey Gibson that weren't related in any way to
 6 GISF?
 7 A Then I -- I must be mistaken as to --
 8 Q And --
 9 A I mean, I did give advice outside of -- outside
 10 of what I was giving advice to the fund, that was
 11 distinct. But I didn't recall that this had been
 12 reimbursed.
 13 MR. FERRIGNO: Let me ask a question?
 14 MR. BAGNALL: Please.
 15 MR. FERRIGNO: Mr. Gibson, back in I guess in
 16 2010, did you have health insurance?
 17 THE WITNESS: Yes.
 18 MR. FERRIGNO: How did you acquire your health
 19 insurance?
 20 THE WITNESS: Through Administaff and Hull
 21 Storey Gibson.
 22 MR. FERRIGNO: You were on the Hull Storey
 23 Gibson health plan?
 24 THE WITNESS: Yes. Yes.
 25 BY MR. BAGNALL:

1 Q So my question remains, why would Geier Group
 2 pay -- reimburse the payment of your salary from Hull
 3 Storey Gibson when your work to Hull Storey Gibson was
 4 not related to your work for GISF?
 5 A Well, I did have complete work that was
 6 unrelated to my work for GISF for Hull Storey Gibson, and
 7 clearly I wasn't compensated for that. My recollection
 8 was incorrect.
 9 Q I see. So Hull Storey Gibson was, in fact,
 10 fronting your salary, for lack of a better term, on
 11 behalf of Geier Group?
 12 A It certainly appears that way, yes.
 13 Q Okay. So then thinking back then to your
 14 testimony about your W-2, which I can show you, which is
 15 Exhibit 51 if you would like to see it again, for what
 16 were you being paid?
 17 A This would appear that I was -- they were from
 18 a practical perspective, assisting in lowering the costs
 19 of and complexity of managing Geier Group by allowing me
 20 to take my salary and healthcare through a system that
 21 they had already set up. And that I thereafter
 22 reimbursed them.
 23 Q Let me -- let me ask it a different way. What
 24 were you providing in return for receiving \$73,953.51?
 25 A From Hull Storey Gibson?

1 Q Correct. Well, it says that you received it
 2 from Administaff Companies --
 3 A Yes, which is -- I've stipulated is Hull Storey
 4 Gibson.
 5 Q Okay.
 6 A And so I would say I received 73,953 in
 7 exchange for giving them \$75,000.
 8 Q Okay. And was that \$75,000, that was earned in
 9 connection with your work for Geier Group; is that right?
 10 A Yes, sir.
 11 Q And so in return for the \$75,000 that came from
 12 Geier Group, at least some of what you were providing in
 13 return for that money was investment advisory services to
 14 GISF; correct?
 15 A All of it.
 16 Q All of it. Okay, I'll take back 51.
 17 MR. BAGNALL: Let me see, I'm not sure I'm done
 18 with that one.
 19 BY MR. BAGNALL:
 20 Q If you could turn to the page ending 177,
 21 please. Do you see the address that's listed for you?
 22 This is -- this appears to be your K-1; is that right,
 23 for 2010, for Geier Group?
 24 A Yes, sir.
 25 Q Okay. The address that's listed there is #38

1 Calypso Bay, Basseterre, St. Kitts, West Indies. Do you
 2 see that --
 3 A Yes.
 4 Q -- in Box F?
 5 Is this the St. Kitts address where you were
 6 living that you testified about earlier today?
 7 A Yes, sir.
 8 Q Okay. Do you see here, same page, Box L,
 9 "Partners Capital Account Analysis."
 10 A Yes, sir.
 11 Q Current year increase for you is \$41,867. Do
 12 you see that?
 13 A Yes, sir.
 14 Q What was the source of that increase?
 15 A I think that would be the difference between
 16 the 50 percent of the 223 or 111, and the 75 that was
 17 reimbursed to Hull Storey Gibson.
 18 Q Okay. And what -- so was that -- let me -- let
 19 me ask how this 75 -- well, table that just for a second,
 20 actually.
 21 And then do you see on the right hand side,
 22 Part 3, Box 14(a) and (c), there is an entry for you of
 23 Self-Employment Earnings, \$4,788 and then \$110,600. Do
 24 you see that?
 25 A Yes, sir.

1 Q What were the source of the – first, the
2 \$4,788?
3 A I think I cashed out a 401(k) that year. That
4 looks about the same, the right number there. I'm not
5 sure if that's the case.
6 Q And why would that be reported on your Geier
7 Group K-1?
8 A Oh, then I guess it's not. I do not know what
9 this number is.
10 Q Okay. How about the next number in – that's
11 14(c), the self-employment earnings of \$110,600?
12 A I assume that is half of the 223.
13 Q Okay. And why is that classified as
14 self-employment earnings?
15 A I do not know.
16 Q Okay. And was the 75,000 that was paid back to
17 Hull Storey Gibson paid back from the full \$221,200? Or
18 was it paid back from only your 50 percent portion of
19 that money?
20 A My understanding is it was paid back from my 50
21 percent portion.
22 Q So does the math work out that way? If you
23 look at this, is \$110,600 half – that's half of 221 and
24 you're saying then that on Box L your – you only got an
25 increase of 41,000 because the 75 was taken out from that

1 110?
2 A Precisely.
3 Q Okay. Could you turn to the page ending 183,
4 please, and this – this appears to be a Georgia Form
5 700. Do you see that in the upper left hand corner?
6 A Yes, sir.
7 Q Okay. And can you look at – again, this is
8 for Geier Group, Box F, the kind of business it's – the
9 entry there is Investment Advisors.
10 Is that accurate?
11 (Witness examined the document.)
12 THE WITNESS: Yes, that that reflects the
13 general, you know, nature of the business, yes.
14 BY MR. BAGNALL:
15 Q Of Geier Group's business; correct?
16 A Yes.
17 Q Okay.
18 MR. BAGNALL: Anybody have any --
19 MR. BOCKIN: I do.
20 Q You've corrected your earlier testimony that
21 the W-2 income was for consulting services to Hull Storey
22 Gibson; correct?
23 MR. FERRIGNO: Well, could you elaborate on
24 that? I'm not sure what your --
25 BY MR. BOCKIN: I'm asking him a question.

1 BY MR. BOCKIN:
2 Q Are you correcting your testimony earlier that
3 the 73,000 in W-2 wages was for consulting services to
4 Hull Storey Gibson?
5 A I'm saying that – that the 73,000 was not for
6 consulting services to Hull Storey Gibson. Yes, sir.
7 Q It was actually for investment advisory
8 services for Geier Group; correct?
9 A Yes, sir.
10 Q I'm going to ask my earlier question again,
11 then. You provided independent investment advisory
12 advice to Jim Hull; correct?
13 A Yes, sir.
14 Q And you were being paid 75,000 to provide
15 investment advice to GISF; correct?
16 A Correct.
17 Q How do you differentiate the two when you're
18 providing investment advice to Jim Hull versus investment
19 advice to GISF?
20 A How do I?
21 Q How do you differentiate them?
22 A I serve both.
23 Q Jim Hull was paying both, wasn't he? He was
24 paying you for independent investment advisory services,
25 and for the fund?

1 MR. FERRIGNO: Did you testify they paid you
2 for investment – personal investment advice?
3 THE WITNESS: No, I --
4 BY MR. BOCKIN:
5 Q Where did the money come from?
6 MR. FERRIGNO: What money?
7 THE WITNESS: What money?
8 BY MR. BOCKIN:
9 Q The \$73,000; where did it come from?
10 A The 73,000 was paid by Geier Group to me to
11 perform investment services to Geier International
12 Strategies Fund.
13 Q Where did it initially come from?
14 A Geier International Strategies Fund.
15 Q No.
16 MR. BOCKIN: George, can you get out the W-2s?
17 THE WITNESS: You mean the cash?
18 BY MR. BOCKIN:
19 Q Yeah, where did the cash come from?
20 A Well, on – I think you're --
21 Q Wait, let me just – I don't want to confuse
22 you. I'm going to show you what's been marked as 51.
23 A With respect --
24 Q Wait, wait.
25 MR. FERRIGNO: Keep that one, that's --

1 THE WITNESS: Well, okay.

2 BY MR. BOCKIN:

3 Q There you go, you can have that one. I'm
4 looking at Exhibit 51 --

5 A With respect, the money did not come from Hull
6 Storey Gibson and Administraff. I mean, the cash
7 initially came there but then was re -- returned,
8 reimbursed, and so therefore, the beneficiary, the actual
9 payer of the money was not Hull Storey Gibson and
10 Administraff.

11 Q It was ultimately reimbursed; correct? But who
12 paid it first?

13 A You can't say that both Hull Storey Gibson and
14 Geier paid the money. It can't both be.

15 Q That's right, so I'm asking you who has an
16 account at Administraff Company?

17 A Hull Storey Gibson.

18 Q Okay. So the money originally came from Hull
19 Storey Gibson; correct?

20 A With the understanding that it would be
21 reimbursed definitely.

22 Q Okay. And it was ultimately reimbursed;
23 correct?

24 A Yes.

25 Q And it was reimbursed by Geier Group; correct?

1 have been zero.

2 Q Okay. So -- and in addition to getting --
3 Geier Group getting a zero percent interest rate on the
4 loan of \$75,000, you also got health insurance benefits;
5 is that right?

6 A For which I pay. The -- that is included in
7 the 75,000.

8 Q And you paid some portion of it or did you pay
9 all of it?

10 A I don't recall.

11 Q Okay. Did Hull Storey Gibson have a practice
12 of paying an employer portion of employees' health
13 benefits?

14 A I do not recall.

15 Q Okay. Was the payment arraignment whereby Hull
16 Storey Gibson would provide a zero percent interest loan
17 to Geier Group for your salary and so that you could get
18 health benefits disclosed to GISF's investors?

19 A Not to my knowledge, no.

20 MR. BAGNALL: Could you mark this next in line,
21 please?

22 (SEC Exhibit No. 56 was marked
23 for identification.)

24 BY MR. BOCKIN:

25 Q Did you receive advice from any of the counsel

1 A Yes. Yes, sir.

2 Q And it was reimbursed by Geier Group for
3 investment advisory services for GISF?

4 A Correct.

5 Q At the same time, you're providing independent
6 investment advice to Jim Hull; correct?

7 A Yes, sir.

8 Q Okay. So my question is, how do you parse out
9 what's being provided to Jim Hull and what's being
10 provided to GISF based on the money that you were paid?

11 A I am compensated for the money -- for the
12 advice I'm giving to GISF, and I'm not compensated for
13 the advice that I'm giving to Jim.

14 Q Okay. So even though he provided this money
15 originally to you, and then it was paid back, that was
16 not for any independent investment advice to him?

17 A That's correct.

18 Q Okay.

19 BY MR. BAGNALL:

20 Q So was the money that was paid initially by
21 Hull Storey Gibson, was that a loan to Geier Group?

22 A I would characterize it as that, yes.

23 Q What was the interest rate that was paid on
24 that loan?

25 A I don't think it was memorialized. It would

1 that we mentioned, and we can go through them each
2 individually, that this arrangement, the way that you
3 were paid, that it didn't present any conflict of
4 interest between Jim Hull, an independent investment
5 advisee, and the fund?

6 A I would have to assert privilege.

7 BY MR. BAGNALL:

8 Q I'm going to hand you what's been marked as
9 Exhibit 56. Mr. Gibson, could you please take a look at
10 it and let me know when you're done?

11 A I'm ready.

12 Q Okay. Do you recognize Exhibit 56, Mr. Gibson?

13 A It's an email from me to the accountant at Hull
14 Storey Gibson.

15 Q Okay. And it's -- the subject of the email is
16 "Geier -- Re: Geier Group and Capital Financials,"
17 correct?

18 A Yes, sir.

19 Q And did you draft the most recent email in the
20 thread, at least?

21 A Yes, sir.

22 Q Okay. And you write, "Debbie, please find
23 attached backup details from Charles Schwab where Geier
24 Group has an account.

25 "Summary: 110,000 in management fees received;

1 \$74,842.69 in short-term realized gains; 21,000 legal
 2 expenses paid; \$33.56 fees paid."
 3 Do you see that?
 4 A Yes, sir.
 5 Q Did I read it correctly?
 6 A Yes, sir.
 7 Q Okay. And then it follows, "In addition to
 8 making these income and expenses into the Geier Group
 9 income statement, could you also incorporate the amount I
 10 owe HSG for my \$75,000 salary? I can send a wire for
 11 that amount as soon as you advise the amount owed.
 12 "As far as Geier Group balance sheet, year-end
 13 value was \$180,441.83, from which the salary payable to
 14 HSG needs to be deducted."
 15 Do you see that?
 16 A Yes, sir.
 17 Q Okay. Did I read it correctly?
 18 A Yes, sir, you did.
 19 Q Okay. So what is the -- did -- does this
 20 confirm your -- your new memory, at least, that Hull
 21 Storey Gibson initially loaned \$75,000 for your salary to
 22 Geier Group?
 23 A Yes, sir.
 24 Q Okay. When you say in the, what would be the
 25 fifth paragraph, I guess -- excuse me, the fourth

1 paragraph that begins, "As far as Geier Group balance
 2 sheet, year-end value was \$180,441.83" --
 3 A Yes, sir.
 4 Q -- what -- what is that amount, 180,441.83?
 5 A I imagine that's the difference between the
 6 221,000 of total revenue and expenses.
 7 Q And which expenses?
 8 A I guess legal expenses of 21,000, but then
 9 there's another call it 20 missing.
 10 Q Um-hmm. Do you know what those 20 missing are?
 11 A No.
 12 Q Okay. Why -- why would the 75,000 be paid out
 13 of the 180,000 figure?
 14 A So I would like to amend my original -- so
 15 testimony I gave earlier. I think this indicates that my
 16 75 was taken out of the total, and the reason I had
 17 suspected that it was out of my half was because the
 18 numbers lined up on the K-1. But now I think that it
 19 appears that the reason that occurred is I wasn't taking
 20 into account the investment gains that we had in the
 21 Charles Schwab account. So I think if you net all of
 22 that up, that's how the numbers add up.
 23 So it would appear -- go ahead.
 24 Q I was just going to say, when you say "the
 25 investment returns in the Charles Schwab account," is

1 that the -- the entry under the summary paragraph that is
 2 second, 74,842.69?
 3 A Yes.
 4 Q Okay. So then if you took your 75,000 that was
 5 owed back to Hull Storey Gibson out of the total amount,
 6 didn't that -- doesn't that mean that your partners in
 7 Geier Group then paid some of your salary back to Hull
 8 Storey Gibson?
 9 A Yes.
 10 Q Okay. Were they aware that that happened?
 11 A Yes.
 12 Q How were they aware?
 13 A That makes sense. I was operating the -- the
 14 salary I took out of Geier Group was to run, to manage
 15 Geier Group and they didn't take salaries out of Geier
 16 Group, and they knew I was taking a salary out of Geier
 17 Group.
 18 Q But wouldn't your salary or shouldn't salary,
 19 rather, have come only from your portion --
 20 A No.
 21 Q -- of the money?
 22 A I don't see it that way, no.
 23 Q Why not?
 24 A Because I was the one managing the entity and
 25 it merited compensation.

1 Q And but wasn't your compensation your 50
 2 percent of the management fees?
 3 A No. I think that I had a salary above my
 4 ownership compensation.
 5 Q Where -- where would that salary be documented?
 6 A There was no documentation.
 7 Q Okay. Is there -- is there an operating
 8 agreement for Geier Group?
 9 A Not that I'm aware of. And that, you know --
 10 MR. FERRIGNO: No privilege.
 11 THE WITNESS: Yeah, and unfortunately I would
 12 have to assert privilege.
 13 MR. FERRIGNO: Well, you don't have to assert
 14 it.
 15 THE WITNESS: Yeah, sorry. Yeah.
 16 BY MR. BAGNALL:
 17 Q I'm a little confused. The existence of a
 18 Geier Group operating agreement is privileged?
 19 A No.
 20 MR. FERRIGNO: He -- just scrub that. He was
 21 going on beyond that.
 22 MR. BAGNALL: I see.
 23 THE WITNESS: Yeah.
 24 BY MR. BAGNALL:
 25 Q So you're not aware of one existing?

1 A I'm not aware of one existing.
 2 Q Are you aware of one ever existing?
 3 A No.
 4 Q Okay. How about for Geier Capital?
 5 A No.
 6 Q Okay. So you -- you've searched and you have
 7 not found an operating agreement for either Geier Capital
 8 or Geier Group; is that right?
 9 A That's correct.
 10 Q Okay.
 11 BY MR. BOHR:
 12 Q In any jurisdiction; Delaware, Georgia, the
 13 Caribbean?
 14 A Yes, sir. That's correct.
 15 MR. BAGNALL: Did you want to ask something,
 16 Greg?
 17 MR. BOCKIN: I do.
 18 BY MR. BOCKIN:
 19 Q So the 75,000 was paid by you, since it was
 20 taken off the top as we just established; correct?
 21 A Yes, sir.
 22 Q There was three members of Geier Group; you,
 23 Jim
 24 Hull and your father; correct?
 25 A Yes, sir.

1 Q And so Jim Hull and your father paid part of
 2 your \$75,000 salary for Geier Group; correct?
 3 A Correct.
 4 Q I ask again; did you -- how do you
 5 differentiate what you received in salary from Jim Hull
 6 for the 75,000, the advice that you gave him as an
 7 investment advisor, versus the money that you received
 8 for the fund?
 9 A They were two different responsibilities and
 10 Jim employed and approved that salary in order to
 11 compensate me solely for my role in carrying out the
 12 duties of Geier Group. And beyond that, I also provided
 13 investment advisory services for him that were not
 14 compensated.
 15 BY MR. BOHR:
 16 Q You said Jim Hull approved that salary for your
 17 services in connection with Geier Group?
 18 A Yes.
 19 BY MR. BAGNALL:
 20 Q Do you mean he approved it at Hull Storey
 21 Gibson or he approved it for Geier Group?
 22 A He approved the salary itself, and the mechanic
 23 by which it was paid.
 24 Q But in his capacity -- in what capacity? His
 25 capacity as a partner of Geier Group or his capacity --

1 A His capacity --
 2 Q -- as -- hold on, let me finish.
 3 A I'm sorry.
 4 Q Or his capacity as the, I'm assuming managing
 5 partner of Hull Storey Gibson?
 6 A Not in his capacity -- well, let me be very
 7 clear. He approved the payment of the salary in his
 8 capacity as a member of Geier Group. And he approved
 9 the -- the structure by which he paid no money but -- by
 10 which Hull Storey Gibson's human resources group
 11 functionally paid the salary and then was recompensated.
 12 BY MR. BOHR:
 13 Q In this timeframe --
 14 BY MR. BOCKIN:
 15 Q Did the other limited partners know that Jim
 16 Hull and your father were paying part of your \$75,000
 17 salary?
 18 A Paying part of it?
 19 Q Yes.
 20 A Did they know? In other words what --
 21 Q Did they know that Jim Hull and your father
 22 were paying part of your \$75,000 salary?
 23 A They didn't know how we paid ourselves out of
 24 Geier Group, no.
 25 Q Did they know that -- so they didn't know that

1 Jim Hull was paying part of your Geier Group salary at
 2 the same time that you were giving him independent
 3 investment advice?
 4 A It would be customary for an owner of an entity
 5 to pay the manager of the entity a salary.
 6 Q I don't -- that's not what I'm asking you. Did
 7 you disclose to the limited partners the fact that Jim
 8 Hull paid a portion of your \$75,000 salary?
 9 A No. And as I -- I was -- what I meant by my
 10 previous answer is that that's so highly customary that I
 11 don't see how that would be relevant to them.
 12 Q Did you disclose to the limited partners the
 13 fact that you were providing independent investment
 14 advice to Jim Hull at the same time?
 15 A Specifically, no.
 16 Q Did you seek -- were --
 17 A I'm going to have --
 18 Q -- did you seek advice, legal advice, about the
 19 validity of giving independent investment advice to Jim
 20 Hull while not disclosing that to the limited partners?
 21 A I would have to assert privilege.
 22 Q Okay.
 23 BY MR. BOHR:
 24 Q Okay, you made a statement -- let me back up.
 25 Geier Group, you owned 50 percent, Mr. Hull owned 35

1 percent, and your father owned 15 percent; correct?
 2 A Yes, sir.
 3 Q And Geier Capital, it was the same 50/35/15
 4 arrangement; correct?
 5 A Yes, sir.
 6 Q And you said, I'm pretty sure I noted this
 7 correctly, words to the effect of "It would be customary
 8 for the owner of an entity to pay the manager of an
 9 entity a salary." Did I understand you correctly?
 10 A Yes.
 11 Q What did you mean by that?
 12 A I mean that it's customary for shareholders to
 13 fund salaries to manage the company of which they're a
 14 shareholder.
 15 Q You -- you said that Mr. Hull approved your --
 16 A In other words --
 17 Q -- salary; correct?
 18 A I'm sorry; go ahead.
 19 Q You said that Mr. Hull approved your salary;
 20 correct?
 21 A Yes.
 22 Q But he's a 35 percent owner approving the
 23 salary of a 50 percent owner. Can you help me understand
 24 how that is? You own more of Geier Group than he does,
 25 and he's approving your salary? He's a 35 percent owner.

1 A Well, I think we -- we all -- I mean, it was by
 2 consensus.
 3 BY MR. BAGNALL:
 4 Q What was by consensus?
 5 A The determination of my salary. But it's
 6 customary for a CEO of a company to have a shareholding
 7 in the company and then for other shareholders to pay out
 8 of the income of the company a salary for that manager.
 9 Q But is it also customary then for that CEO to
 10 provide services to some subset of those shareholders for
 11 free, without telling all the other shareholders?
 12 A I would say that that is consistent with the
 13 agreements that we have in place.
 14 Q I'm asking you if it's customary?
 15 A I think it is customary, yes. Highly
 16 customary.
 17 Q So it's highly customary for CEO's of companies
 18 to provide --
 19 A Publically traded companies you're talking
 20 about?
 21 Q Hold on. Whatever -- whatever you meant,
 22 right?
 23 A Yeah.
 24 Q I'm repeating to you what your question is.
 25 A For hedge fund companies, yes.

1 Q So it's -- it's -- for the hedge fund company
 2 for the CEO to provide free services to certain of the
 3 members of the hedge fund?
 4 MR. FERRIGNO: Who also have another role.
 5 THE WITNESS: Yes, I think that's highly
 6 customary.
 7 BY MR. BOHR:
 8 Q Can you give us an example of another hedge
 9 fund or other -- any other private equity fund or venture
 10 capital fund that does that?
 11 A I would have to assert privilege.
 12 Q I'm asking you if you can give an example of
 13 another hedge fund, investment fund, private equity fund,
 14 LBL fund, mezzanine fund where --
 15 A I don't -- I don't have specific knowledge of
 16 those examples, no.
 17 MR. FERRIGNO: Okay, can we go off the record?
 18 MR. BAGNALL: Pardon?
 19 MR. FERRIGNO: Can we go off the record for a
 20 minute?
 21 MR. BAGNALL: Could -- I have one more document
 22 to finish up to 2010, and then we would be at a natural
 23 stopping point, if we could do that?
 24 MR. FERRIGNO: Yeah.
 25 MR. BAGNALL: Thank you. I'll take back 56.

1 Could you mark this one next, please?
 2 (SEC Exhibit No. 57 was marked
 3 for identification.)
 4 BY MR. BAGNALL:
 5 Q Mr. Gibson, I'm handing you what's been marked
 6 as Exhibit 57. Would you take a look at it, please, and
 7 let me know when you're done?
 8 A Yes, I'm ready.
 9 Q Okay. What -- what is Exhibit 57?
 10 A It's my personal tax return.
 11 Q For what year?
 12 A The year 2010.
 13 Q Okay. Could you turn to the page that ends
 14 507, please? The entry on Line 7, 73,954 as wages,
 15 salaries and tips; is that -- is that the money that was
 16 paid initially by Hull Storey Gibson through the external
 17 HR company?
 18 A Yes, sir.
 19 Q Okay. And that was paid for investment
 20 advisory services you provided on behalf of Geier Group;
 21 correct?
 22 A The source of the funds that recompensated that
 23 were for that, yes.
 24 Q Okay. And could you turn -- do you see on Line
 25 13 a capital gain of approximately \$1.6 million. What

1 was the source of that \$1.6 million?
 2 A The substantial majority was the performance
 3 allocation and the rest was the positive performance on
 4 my underlying capital account.
 5 Q When you say "your underlying capital account,"
 6 you mean your personal account in GISF?
 7 A Yes.
 8 Q Okay. And so it's -- let me just make sure I
 9 got this right. So is it three sources; it's the --
 10 A The performance --
 11 Q Go ahead.
 12 A The performance allocation, the return on my
 13 GISF account, and any gains from my personal Schwab
 14 account, as well.
 15 Q And what about any interest that you had in
 16 Geier Group or Geier Capital?
 17 A I think those would have been fees, and I don't
 18 think that would have been a capital gain.
 19 Q Okay. So that would be what then?
 20 A Actually, I guess it must be cap -- must be in
 21 there.
 22 Q So for example, focusing on your -- the
 23 management fees that were paid to you in connection with
 24 Geier Group, those would be -- that would be ordinary
 25 income, right?

1 A I would have expected that, yes.
 2 Q Okay. And so you got the 73,000 from Hull
 3 Storey Gibson. But then we just looked at your Geier
 4 Group K-1 and it showed that you also had a 110,000 on
 5 top of that; correct?
 6 A Of which 75,000 was gains, investment gains in
 7 the Geier Group Schwab account.
 8 Q I don't -- I don't think that's quite right. I
 9 think that if you -- we look back at Exhibit 56, you'll
 10 see that there's 110 in management fees, and then on top
 11 of that is 74,000 and the gains in the Schwab account,
 12 right?
 13 A Right.
 14 Q So you had the 75 that came in from --
 15 indirectly from Hull Storey Gibson, which is on Line 7.
 16 A Right.
 17 Q Okay. Then you had, after that was reimbursed
 18 back to Hull Storey Gibson, you had 110,000 come back out
 19 of the management fees that were paid to Hull -- to Geier
 20 Group; correct?
 21 A I'm sorry; can you say that again?
 22 Q Yeah. And maybe I've got this wrong, but when
 23 we were -- went through Exhibit 56 a moment ago, when we
 24 talked -- when we talked specifically about the fourth
 25 paragraph, the paragraph that begins, "As far as Geier

1 Group balance sheet" --
 2 A Right.
 3 Q -- "year-end value is 180,000" --
 4 A Right.
 5 Q -- "from which payable to HSG -- from which
 6 75,000 needs to be paid to HSG." Is that right?
 7 A Right. Right.
 8 Q So after that, you still had, what 105,000?
 9 A Uh-huh.
 10 Q Is that right?
 11 A In the balance sheet, yes.
 12 Q Okay. So what -- on top -- over and above the
 13 75,000 that you -- that was initially paid from Hull
 14 Storey Gibson, how much did you earn from Geier Group in
 15 2010?
 16 A That's the question that we're trying to get at
 17 and I'm not sure.
 18 Q You don't know, okay.
 19 BY MR. BOCKIN:
 20 Q Look at 1538, it ends in 1538 of this document.
 21 MR. BAGNALL: Which is Exhibit --
 22 MR. BOCKIN: Fifty-seven.
 23 BY MR. BOCKIN:
 24 Q Exhibit 57, 1538, do you see in the middle
 25 there there's a description of activities?

1 A Yes, sir.
 2 Q Okay. Going down, there's three sources. It
 3 looks like three sources of income you received in 2010.
 4 Do you see that?
 5 A Yes, sir.
 6 Q First is GISF for 140,019.
 7 A Yes, sir.
 8 Q Geier Group for 37,422. And then Geier Capital
 9 for 496,316.
 10 A Yeah.
 11 Q So does this refresh your recollection as to
 12 the amounts that you received?
 13 A Yes.
 14 Q Okay. What did you receive from Geier Group in
 15 2010, I believe was Mr. Bagnall's original question.
 16 A 37,422.
 17 Q Okay. And that was for investment advisory
 18 services provided to the fund?
 19 A Yes, sir.
 20 Q Okay. Provided to GISF?
 21 A Yes, sir.
 22 Q Okay.
 23 BY MR. BAGNALL:
 24 Q And that -- is that what you received on top of
 25 the 75,000 that was paid initially by Hull Storey Gibson?

1 A That would be correct. Yes, sir.
 2 Q Okay. And then the Geier Capital entry is here
 3 496,000. Why isn't it the 1.3 million?
 4 A I do not know.
 5 Q Okay.
 6 MR. BAGNALL: All right, anybody have anything
 7 else on 57?
 8 (No response.)
 9 MR. BAGNALL: Okay –
 10 THE WITNESS: I think I can answer that
 11 question, if you would like?
 12 MR. BAGNALL: Okay.
 13 BY MR. FERRIGNO:
 14 Q Could you remind me what page you're looking
 15 at, please?
 16 A 1538.
 17 Q 1538, okay.
 18 A This is limited to short-term gains.
 19 Q Okay.
 20 A So perhaps the balance was long-term.
 21 Q Okay. I'll take back both Exhibit 56 and 57,
 22 please.
 23 MR. BAGNALL: And we'll go – and let's, I
 24 don't think we have any other questions, we'll go off the
 25 record at 12:26 p.m., December 21, 2014.

1 (Whereupon, at 12:26 p.m., a luncheon recess
 2 was taken.)
 3 AFTERNOON SESSION
 4 MR. BAGNALL: All right, we'll go back on the
 5 record at 1:08 p.m. on December 21, 2015.
 6 BY MR. BAGNALL:
 7 Q Mr. Gibson, you recall you're under oath?
 8 A Yes, sir.
 9 Q Okay. And just to confirm, during the break
 10 there were no conversations of substance between you and
 11 the staff; is that correct?
 12 A That's correct.
 13 MR. BAGNALL: And Mr. Ferrigno, you agree?
 14 MR. FERRIGNO: Yes.
 15 MR. BAGNALL: Okay, could you please mark this
 16 next?
 17 (SEC Exhibit No. 58 was marked
 18 for identification.)
 19 BY MR. BAGNALL:
 20 Q All right, I'm going to hand you what's been
 21 marked as Exhibit 58. Mr. Gibson, could you please take
 22 a look at that and let me know when you're done?
 23 A Yes.
 24 MR. FERRIGNO: Sorry, thank you.
 25 MR. BAGNALL: Okay.

1 BY MR. BAGNALL:
 2 Q Are you done?
 3 A Yes, sir.
 4 Q Okay. Do you recognize Exhibit 58?
 5 A It's my 2011 W-2.
 6 Q Okay. And in Box 1 here, "Wages, Tips and
 7 Other Compensation" is listed as \$148,718.31. Do you see
 8 that?
 9 A Yes.
 10 Q And it was – that was paid by Insuperity PEO
 11 Services. Do you see that?
 12 A Yes, sir.
 13 Q Of Kingwood, Texas?
 14 A Yes, sir.
 15 Q For what were you paid the 100 – approximately
 16 \$148,000?
 17 A This is similarly to the year proceeding:
 18 instead of a \$75,000 salary it's \$150,000 salary that was
 19 practically paid by the human resources firm of Hull
 20 Storey Gibson, with it being contemplated that Geier
 21 Group would repay it.
 22 Q Okay. And were – so you were being paid this
 23 approximately \$148,000 for providing investment advisory
 24 services?
 25 A By Geier Group, yes.

1 Q By Geier Group in 2011?
 2 A Yes.
 3 Q Not Geier Capital?
 4 A Initially Geier Group and then Geier Capital.
 5 Q Okay. I will – what's this address here for
 6 you, Christopher M. Gibson, 3011 Bransford Road, Augusta,
 7 Georgia?
 8 A That's my parents' residence.
 9 Q And were you living there in early 2012?
 10 A In early 2012?
 11 Q Which is when your 2011 W-2 would have been
 12 sent to you?
 13 A Right. I – I was spending time there, yes. I
 14 was living in New York.
 15 Q Okay. Why did you have your W-2 sent to your
 16 parents' address?
 17 A I don't recall that.
 18 Q Okay.
 19 MR. BAGNALL: Does anybody have anything else
 20 about 58?
 21 (Counsel confers.)
 22 MR. BAGNALL: Okay, take back 58.
 23 Would you mark this next, please?
 24 (SEC Exhibit No. 59 was marked
 25 for identification.)

1 BY MR. BAGNALL:

2 Q Okay, I'm going to hand you what's been marked
3 now as Exhibit 59. Mr. Gibson, could you please look it
4 over and let me know when you're done?

5 A Yes.

6 Q Okay. What is Exhibit 59?

7 A It's the Geier Capital 2011 tax return.

8 Q Okay. In 2011, to what amount, if any, Geier
9 Capital income were you entitled to?

10 A Fifty percent.

11 Q Okay. And is that what's memorialized on or is
12 that confirmed, I should say, by what's recorded on it –
13 on Page 211 of Exhibit 59, where you're listed as a 50
14 percent owner of Geier Capital?

15 A Yes, sir.

16 Q Okay. And is this Geier Capital Delaware or
17 Geier Capital Georgia?

18 A I would imagine it's Geier Capital Delaware.

19 Q Okay. So Geier Capital Delaware had a Georgia
20 address?

21 A Probably a – was qualified to do business
22 there.

23 Q Was it? Or do you know?

24 A I do not know for sure, no.

25 Q Okay. So what makes you think this is Geier

1 A Right. Correct. So that was my distribution
2 of Geier Capital's –

3 Q Okay.

4 A – performance allocation.

5 Q So that's – that's your share of Geier

6 Capital's performance allocation from 2010, but it was
7 paid to you in 2011; is that right?

8 A It was distributed or – yeah. Paid.

9 Q Okay. Did you have control over that money
10 when it was paid to you –

11 A Yes.

12 Q – in 2011?

13 A Yes, sir.

14 Q Okay. And could you – did you decide to
15 invest it back into GISF?

16 A Yes.

17 Q But you – could you have done something else
18 with it if you wanted to?

19 A That would be my understanding, yes.

20 Q Okay. And who paid that – that amount of
21 money? Who paid – let me ask that again. Who paid that
22 approximately \$1.4 million?

23 A The members of Geier International Strategies
24 Fund.

25 Q Pro rata? So –

1 Capital Delaware's 2011 tax return?

2 A Because since this investigation I learned that
3 Geier Capital Georgia and Geier Group Georgia were
4 dissolved in April of 2011.

5 Q Okay. And so was there another return filed
6 for whatever Geier Capital may have earned – Geier
7 Capital Georgia may have earned for the portion of 2011
8 for which it existed?

9 A Not to my knowledge.

10 Q Okay. Can you turn to the page ending in 214?
11 Do you see in Line 19 there's a distribution of 1.425
12 million –

13 A Yes.

14 Q – approximately?

15 What was that distribution for?

16 A The performance allocation of the preceding
17 year.

18 Q And to whom was it distributed?

19 A Uh –

20 Q Well, I'll just point out that –

21 A Fifty percent to me. Or I guess there's
22 another – I think this is all me.

23 Q Yeah. Well, that's what I was going to say.
24 I'm just going to point out that this is – this appears
25 to be your K-1.

1 A Correct.

2 Q – pro rata to their – to their share of their
3 investment in GISF?

4 A Yes, sir. That's correct.

5 Q Okay.

6 MR. BAGNALL: Anybody have anything else?
7 (No response.)

8 MR. BAGNALL: Okay, I'll take back 59.

9 BY MR. BAGNALL:

10 Q Sorry, for the record, could you please spell
11 for the court reporter Suejin Jo's first name?

12 A S U E J I N, all one word, Jo, J O.

13 Q Thank you.

14 MR. BAGNALL: Okay, could you mark this next,
15 please?

16 (SEC Exhibit No. 60 was marked
17 for identification.)

18 BY MR. BAGNALL:

19 Q Okay, I'm going to hand you what's been marked
20 as Exhibit 60, and let me explain to you what this is.
21 Well, let me ask you first, do you recognize what this
22 is?

23 A This is a portion of Kaufman Rossin Fund
24 Services Net Asset Value Reporting Package for the year
25 end 2011.

1 Q Okay. And do you see that there – what – and
2 this appears to be a menu, right? The first page of
3 Exhibit 60?

4 A Yes, sir.

5 Q Have you ever seen an NAV reporting package
6 from KRFS before?

7 A Yes.

8 Q And in what form have you typically seen it?

9 A Excel.

10 Q An Excel spreadsheet or an electronic file?

11 A Yes, sir.

12 Q Okay. And when you see it are the – the
13 entries that are listed next to the numbers on the first
14 page of Exhibit 60, are they hyperlinks?

15 A They may be. I'm not sure.

16 Q Have – do you understand what I mean when I
17 say "hyperlink"?

18 A In that you can click on it and it references
19 something else.

20 Q Okay. So for example, if you clicked on "Fees"
21 next to 5, would it take you to that worksheet or the
22 relevant portion of that workbook?

23 A I presume so.

24 Q Okay. And if you turn to the second page of
25 60, what I'll – I'll represent to you is that what the

1 you that this was produced to us by Cherry Bekaret, even
2 though it says it's a KRFS document. So what we believe
3 happened is that Cherry Bekaret got a copy of this
4 spreadsheet for the purposes of completing a tax
5 return –

6 A Right.

7 Q – for what entity I'm not – I'm not exactly
8 sure.

9 Now, if you look down where it says,
10 "Management Fee Is Charged Quarterly In Advance," which
11 is the second column –

12 A Right.

13 Q – after the date it says, "On January 31,
14 2011, \$114,782," right?

15 A Right.

16 Q Then for February, \$1,150. March 31st, \$292.
17 Is that correct?

18 A Yes.

19 Q Okay. And then for April 30, 2011, 87,924.

20 A Yeah.

21 Q Then there – that column is blank for May and
22 June, but for July 31, 2011 there's an entry for \$90,884.
23 Do you see that?

24 A Yes.

25 Q And then there's a negative entry in August of

1 staff did, is they went and found the sheet that was
2 related to Number 5 – on the first page, and this is
3 what was there. There was a tab, a worksheet within the
4 workbook for which this first page applies. And on the
5 second page do you see about six – actually exactly six
6 lines of text down, it says, "Management Fees, Expenses,
7 \$295,000 – \$295,005." Do you see that?

8 A Yes, sir.

9 Q Is that what GISF paid in management fees for
10 the year 2011?

11 A Yes, sir.

12 Q And how do you know that?

13 A Because I see it added up.

14 Q Okay. And does – does that amount comport
15 with our memory of 2011?

16 A Yes, sir.

17 Q Okay. And when I say that, I mean, you
18 remember GISF paying approximately that amount of money
19 in management fees in 2011?

20 A I don't remember. I – it could have been
21 100,000 less or 100,000 more but –

22 Q Okay. But do you –

23 A I mean, it looks within \$200,000 correct.

24 Q Okay. And do you have any reason to believe
25 that – that this document – and I'll just tell – tell

1 2011 for negative \$27. Do you see that?

2 A Yes.

3 Q Does – based on what we discussed earlier
4 today, specifically the portions of the confidential
5 offering memorandum or the operating agreement where
6 management fees were described as being paid .25 percent
7 in advance of each quarter, would payments in January,
8 April and July sort of satisfy that schedule?

9 A Yes.

10 Q Okay. And do you recall management fees being
11 paid by GISF for management services in those months
12 typically?

13 A Yes.

14 Q Okay. And then then there's no – the next –
15 the next payment would have been in, what, probably
16 October, is that right?

17 A That's correct.

18 Q But there's no entry there; is that because
19 that's when management fees were suspended?

20 A Yes, sir.

21 Q Okay. So this seems to track what we've talked
22 about in 2011 before and that management fees were paid
23 the first three quarters of 2011; correct?

24 A Yes, sir.

25 Q Okay. Now, if you compare the management –

1 the second column where "Management Fee Is Charged
2 Quarterly In Advance" with the fifth column, "Management
3 Fee Payments," it seems that the management fee was
4 actually paid – the one that described in the first
5 column in January was actually paid in April, excuse me,
6 February. Do you see that?
7 A Yes.
8 Q Okay. And it's the same amount?
9 A Yes.
10 Q But there's no entry for the 1,150 and there's
11 no entry for the 292. Do you know why that is?
12 A I don't.
13 Q Are – the entry, is the \$1,150 entry for
14 management fees?
15 A I assume that that was a true up of some kind,
16 that they made a mistake or that that was, you know,
17 there was an expense or something like that.
18 Q And what about the \$292 entry in March?
19 A The same.
20 Q Okay. And what about the negative \$27 entry?
21 A The same.
22 Q Okay. And then you see that the April entry of
23 87,924, that's the same in both the second and fifth
24 columns. Do you see that?
25 A Yes.

1 Q But then the July entry is different by 3-plus
2 thousand dollars?
3 A Right.
4 Q Why is that different?
5 A I do not know.
6 Q Okay. And then so the amount that's shown at
7 the top of the page, \$295,005, matches the first column,
8 or excuse me, the second column, through its reported
9 under the third and not the fifth column. Do you know
10 why that is? Do you see at the bottom of the page.
11 A Yeah. Yeah, no, I do not.
12 Q Okay. For what were these \$295,005 paid?
13 A Advisory services to manage GISF.
14 Q Okay. And so GISF – to what portion of this
15 \$295,005 were you entitled?
16 A Fifty percent.
17 Q Okay. And did you ever actually get that 50
18 percent of \$295,005 in 2011?
19 A No.
20 Q What happened to that portion of your money?
21 A It was accrued into a capital account under the
22 name of Geier Capital, and then that reflected the
23 performance of the fund. And at some point when I – in
24 the subsequent future when I defaulted, this, you know,
25 probably did get allocated over to my account, which I

1 have now at GISF.
2 Q So I'm not sure I follow that –
3 A Sorry.
4 Q So was there time period in 2011 when you
5 had – you received at least the control over 50
6 percent –
7 A As soon as the payments were made I received
8 control over it.
9 Q Okay. And so at that time you had control over
10 that payment and you – you could have decided not to
11 reinvest it in the Geier Capital –
12 A Yes.
13 Q – account?
14 A Yes, sir.
15 Q Okay.
16 MR. BAGNALL: Anybody have anything else?
17 BY MR. BOHR:
18 Q You – I think you said this was payment for
19 the performance of the fund. Did I hear you correctly?
20 A No.
21 Q Okay. Because this is a management fee,
22 this –
23 A Yeah.
24 Q And your management fee was – was it 1 percent
25 of assets under management?

1 A Yes, sir.
2 Q So just for clarity, the period expensed there
3 is as of each date represents 1 percent of assets under
4 management divided by monthly?
5 A Correct.
6 Q Okay. Thank you.
7 MR. BAGNALL: I'll take back 60.
8 Could you mark this next, please?
9 (SEC Exhibit No. 61 was marked
10 for identification.)
11 BY MR. BAGNALL:
12 Q Okay, I'm going to hand you what's been marked,
13 Mr. Gibson, as Exhibit 61. Could you look it over and
14 let me know when you're done, please?
15 A Yes, I'm ready.
16 Q Okay. What is Exhibit 61?
17 A The 2011 Geier Group, LLC tax return.
18 Q Okay. And could you turn to the page ending
19 097? When you testified a moment ago that you were
20 entitled to 50 percent of the fees that we saw as being
21 paid in Exhibit 60, is that confirmed here in Part 2
22 showing you as a 50 percent owner of Geier Group?
23 A Yes, Sir.
24 Q Okay. Is the \$295,005 management fee that we
25 saw GISF paying in Exhibit 61 reflected in – excuse me,

1 in Exhibit 60, reflected in Exhibit 61?
 2 MR. FERRIGNO: I'm sorry; the first part of
 3 that?
 4 MR. BAGNALL: Sure.
 5 MR. FERRIGNO: Which?
 6 BY MR. BAGNALL:
 7 Q So we just saw in Exhibit 60 that GISF paid
 8 approximately \$295,000 in management fees; correct?
 9 A Correct.
 10 Q I'm asking you where, if anywhere, is that
 11 200 – approximately \$295,000 reflected in Geier Group's
 12 2011 tax return?
 13 A I don't know.
 14 Q Okay. So if you look at the page that's marked
 15 090 – actually, sorry; why don't you look at the page
 16 that's marked 092.
 17 A Okay.
 18 Q Do you see any – for example, Line 9,
 19 "Salaries and Wages," do you see any entry there?
 20 A No.
 21 Q Do you see Line 4, "Ordinary Income"?
 22 A Yes.
 23 Q Do you see anything there?
 24 A No.
 25 Q Okay. Line 3, "Gross Profits," do you see any

1 entries for Line 3?
 2 A No. So why isn't that 295,000 reflected
 3 somewhere on this first page of the 1065 for Geier Group
 4 for 2011?
 5 A I don't – I don't know.
 6 Q Okay.
 7 BY MR. BOHR:
 8 Q And can – for the record, also do you see Item
 9 4, "Ordinary Income or Loss From Other Partnerships,
 10 Estates and Trusts," that's also zero?
 11 A Yes.
 12 Q Okay.
 13 BY MR. BAGNALL:
 14 Q Can you turn to the page ending 099? So
 15 what – if you look – we looked at the similar entry for
 16 Geier Group's 2010 tax return, there was an
 17 administration expense included in the other deduction
 18 section that we later determined was the repayment of the
 19 loan of \$75,000 from Hull Storey Gibson to you. There's
 20 no administration entry in the 2011 tax return. Why not?
 21 A I don't believe that was repaid that year. I
 22 think that at this point in time I was insolvent and my
 23 father paid off the loan.
 24 Q Well, why not – why not pay it back from the
 25 \$295,000 that Geier Group earned in – for its services

1 in 2011?
 2 A That's a good question. I think that perhaps
 3 also might answer the discrepancy in some of these
 4 numbers, because most of that was lost because it was
 5 invested into the fund, which had very poor performance
 6 during that time.
 7 Q Okay. And then could you look at the – the
 8 page ending 100, please? It's the next page. Do you see
 9 in Box L there's a withdrawal, this – and again, this –
 10 this appears to be the K-1 for you, Chris Gibson, there's
 11 a withdrawal of just over \$12,000. Do you see that?
 12 A Yes.
 13 Q What was the purpose of that withdrawal?
 14 A I don't know.
 15 Q Or I guess it was a distribution, if you follow
 16 it over to Line 19.
 17 A Right.
 18 Q Was that – was the source of the money that
 19 was distributed to you proceeds that Geier Group earned
 20 providing investment advisory services to GISF?
 21 A I would imagine.
 22 Q Okay.
 23 A I'm not sure if this was a cash withdrawal out
 24 of the capital account, or if this was just an allocation
 25 from Geier Group to my capital account.

1 Q Okay. Do you know whether this – does – is
 2 there a – is there a distinction between those two
 3 things? I mean, would you still have control over the
 4 \$12,283?
 5 A I would still have control. But –
 6 Q Whether you got it in cash or whether it was an
 7 assignment to your capital account at GISF?
 8 A That's correct.
 9 Q Okay. And you would control the money?
 10 A Yes, sir.
 11 Q In either situation, right?
 12 A Yes, sir.
 13 Q Okay. And are you sure that – you said – I
 14 can't remember what you said, but it sounded a little bit
 15 equivocal, so was the money, the 12,283 that was
 16 distributed to you was that from proceeds that Geier
 17 Group earned providing advisory services – investment
 18 advisory services to GISF?
 19 A Yes.
 20 Q Okay. Okay, I'll take back Exhibit 61.
 21 MR. BAGNALL: Could you mark this one next,
 22 please?
 23 (SEC Exhibit No. 62 was marked
 24 for identification.)
 25 BY MR. BAGNALL:

1 Q Okay, I'm handing you what's been marked as
2 Exhibit 62. Be careful of the staples, they're a little
3 sharp on the back. Do you recognize Exhibit 62, Mr.
4 Gibson?
5 A This appears to be my 2012 tax return.
6 Q If you look at the page –
7 A Oh, I'm sorry –
8 Q I got myself.
9 A Sorry, my 2011 tax return.
10 Q Are you looking at – yes, okay. And there's
11 some carry forwards for 2012 that you saw one or two
12 pages in, right?
13 A Yes, sir.
14 Q Okay. If you – if you could please turn to
15 the page ending 030, and focus on Line 7, "Wages,
16 Salaries, Tips," there's an entry there, 148,781. Do you
17 see that?
18 A Yes.
19 Q Okay. And that matches almost exactly the W-2
20 we looked at for 2011 a moment ago, right?
21 A Yes, sir.
22 Q And so that was income that you earned in 2011
23 for providing investment – for your work for Geier Group
24 in providing investment advisory services to GISF; is
25 that right?

1 A Yes, sir.
2 Q Okay. And could you turn to the page ending
3 048, please? Do – are you there?
4 A Yes, sir.
5 Q Do you know what this page represents, Mr.
6 Gibson?
7 A I do not.
8 Q It says a Schedule E. Do you know what a
9 Schedule E is?
10 A No, sir.
11 Q Do you see lower down on the page there's
12 another – another entry after Schedule E, Page 2,
13 there's something, Form 4797 and then Schedule D. Do you
14 see that?
15 A Yes, sir.
16 Q And the first entry under Schedule D says, "Net
17 Short-Term Capital Gain or Loss." Do you see that?
18 A Yes, sir.
19 Q And there's a gain of \$481,194. Do you see
20 that?
21 A Yes, sir.
22 Q What was that gain for in 2011?
23 A I have no idea.
24 Q Okay. And do you see that at – about – can
25 you look where I'm – I'm pointing over here, about

1 there, it says, it's a pass through from Geier Capital,
2 LLC. Do you see that?
3 A Yes, I do.
4 Q So is – is this 481,000 – approximately
5 \$481,000 short-term gain from Geier Capital?
6 A I – I do not know.
7 Q Okay. Did you have a gain in Geier Capital in
8 the year 2011?
9 A No, not to my – no, definitely not.
10 Q Okay. But so this seems to reflect (sic) that
11 there was such a gain, though. Do you – do you disagree
12 with that? I mean, that's a positive entry for 481,000,
13 right?
14 A Yes, sir. It is.
15 Q Okay.
16 A I – I can decisively say I did not have any
17 gains in 2011.
18 MR. FERRIGNO: Are you referring to the entry
19 "Geier Capital" on the – about the middle of the page?
20 MR. BAGNALL: I am.
21 MR. FERRIGNO: Where it says "Pass Through"?
22 MR. BAGNALL: Yes.
23 MR. FERRIGNO: Is there something that suggests
24 that everything below that relates to that entry?
25 MR. BAGNALL: I – that was my question to Mr.

1 Gibson.
2 MR. FERRIGNO: Okay.
3 BY MR. BAGNALL:
4 Q Can you turn to the page ending 050, please?
5 A Yes, sir.
6 Q Okay. Do you see "Pass Through Recap, Basic
7 Information, Schedule E for Christopher Gibson."
8 A Yes.
9 Q "Schedule K-1 Line Reference," the last entry
10 there is for Geier Capital, and do you see to the right
11 hand side there's another positive entry, 481,194. Do
12 you see that?
13 A I do see that.
14 Q So – so seeing it in this frame, do you know
15 what your approximately \$481,000 gain with Geier Capital
16 was in 2011?
17 A I don't. I could say that that appears to be
18 about the amount of money I withdrew from Geier Capital
19 in early 2011 to pay the tax bill that year. That was
20 about the tax bill I paid. I – I'm purely speculating
21 as to what that might relate to.
22 Q Okay.
23 MR. BAGNALL: Anybody have anything else?
24 (No response.)
25 MR. BAGNALL: Okay, I'll take back Exhibit 62.

1 Could you mark this next, please?
 2 (SEC Exhibit No. 63 was marked
 3 for identification.)
 4 BY MR. BAGNALL:
 5 Q Okay, I'm going to hand you what's now been
 6 marked as Exhibit 63.
 7 Could you look it over and let me know when
 8 you're done, please?
 9 A Yes, sir. I'm ready.
 10 Q Okay. Do you recognize Exhibit 63, Mr. Gibson?
 11 A It's my 2012 W-2.
 12 Q Okay. And do you see in Box 1 there's an
 13 entry, \$148,395.53. do you see that?
 14 A Yes.
 15 Q What -- for what did you receive 100 --
 16 approximately \$148,000 for in 2012?
 17 A The same that I had been receiving the salary
 18 for previously.
 19 Q Okay. So the -- this is a payment for your
 20 providing investment advisory services to GISF --
 21 A Yes.
 22 Q -- is that right? Okay.
 23 MR. BAGNALL: Anybody have anything else?
 24 (No response.)
 25 MR. BAGNALL: Okay, I'll take back 63.

1 Could you mark this next, please?
 2 (SEC Exhibit No. 64 was marked
 3 for identification.)
 4 BY MR. BAGNALL:
 5 Q Okay, I'm going to hand you what's been marked
 6 as Exhibit 64. Could you look it over, please, and let
 7 me know when you're done?
 8 A I'm ready.
 9 Q What is Exhibit 64, Mr. Gibson?
 10 A My 23rd W-2 -- 2013 W-2.
 11 Q Okay. And do you see that in Box 1, "Wages,
 12 Tips and other Compensation," it's reported \$6,270.74.
 13 Do you see that?
 14 A Yes, sir.
 15 Q For what did you earn the approximately \$6200
 16 in 2013?
 17 A I'm fairly sure this is a redemption of a
 18 401(k) I had related to this.
 19 Q And why -- why would that be reported as wages,
 20 tips and other compensation?
 21 A If it's not the -- the 401(k), then maybe I got
 22 paid a week in January of this year or something like
 23 this, but I -- I did not receive compensation generally
 24 speaking in 2013.
 25 Q So if you got paid for a week of work in

1 January of 2013, what would that work have been for?
 2 A The same as before.
 3 Q Okay. Investment advisory services provided to
 4 GISF?
 5 A Yes, sir.
 6 Q I'll take back 64.
 7 MR. BAGNALL: Could you mark this next, please?
 8 (SEC Exhibit No. 65 was marked
 9 for identification.)
 10 BY MR. BAGNALL:
 11 Q Okay, I'm going to hand you what's been marked
 12 as Exhibit 65. Could you look it over and let me know
 13 when you're done, please?
 14 A Yes.
 15 Q Okay. Are you done?
 16 A Yes.
 17 Q Okay. What is Exhibit 65?
 18 A It's the Certificate of Organization for Geier
 19 Group, effective April of 2009.
 20 Q Okay.
 21 A Georgia Certificate of Organization.
 22 Q Okay. And could you turn to the second page,
 23 please?
 24 A Yeah.
 25 Q It says that the registered agent is Chris

1 Gibson. And that 1190 Interstate Parkway, is that the
 2 Hull Storey Gibson company's address?
 3 A Yes, sir.
 4 Q Okay. And then the name and address of each
 5 organizer, it's your name. Do you see that?
 6 A Yes.
 7 Q There are no other names listed. Do you see
 8 that?
 9 A Yes, sir.
 10 Q So where is Mr. Hull's name and your father's
 11 name?
 12 A They're not on there.
 13 Q Why aren't they included?
 14 A I -- I don't know.
 15 Q Okay. And do you see at the very bottom of the
 16 page, the signature of the organizer is Chris Gibson.
 17 Did you sign the documents that were submitted to Georgia
 18 to create the Geier Group entity there?
 19 A I must have.
 20 Q Okay.
 21 BY MR. BOHR:
 22 Q Did you cause this certificate of organization
 23 to be filed?
 24 A Not by myself, no.
 25 BY MR. BAGNALL:

1 Q What does that mean?
 2 A Laurie Underwood, Jim Hull's assistant, did
 3 this.
 4 Q How do you know?
 5 A Because she filed all of these. All LLCs for
 6 him.
 7 Q Did you say "for him"?
 8 A For Mr. Hull.
 9 Q Did you ever direct her to do any filings with
 10 the State of Georgia or the State of Delaware?
 11 A Not by myself, no.
 12 Q Okay. With whom did you direct her to do so?
 13 A Mr. Hull.
 14 Q Okay. So why then didn't Mr. Hull sign this
 15 document?
 16 A I don't know.
 17 Q Okay.
 18 MR. BAGNALL: Anybody have anything else?
 19 (No response.)
 20 MR. BAGNALL: Okay, I'll take back 65.
 21 Okay, could you mark this next, please?
 22 (SEC Exhibit No. 66 was marked
 23 for identification.)
 24 BY MR. BAGNALL:
 25 Q Okay, I'm handing you what's been marked as

1 A Yes.
 2 Q Did I read it correctly?
 3 A Yes.
 4 Q So based on what I saw on Web CRD, this
 5 indicated that Geier Group was registered in Georgia
 6 until its status was FTR'd on December 31, 2010. Does
 7 that sound right to you?
 8 A That's very accurate. Yes.
 9 Q Okay. Do you know what "FTR" stands for?
 10 A Eliminated.
 11 Q So if you click – there was a way to look at
 12 that on Web CRD, too, and it stood for "Terminated,
 13 Failure To Renew," do you – does that – do you see "FTR
 14 Failure, Terminated To Renew"?
 15 A Yes.
 16 Q Okay. Why did Geier Group fail to renew with
 17 the State of Georgia at the end of 2010?
 18 A My understanding was that we did not have to
 19 remain an investment advisor if we had only one client.
 20 Q Okay. And is that true of you personally or of
 21 Geier Group that you're testifying about?
 22 A My understanding was both.
 23 Q Okay. But didn't you have more than one
 24 client?
 25 A I think it was up to 10 clients.

1 Exhibit 66. Could you let me know when you're done
 2 looking at it, please?
 3 A Yes.
 4 Q Okay. Do you recognize this?
 5 A Yes.
 6 Q What is it?
 7 A It's a FINRA registration for myself.
 8 Q Okay. And it's – it is a subset of your Web
 9 CRD entry that I pulled down off of FINRA's website, Web
 10 CRD. I'll represent that to you. And I would like you
 11 to look under the section, "Registrations With Prior
 12 Employers." Do you see that about the middle –
 13 A Yes.
 14 Q – of the page?
 15 Okay. The first entity that's listed there is
 16 Geier Group, LLC. Do you see that?
 17 A Yes, sir.
 18 Q And it says your employment date start there
 19 was April 1, 2009 through 12/21/2010. Do you see that?
 20 A Yes.
 21 Q And then it says under that that – and I'll
 22 explain this to you, but it says, "Regulatory Authority
 23 GA, Registration Category RA, Filing Date 5/11/2009,
 24 Status Date 12/31/2010, Registration Status FTR, Approval
 25 Date 6/15/2009." Do you see that?

1 Q Okay. And what forms the basis of that
 2 understanding, the 10-client limit?
 3 MR. FERRIGNO: Again, don't disclose any
 4 privileged communications.
 5 THE WITNESS: Right. Discussions with counsel.
 6 MR. BAGNALL: Okay. Anybody have anything
 7 else?
 8 BY MR. BOCKIN:
 9 Q Did you, in fact, discuss with counsel the
 10 issues surrounding Geier Group and the fact that it
 11 shouldn't renew at the end of 2010?
 12 MR. FERRIGNO: Privilege.
 13 THE WITNESS: Well, I would have to assert
 14 privilege.
 15 BY MR. BAGNALL:
 16 Q Did you inform GISF's investors that Geier
 17 Group's registration with the State of Georgia had
 18 expired at the end of 2010?
 19 A No, sir.
 20 MR. BAGNALL: Could you mark this next, please?
 21 (SEC Exhibit No. 67 was marked
 22 for identification.)
 23 BY MR. BAGNALL:
 24 Q Okay, I'm going to hand you what's been marked
 25 as Exhibit 67. Could you look it over and let me know

1 when you're done, please?

2 A I'm ready.

3 Q Okay. Do you recognize this document?

4 A It's the State of Georgia Certificate of

5 Organization for Geier Capital, effective June of 2009.

6 Q Effective June 2009, okay. And do you see

7 that -- if you could turn to the second page, please?

8 A Yes.

9 Q It lists here that the registered agent is Jim

10 Hull.

11 A Um-hmm.

12 Q And that the name and address for each

13 organizer is -- the name listed there is Laurie

14 Underwood. Do you see that?

15 A Yes.

16 Q And that the signature of the organizer is

17 Laurie Underwood. Do you see that?

18 A Yes.

19 Q In what way was Laurie Underwood affiliated

20 with Geier Capital?

21 A She was not, except insofar as she performed

22 certain administrative tasks.

23 Q For the -- for the entity or for an individual?

24 A For the entity.

25 Q Okay. And she is, I think you testified a

1 moment ago that is -- Ms. Underwood is Mr. Hull's

2 personal administrative assistant; is that right?

3 A Yes, sir.

4 Q And is she -- so she is employed by Hull Storey

5 Gibson?

6 A Yes, sir.

7 Q Okay. Why -- do you know why you're not listed

8 as an organizer for Geier Capital?

9 A I do not.

10 Q Okay. Do you know why you're not the

11 registered agent for Geier Capital, when you were for

12 Geier Group?

13 A I do not.

14 Q Okay.

15 A I didn't review either of these before they

16 were filed.

17 Q When you say "either of these," what are you

18 referring to?

19 A This or the previous one.

20 Q So Exhibit 67 and Exhibit 65; is that right?

21 A Yes, sir.

22 Q Okay. I'll take back 67.

23 MR. BAGNALL: Could you mark this next, please?

24 (SEC Exhibit No. 68 was marked

25 for identification.)

1 BY MR. BAGNALL:

2 Q Okay, I'm handing you what's been marked as

3 Exhibit 68.

4 Can you please let me know when you're --

5 you're done looking at it?

6 A Yes.

7 Q Okay. Are you done?

8 A Yes, sir.

9 Q And what is Exhibit 68?

10 A Delaware Certificate of Formation for GISF.

11 Q Okay. And it's dated in December of 2009; is

12 that right?

13 A Yes, sir.

14 Q Okay. And is that your signature at the bottom

15 of the first page?

16 A Yes.

17 Q And are you signing there as a managing member

18 of what entity?

19 A Of GISF.

20 Q Okay. Are you the managing member of GISF or

21 is Geier Capital?

22 A Geier Capital is.

23 Q Okay. So and are you then -- is that managing

24 member title your title at Geier Capital or at GISF?

25 A I think that this is misleading. I'm the

1 managing member of the managing member.

2 Q Okay.

3 A Or the managing director of the managing

4 member.

5 Q Okay. So this --

6 A I'm not -- I don't think I am individually the

7 managing member of Geier International Strategies Fund.

8 No.

9 Q Okay. And so do you believe then that that's a

10 typo, essentially, that that should say managing director

11 and be a reference to your position as the managing

12 director of Geier Capital?

13 A Yes, sir. That's correct.

14 Q Which is the managing member of GISF?

15 A Yes, sir.

16 Q Okay. Did you ever seek to have that corrected

17 on the Delaware -- Delaware's books and records?

18 A No, sir.

19 Q Okay. Did you cause this to be submitted with

20 the State of Delaware in December of 2009? When I say

21 "this," I mean Exhibit 68.

22 A Yes, evidently.

23 Q Okay. But you don't recall doing it?

24 A No, I don't.

25 Q Okay. I'll take back 68.

1 MR. BAGNALL: Could you mark this next, please?
2 (SEC Exhibit No. 69 was marked
3 for identification.)

4 BY MR. BAGNALL:

5 Q I'm going to hand you what's now been marked as
6 Exhibit 69. Could you please look it over and let me
7 know when you're done?

8 A I'm ready.

9 Q Do you recognize Exhibit 69?

10 A I do.

11 Q What is Exhibit 69?

12 A A State of Georgia Certificate of Authority for
13 GISF, effective December 2009.

14 Q Okay. And why – why was this filed with the
15 State of Georgia?

16 A I imagine it's to do business and to be
17 qualified to do business in Georgia, since it's a
18 Delaware LLC.

19 Q And was that – was that necessary?

20 A Not to my understanding.

21 Q Okay. So why was it filed then with the State
22 of Georgia?

23 A I – it appears that there's an email address
24 with Seward & Kissel, so perhaps they did this.

25 Q Okay. Do you one way or the other?

1 registered agent. And the organizer was listed as –
2 organizer, rather, was listed as Laurie Hull – Laurie
3 Underwood, excuse me. Yes, the registered agent.

4 BY MR. BAGNALL:

5 Q So do you know why Mr. Hull didn't sign the
6 application, that's the second page of Exhibit 69?

7 MR. FERRIGNO: This just says "authorized
8 signature." It doesn't say anybody in particular.

9 BY MR. BAGNALL:

10 Q My question stands.

11 A I don't.

12 Q Okay. Did you – did you seek advice from
13 Seward & Kissel that you needed to file this certificate
14 of authority or application for certificate of authority
15 with the State of Georgia?

16 A I imagine, yes.

17 Q Okay.

18 MR. BAGNALL: Anybody have anything else?
19 (No response.)

20 MR. BAGNALL: I'll take back 69.

21 Okay, could you mark this next, please?

22 (SEC Exhibit No. 70 was marked
23 for identification.)

24 BY MR. BAGNALL:

25 Q Okay, I'm going to hand you what's now been

1 A No, I don't.

2 Q Okay. Could you – are you looking at the
3 second page, I think it's dated – is that your – is
4 that your signature at the bottom, in Paragraph 8?

5 A Yes.

6 Q Okay. So did you – and this second page, this
7 looks like a – something that was submitted to the State
8 of Georgia; is that right?

9 A Yes, sir.

10 Q And this is the application for the certificate
11 of authority, which was granted, which is on the first
12 page of Exhibit 69?

13 A Yes, sir.

14 Q Okay. And so it looks like you signed it. Do
15 you know why were you asked to sign this?

16 A In my capacity as the managing director of the
17 managing member of Geier International Strategies Fund.

18 Q Okay. So that's Geier Capital, right?

19 A Yes.

20 Q But we just – we just saw in the certificate
21 of registration for Geier Capital that it's Jim Hull
22 that's identified on those documents, right?

23 A That's correct.

24 MR. FERRIGNO: As what, the registered agent?

25 MR. BAGNALL: I believe he's identified as the

1 marked, just now been marked as Exhibit 70. Could you
2 please let me know when you're ready to talk about it?

3 A I'm ready.

4 Q Do you recognize Exhibit 70?

5 A Yes. This is an email from our prime broker at
6 Garwood with customer disclosures.

7 Q Okay. Do you see – can I point out to you the
8 second email down on the first page, the page ending 696.

9 A Um-hmm.

10 Q You wrote an email – that was your email
11 address, right, cg@geierfund.com?

12 A Yes.

13 Q To Dennis Gereckd and Craig Gantar, December
14 21, 2010. So –

15 A Um-hmm.

16 Q – exactly five years ago.

17 A Yes.

18 Q "In order to redomicile, we need to establish a
19 new account in the name of Geier International Strategies
20 Fund, LTD, a Cayman exempt entity." Do you see that?

21 A Yes.

22 Q Did I read it correctly?

23 A Yes.

24 Q What are you talking about there?

25 A At this point in time we had been doing well,

1 very well from a performance perspective, and there was a
2 discussion that in order to attract additional
3 investment, we may have to adopt a – an alternative
4 structure that we ended up not adopting. And insofar as
5 we contemplated that, we looked at what was – would be
6 necessary to do that.

7 Q So why would you need to redomicile?

8 A My understanding is that certain foreign
9 investors cannot invest directly into a U.S. entity, but
10 require what's called a, as I understand it, a mater
11 feeder structure, whereby their capital is invested into
12 an offshore entity that protects them from U.S. taxes.

13 Q And so is that true of U.S. based investors in
14 GISF, as well?

15 A No. It would have no impact on U.S. investors.

16 Q And so would U.S. investors then also be
17 investing in an offshore entity?

18 A First, as I said, this never materialized. But
19 to the degree that we did pursue this, our thought was
20 that we would have Geier International Strategies Fund
21 LLC, the domestic entity and all of the domestic
22 investors remain the same. Then this would be a
23 standalone entire, you know, different entity and
24 structure.

25 Q So why is it being described as redomiciled,

1 A I'm ready.

2 Q Okay. And I would like you to focus on Page 2
3 of this exhibit.

4 A Yes.

5 Q All right, so this is – do you recognize Page
6 2 of Exhibit 43?

7 A Yes, sir. It's the Delaware Certificate of
8 Formation of Geier Capital.

9 Q Okay. And is that your signature at the bottom
10 of the page?

11 A Yes.

12 Q And did you sign this on December 29, 2010?

13 A It appears.

14 Q Okay. And was this in your capacity as the,
15 again, as the managing director of Geier Capital?

16 A Yes.

17 Q Okay. So which Geier Capital are you signing
18 this on behalf of as the managing director, Geier Capital
19 Georgia or Geier Capital Delaware?

20 A Geier Capital Delaware, it would appear.

21 Q Okay. So – so is this when Geier Capital
22 Delaware was first created?

23 A Yes.

24 Q Okay. And so from that very first moment you
25 were the managing director of Geier Capital Delaware?

1 instead of just talking about a new entity?

2 A That would be poorly worded.

3 Q Okay.

4 BY MR. BOHR:

5 Q What is the address at the bottom of Exhibit
6 70, Dashwood House, Level 17 in London?

7 A That was an office that we contemplated using
8 to the degree we did this.

9 BY MR. BAGNALL:

10 Q Did you – did you pay to use that address?

11 A No.

12 Q Did GISF's investors know that there was going
13 to be an offshore GISF entity?

14 A We were only contemplating at this point in
15 time, and we never pursued it.

16 Q Okay. Did GISF –

17 BY MR. BOHR:

18 Q Is that a "no"? Is that a "no"?

19 A No. They did not know that we were
20 contemplating doing this.

21 MR. BAGNALL: Okay. Yeah. I'll take back 70.

22 BY MR. BAGNALL:

23 Q Okay, I'm going to hand you what's been
24 previously marked as Exhibit 43. Can you take a look at
25 that exhibit, please, and let me know when you're done?

1 A Yes.

2 Q Okay. Is there an operating agreement for
3 Geier Capital Delaware?

4 A No. Not to my knowledge.

5 Q Is there an offering document for Geier Capital
6 Delaware anywhere?

7 A Not to my knowledge.

8 Q What was the ownership structure of Geier
9 Capital Delaware?

10 A 50/35/15; myself, James Hull and my father,
11 respectively.

12 Q So it's the same as Geier Capital Georgia?

13 A Yes, sir.

14 Q Okay. So why – why was Geier Capital Delaware
15 created?

16 A I do not know.

17 Q Okay. When you signed this in December of
18 2010, who asked you to sign it?

19 A It would either have been Seward or Laurie
20 Underwood and Jim Hull.

21 Q Did you ask whoever it was that asked you why
22 you were being asked to sign this?

23 A No.

24 MR. FERRIGNO: Privilege.

25 BY MR. BAGNALL:

1 Q I'm sorry; is the answer "no," or you're
2 claiming privilege?
3 A I'm asserting privilege.
4 Q Okay. So -- so if Laurie Underwood asked you
5 sign this, that's still a privileged communication?
6 A No. I don't know who asked me to sign it. To
7 the degree it was counsel, I would assert privilege. And
8 to the degree it was Laurie Underwood, I don't remember.
9 It may have been.
10 Q Okay. Did you ask Laurie Underwood about the
11 creation of Geier Capital on December of 2010?
12 A No.
13 Q Did you discuss Geier Capital Delaware with Jim
14 Hull in December 2010?
15 A In terms of these entity formations I, you
16 know, was taking advice and proceeding on that basis.
17 Q I'm sorry?
18 A Did I -- do I specifically remember discussing
19 with Jim, no.
20 Q Well, you said you were taking advice and
21 proceeding on that advice; is that right?
22 Q Who's advice?
23 A I don't recall if it was counsel or if it was
24 Jim and Laurie.
25 Q Okay. What -- at -- was it at this point in

1 time that Geier Capital -- so was it December 29, 2010
2 that Geier Capital Delaware was substituted in for Geier
3 Capital Georgia for GISF?
4 A That would be my understanding.
5 Q Okay. Were Geier -- GISF's investors notified
6 that you signed this document and created Geier Capital
7 Delaware on December 29, 2010?
8 A No.
9 BY MR. BOHR:
10 Q Can I ask -- I would like to clarify. Were
11 they notified at any time that you had -- that this had
12 been done?
13 A No, sir. Not to my knowledge.
14 Q Okay.
15 MR. BAGNALL: I'll take back Exhibit 43.
16 Okay, could you mark this one next, please?
17 (SEC Exhibit No. 71 was marked
18 for identification.)
19 BY MR. BAGNALL:
20 Q okay, I'm going to hand you what's been marked
21 as Exhibit 71. Could you please look at it and let me
22 know when you're done?
23 (Witness examined the document.)
24 THE WITNESS: Okay, this is an application
25 to --

1 BY MR. BAGNALL:
2 Q Let me just ask the question. So you're
3 responding --
4 A Oh, sorry. Sorry. Sorry.
5 Q What is Exhibit 71?
6 A It's the document to qualify to do business for
7 Geier Capital, the Delaware LLC, in Florida.
8 Q And why did the Geier Capital Delaware need
9 to -- needed to be registered with the State of Florida
10 to do business in the State of Florida?
11 A Because I was living there.
12 Q So this is the -- during the time when you were
13 seeking a way to lower your tax burden?
14 A Yes, sir. That's correct.
15 Q Okay. Is that your -- if you could please turn
16 to the third page of Exhibit 71; is that your signature
17 at the bottom middle of the page?
18 A Yes, sir.
19 Q Okay. And what is the -- what is the address
20 in Paragraph 9, "Chris Gibson, Wachovia Financial Center,
21 200 --
22 A That's -- that's an office that we used for
23 Geier Capital.
24 Q Okay. And then in 7, is that the same address?
25 Paragraph 7.

1 A Yes.
2 Q Okay. Is -- what was the address -- please
3 remind me of the residence, the apartment that you had in
4 Florida?
5 A Uh --
6 Q I thought it was that address that we saw
7 before?
8 A I don't recall. One -- actually -- actually,
9 sorry; the address -- you're correct. The address before
10 was actually this address, not my residence.
11 Q Okay.
12 A The residence was 150 Biscayne Boulevard, I
13 think.
14 Q Okay. So this -- you -- you rented an office
15 in the Wachovia Financial Center in Miami, Florida?
16 A Yes.
17 Q You in your personal capacity?
18 A No, the Geier Capital did.
19 Q Geier Capital or Geier Group?
20 A Geier Capital.
21 Q Who paid the rent for that office?
22 A Geier Cap -- Geier Capital caused Geier Group
23 probably to practically make the payments.
24 Q Okay. So did Geier Capital Delaware actually
25 do business in Florida?

1 A Yes.
2 Q Okay. And were GISF's investors notified that
3 Geier Capital Delaware was operating from Florida?

4 A They knew that I had moved to Florida, and
5 then – and was practically spending time in St. Kitts.

6 But –

7 Q Okay.

8 A – as far as the redomicility, formally I do
9 not believe they were informed.

10 Q Did anybody else, other than yourself, have any
11 titles at Geier Capital Delaware?

12 A Not to my knowledge. No.

13 Q Okay.

14 MR. BAGNALL: Anybody have anything else on
15 Exhibit 71?

16 (No response.)

17 MR. BAGNALL: Okay, take this back.

18 Okay, could you mark this next, please?

19 (SEC Exhibit No. 72 was marked
20 for identification.)

21 BY MR. BAGNALL:

22 Q Okay, I'm going to hand you now what's been
23 marked as Exhibit 72. Could you please look it over and
24 let me know when you're done?

25 (Witness examined the document.)

1 THE WITNESS: I see.

2 BY MR. BAGNALL:

3 Q Okay, what is Exhibit 72, Mr. Gibson?

4 A It's an email to Laurie Underwood.

5 Q Okay. Who wrote the email to Laurie Underwood?

6 A I did.

7 Q Okay. Is that your email, cg@geierfund.com,
8 right?

9 A Yes.

10 Q Okay. And you wrote to her, I'll read it to
11 you, on February 8, 2011, "Laurie, if there are Geier
12 Group and Geier Capital in Georgia, please end them, as
13 well. Geier Capital is now a Delaware LLC, doing
14 business in Florida, and Geier Capital is now a Cayman
15 LTD. We do not need either as Georgia entities effective
16 1/1/2011. Thanks."

17 Did I read that right?

18 A Yes.

19 Q Okay. So were you directing Laurie Underwood
20 to withdraw Geier Group Delaware's and Geier Capital –
21 excuse me; Geier Group Georgia and Geier Capital Georgia
22 registration?

23 A Yes. It appears so.

24 Q Okay. Why were you directing her to do that?

25 A Under the theory that we were going to move

1 toward this alternative structure, but we didn't.

2 Q Um-hmm. But you still dissolved the entities
3 in Georgia anyway?

4 A I – I don't think that that's the case. That
5 happened two months later.

6 Q What happened two months later?

7 A As I understand, these were not dissolved until
8 April. So I'm not sure that this – that they were
9 dissolved directly in response to this.

10 Q Okay. But – but you were directing her to do
11 that, right?

12 A Yes.

13 Q Do you know Laurie Underwood well?

14 A Yes.

15 Q Did – is she – normally not do things she's
16 asked to do?

17 A Well, I was saying this to her, to talk to Jim
18 to figure out what to do. But –

19 Q Where does it say that you want her to talk to
20 Jim Hull?

21 A It doesn't explicitly say that.

22 Q Okay. Is Jim Hull copied on any – either of
23 these emails?

24 A No.

25 Q Okay. So did you have a conversation with Ms.

1 Underwood in the February 8, 2011 timeframe in which you
2 provided that additional information?

3 A I would imagine.

4 Q Do you –

5 A I don't recall.

6 Q Don't recall, okay. And why would Geier
7 Group – if what you were describing before, the plan was
8 to create an offshore entity for foreign investors in
9 GISF, why wouldn't you still need a U.S. based Geier
10 Group?

11 A I don't recall.

12 Q Okay. And based on what you told us earlier
13 about how Geier Group was never really implemented and
14 you were managing GISF through Geier Capital, for an
15 offshore entity why would need a Geier Group?

16 A If we were going to create that new structure
17 as

18 a – the new offshore structure, we would need a
19 management entity for it.

20 Q Why wouldn't that be Geier Capital?

21 A LLC – oh, you mean Geier Group – Capital,
22 Limited?

23 Q Yeah, whatever. Whatever the –

24 A I'm not sure.

25 Q Let me just make sure I finish the question.

1 Whatever the terminology would be in the location, the
2 country in which you created the entity; so if it's LTD
3 or LLC or SA or whatever it is, why wouldn't you have a
4 Geier Capital in that foreign location instead of a Geier
5 Group?

6 A I think we did have a Geier Capital in the
7 foreign location, to the degree we -- we proceeded down
8 that path. I think we did form entities. We never used
9 them.

10 Q So why would you have a Geier Group and a Geier
11 Capital for the foreign investment but not -- only use
12 the Geier Capital for the domestic investment?

13 A I don't have a specific answer to that.

14 Q Okay.

15 MR. BAGNALL: Anybody have anything else?

16 BY MR. BOCKIN:

17 Q So my understanding -- if you want to correct
18 your earlier testimony where you said you didn't know
19 anything about the dissolution of Geier Group and Geier
20 Capital in Georgia until this investigation?

21 A I suppose I -- yes. I don't -- you know, I
22 didn't recall dissolving these, no.

23 MR. FERRIGNO: Well, pay attention to the
24 timing, because this is February.

25 THE WITNESS: Yeah. I mean, yeah, I don't --

1 in -- yeah. I remember this contemplating this, but we
2 didn't proceed down this path; so this is a separate, you
3 know, event.

4 BY MR. BOCKIN:

5 Q Well, you in fact did proceed down this path,
6 didn't you? In April of 2011 they were, in fact,
7 dissolved, weren't they?

8 A But not in order to do a Cayman entity.

9 Q No, that's not what I'm talking about. You
10 said you -- your earlier testimony was you didn't have
11 any knowledge until this investigation of the dissolution
12 of Geier Capital in Georgia; correct?

13 A Right. And I'm saying --

14 Q And I'm asking you now, in -- on February 8,
15 2011, you directed Laurie Underwood to dissolve Geier
16 Capital in Georgia; correct?

17 A In this -- by this email. And my recollection
18 at this point in time would be that that did not
19 transpire because we did not end up forming the -- or
20 proceeding down the Cayman offshore entities. And that
21 it was dissolved in a separate event later. But that's
22 my recollection.

23 Q Okay. I guess to finish, I thought you had a
24 conversation with Laurie Underwood in February of 2011 to
25 dissolve Geier Capital of Georgia; correct?

1 A Yes, sir.

2 Q And two months later Geier Capital of Georgia
3 was actually dissolved; isn't that right?

4 A Yes, sir.

5 Q Okay.

6 MR. BAGNALL: Could you mark this next, please?

7 (SEC Exhibit No. 73 was marked
8 for identification.)

9 BY MR. BAGNALL:

10 Q I'm handing you what's now been marked as
11 Exhibit -- sorry for the twist there --

12 A No, it's okay.

13 Q -- Exhibit 73. Could you look it over and let
14 me know when you're done?

15 A I'm ready.

16 Q What is Exhibit 73?

17 A It's a Certificate of Withdrawal in the State
18 of Georgia for GISF, dated February 2011.

19 Q Okay. And could you turn to the second page,
20 please, and look at Paragraph 8? Is that your signature
21 there?

22 A It appears.

23 Q So did you cause the withdrawal of the GISF
24 entity from Georgia in February of 2011?

25 A It appears so.

1 Q And why did you do that?

2 A I do not know.

3 Q Did -- did GISF no longer need to be registered
4 to do business in the State of Georgia?

5 A Presumably since we were operating out of
6 Florida.

7 Q Where at -- in February of 2011, where were the
8 majority of GISF's investors living?

9 A Georgia.

10 Q Okay. Did that not require GISF to be
11 registered in Georgia then?

12 A No. My understanding is we only had one client
13 in Georgia; the fund. Plus Jim Hull. And my father.

14 Q But this is the fund?

15 A Right.

16 Q The fund is your client, right?

17 A Yes.

18 Q So -- and --

19 A But your follow-up question was were the
20 majority of the investors. I'm just saying we didn't
21 have 29 investment advisory relationships, we had one;
22 the fund.

23 Q When you say "we," who's "we"?

24 A Geier Capital.

25 Q Okay. But you had a relationship with Jim Hull

1 and you had a relationship with your father, right?
 2 A Yes.
 3 Q And your mother? Did you say your mother?
 4 A Yes.
 5 Q And they were all investors in GISF, right?
 6 A True.
 7 Q Does the — does that duality, for lack of a
 8 better term, affect whether GISF needs to be registered
 9 in Georgia?
 10 A My understanding is we did not.
 11 Q Okay. And what's the basis for that
 12 understanding?
 13 A Discussions with counsel.
 14 Q Okay. And what were those discussions?
 15 A I would have to assert privilege.
 16 Q Okay. Which counsel?
 17 A Seward & Kissel.
 18 Q Okay. When did those conversations occur?
 19 A At the end of 2010.
 20 Q Okay. And were those conversations at the end
 21 of 2010 related to the redomiciling plan that you've been
 22 talking about?
 23 A Well, there's two separate issues —
 24 MR. FERRIGNO: Okay, but be careful. You can
 25 say there are two issues, but —

1 THE WITNESS: I guess I have to —
 2 MR. FERRIGNO: — you know, don't get into the
 3 discussion.
 4 THE WITNESS: Uh —
 5 MR. FERRIGNO: Do we need to consult?
 6 THE WITNESS: No, no.
 7 Can you ask the question, again? You're saying
 8 the re — the redomiciling plan. I'm just merely saying
 9 that there's redomiciling of Geier International
 10 Strategies Fund to Florida, and then there's this whole
 11 separate offshore entity thing.
 12 BY MR. BAGNALL:
 13 Q What I was asking was were the conversations
 14 that you were having with counsel at the end of 2010 that
 15 you testified to, related to the effort to redomicile
 16 GISF in the Caymans?
 17 A They were un — they're two unrelated matters.
 18 Q What are two unrelated matters?
 19 A Moving GISF to Florida and potentially starting
 20 a new offshore entity were unrelated matters.
 21 Q I see. So this was — this was done to move
 22 GISF to Florida?
 23 A Yes.
 24 Q All right. So let me ask that question more
 25 clearly for the record.

1 So the document that are part of Exhibit 73,
 2 which is the withdrawal of GISF's ability to do business
 3 in Georgia, were so that could be changed such that GISF
 4 was authorized to business in Florida; is that right?
 5 A Yes.
 6 Q And why was that change being made?
 7 A I would have to assert privilege.
 8 Q Okay. And so the conversations that you're
 9 asserting privilege with are with — about re — moving
 10 the domestic GISF from Georgia to Florida, the
 11 conversation you're asserting privilege on occurred at
 12 the end of 2010; is that right?
 13 A Yes, sir.
 14 Q Okay. Take back 73.
 15 BY MR. BOHR:
 16 Q Was there any potential disadvantage to keeping
 17 GISF qualified to do business in Georgia?
 18 A I don't — I don't know that.
 19 Q You're not aware of any potential disadvantage?
 20 A I'm not aware of. No.
 21 BY MR. BAGNALL:
 22 Q Were — I apologize if I asked this before, but
 23 were GISF's investors made aware that GISF International
 24 Strategies Fund was having its certificate withdrawn in
 25 Georgia?

1 A No.
 2 Q Were they aware that GISF was seeking, instead,
 3 a certify of authority to do business in Florida?
 4 A Not specifically, no.
 5 Q When you say "not specifically," what do you
 6 mean?
 7 A They were aware that I was moving to Florida
 8 and operating from there.
 9 Q Okay.
 10 (Counsel confer.)
 11 BY MR. BAGNALL:
 12 Q Yeah, was GISF — was an application for GISF
 13 to do business in Florida ever actually filed?
 14 A I don't know.
 15 Q Okay.
 16 MR. BAGNALL: Could you mark this next, please?
 17 (SEC Exhibit No. 74 was marked
 18 for identification.)
 19 BY MR. BAGNALL:
 20 Q Okay, I'm handing you what's been marked as
 21 Exhibit 74. Could you look it over and let me know when
 22 you're done, please?
 23 A Yes.
 24 Q Okay, do you — what is Exhibit 74?
 25 A It's further emails between Laurie Underwood

1 and myself, in which I state to ultimately dissolve Geier
 2 Group, LLC.
 3 Q Okay. So just to be a little bit more clear,
 4 on March 21, 2011, Laurie Underwood wrote to you and
 5 said, "Just double checking, okay to terminate the Gibson
 6 Fund LLC, Geier Capital, LLC, the Geier Group, LLC, and
 7 Whole Fund LLC?" That's on the page ending 348 of
 8 Exhibit 74. Do you see that?
 9 A Yeah.
 10 Q Did I read that correctly?
 11 A You did.
 12 Q All right. So she's talking about Geier
 13 Capital and Geier Group; correct?
 14 A Correct.
 15 Q Among the Gibson Fund and the Hull Fund, right?
 16 A Right.
 17 Q And you wrote back to her, "Keep Geier Group,
 18 LLC for now." Did I read that right?
 19 A Yes.
 20 Q Okay. And she writes back, "Will do. Thanks."
 21 And then you respond to that saying, "Actually, sorry,
 22 kill Geier Group, LLC, too. Thanks." Right?
 23 A Yes.
 24 Q Right. So in this thread you've directed
 25 her -- confirmed for her that she should dissolve both

1 Geier Capital, LLC and Geier Group, LLC, right?
 2 A Correct.
 3 Q And is that Geier Group, LLC Georgia?
 4 A Yes.
 5 Q And is that Geier Group, LLC Georgia?
 6 A You said the same thing twice. But --
 7 Q Sorry; Geier Group Georgia?
 8 A Yes.
 9 Q And Geier Capital Georgia?
 10 A Yes.
 11 Q Okay. Thank you. Thank you for catching that.
 12 And she writes back on March 21, 2011, "Okay,
 13 will do. Thanks." Is that right?
 14 A Yes, sir.
 15 Q Okay. So picking up on what Mr. Bockin said a
 16 moment ago, do you want to revisit your prior testimony?
 17 A It appears that I was, you know, a part of
 18 these discussions, absolutely.
 19 Q Okay. And can you point out anywhere in
 20 Exhibit 74 where Mr. Hull is copied?
 21 A He's not.
 22 Q Okay. And did you have a conversation with Ms.
 23 Underwood during this time in which you told her that
 24 this was actually Mr. Hull's idea?
 25 A I don't recall.

1 Q Okay.
 2 BY MR. BOCKIN:
 3 Q But just so it's clear for the record, you
 4 advised her in March of 2011 to dissolve Geier Capital of
 5 Georgia and Geier Group, LLC of Georgia; correct?
 6 A Yes, sir.
 7 BY MR. BAGNALL:
 8 Q Why did you ultimately change your mind about
 9 Geier Group? Initially telling Ms. Underwood not to --
 10 to withdraw Geier Group, and then telling her to do it?
 11 A I have no recollection of the -- what was going
 12 on in terms of phone conversations around this. I'm
 13 quite confident that these emails don't capture the full
 14 picture. But I don't recall what -- what discussions I
 15 had over the phone.
 16 Q Okay. Did you seek advice from anyone about
 17 the decision to withdraw Geier Group, LLC or Geier
 18 Capital?
 19 A I definitely would have spoken to Jim Hull
 20 about it. And --
 21 Q Well, because when I asked you that question
 22 before, you said, "I didn't even know that it happened,"
 23 right? So now that you're, sort of, memory is refreshed
 24 that you were more involved than you originally led on or
 25 originally recalled, at least, did you -- do you now

1 recall seeking advice from anybody about authority or
 2 the --
 3 A I wouldn't have dissolved legal entities by
 4 myself, to my recollection. I don't -- I --
 5 Q Okay. Did you seek Seward & Kissel's advice?
 6 A I don't recall.
 7 Q Okay. And let me ask that -- did you seek
 8 Seward & Kissel's advice about dissolving Geier Capital?
 9 A I don't recall.
 10 Q Did you seek Seward & Kissel's advice about
 11 dissolving Geier Group?
 12 A I -- I don't recall any of this.
 13 Q Okay. I'll take back Exhibit 74.
 14 Okay, I'm going to hand you what's been
 15 previously marked as Exhibit 39. If you could take a
 16 look at that and let me know when you're done, please?
 17 A I'm ready.
 18 Q Okay. Do you recognize this document?
 19 MR. FERRIGNO: Do you have another one there?
 20 MR. BAGNALL: Oh, I'm sorry. Greg, could you
 21 hand one to Tom? Apologies.
 22 MR. FERRIGNO: Yeah.
 23 THE WITNESS: This is a voluntary termination
 24 at the State of Georgia for Geier Capital, effective
 25 March of 2011.

1 BY MR. BAGNALL:
 2 Q Okay, and could you turn the page to the second
 3 page, please?
 4 A Um-hmm.
 5 Q The signature at the bottom of the page, who's
 6 signature is that?
 7 A James Hull.
 8 Q Is that James Hull's hand? Is that – did he
 9 write that himself? Is that what his signature looks
 10 like? Or is that Laurie Underwood's signature for Mr.
 11 Hull?
 12 A I couldn't say.
 13 Q Do you know one way or the other?
 14 A No.
 15 Q I sort of doubled up the questions on you. Do
 16 you know if that's Jim Hull's handwriting?
 17 A I – I couldn't say.
 18 Q Okay. And you don't know if it's Laurie
 19 Underwood's handwriting?
 20 A I couldn't say.
 21 Q Okay. But the fact remains that as of March
 22 28, 2011, Geier Capital had been terminated in Georgia;
 23 is that right?
 24 A Yes.
 25 Q Okay. Did – but we just saw emails in

1 which – on March 21st, so about a week prior you had
 2 directed Laurie Underwood to dissolve Geier Capital,
 3 right?
 4 A Right.
 5 Q And are you aware of whether Laurie Underwood
 6 ever signed Jim Hull's name on his behalf?
 7 A I think that may have been customary.
 8 Q It was customary for Laurie Underwood to sign
 9 Jim Hull's name for it?
 10 A It may have been. I don't know. I was not
 11 there, I didn't see.
 12 Q Are you ever – are you aware in your dealings
 13 with either Ms. Underwood or Mr. Hull of any instances in
 14 which Ms. Underwood signed Jim Hull's name on behalf of
 15 Mr. Hull?
 16 A Not specifically. No.
 17 Q Okay. Was Mr. Hull ever made aware that Geier
 18 Capital had been dissolved?
 19 A I cannot imagine that any of these entities
 20 were dissolved without his knowledge and approval.
 21 Q Okay.
 22 BY MR. BOCKIN:
 23 Q You're speculating?
 24 A Well, my memory clearly is –
 25 Q If he was –

1 A – is very poor around – around these events.
 2 But I – as a matter of what is – what was customary and
 3 what I strongly believe to be true, and would be stunned
 4 to learn is not true, I know that the formation and
 5 maintenance of these entities was run and managed through
 6 him, and Laurie, who is his personal assistant and is
 7 directly next to him.
 8 Q Let me ask it in a simple straight forward way;
 9 did you tell Jim Hull that you had directed Laurie
 10 Underwood to dissolve Geier Capital, LLC of Georgia?
 11 A Again, I am confident that I was having a back
 12 channel discussion with Jim about this. And then why –
 13 and then Laurie would email me and say, "Should we
 14 dissolve this?" And then I would say, "Maybe hold on to
 15 that one." And then I'm sure I was having a back channel
 16 discussion with Jim, and then that's why I responded back
 17 to Laurie in writing. So I – in other words, I don't
 18 think this is capturing anything.
 19 Q But you don't know for sure?
 20 A I don't – I do not recall for sure. I know
 21 what I would imagine and believe to have to been the
 22 case.
 23 Q But you don't recall if you notified Jim Hull
 24 of the dissolution?
 25 A I do not remember – I could not say that I

1 specifically notified Jim Hull.
 2 BY MR. BAGNALL:
 3 Q How, if at all, did the dissolution of Geier
 4 Capital that's memorialized in Exhibit 39, affect GISF?
 5 A My understanding is that we retained Geier
 6 Capital Delaware and that that was the managing member of
 7 the – of GISF, and that that was not a material change
 8 since the ownership and management was the same.
 9 Q Okay. And what's the basis for your
 10 understanding for – for supporting that testimony?
 11 A That the ownership and management was the same
 12 for both entities?
 13 Q No. I'm saying that – that as a rationale for
 14 why it didn't – this change didn't affect GISF, you
 15 testified that –
 16 A Well, I understand from – I'm sorry to
 17 interrupt you, but I understand from the operating
 18 agreement and the confidential information memorandum
 19 that our obligations to make reports of that kind had to
 20 be surrounding a material adverse event or change.
 21 Q And what I'm asking you is, did you just base
 22 your decision, or even your testimony a moment ago, that
 23 this termination of Geier Capital didn't amount to a
 24 material change? Or did you seek advice from someone to
 25 confirm that understanding on your – that you have?

1 A I don't recall seeking advice.
 2 Q Okay. So your testimony is based on your
 3 personal reading of the offering documents; is that
 4 right?
 5 A And I may have sought advice. I don't remember
 6 specifically.
 7 Q Okay. But I'm asking, what's forming the basis
 8 of your testimony a moment ago, that this wasn't
 9 material?
 10 A My thought in this moment that -- what -- the
 11 change of a domicility of a legal entity from one state
 12 to another whose ownership and management is the same is
 13 not material.
 14 Q But that's not what happened, right? Geier --
 15 Geier Capital Georgia wasn't redomiciled in Delaware. A
 16 brand new entity was created in Delaware that happens to
 17 have the same name, right?
 18 A That's correct.
 19 Q Okay. So do you want to give your testimony
 20 again?
 21 A That that -- exactly what you just described is
 22 not a material change.
 23 Q Okay. And did you seek advice from anyone to
 24 support your understanding that that's not a material
 25 change?

1 A I may have, but I don't recall specifically.
 2 Q Okay.
 3 MR. BAGNALL: Anybody have anything?
 4 BY MR. BOCKIN:
 5 Q Did you make the GISF investors aware of the
 6 fact that you had directed Laurie Underwood to dissolve
 7 Geier Capital, LLC?
 8 A No.
 9 MR. BOCKIN: That's it.
 10 MR. FERRIGNO: Can we take a restroom break?
 11 MR. BAGNALL: Sure. We'll go off the record at
 12 2:21 p.m., December 21, 2015.
 13 (A brief recess was taken.)
 14 MR. BAGNALL: Okay, we'll go back on the record
 15 at 2:27 p.m., December 21, 2015.
 16 BY MR. BAGNALL:
 17 Q Mr. Gibson, you recall you're under oath?
 18 A Yes, sir.
 19 Q Okay. And just to confirm, there were no
 20 conversations of substance between you and the staff
 21 during the break; is that right?
 22 A That's correct.
 23 MR. BAGNALL: And you agree, Mr. Ferrigno?
 24 MR. FERRIGNO: Yes.
 25 MR. BAGNALL: Okay.

1 BY MR. BAGNALL:
 2 Q Okay, I'm going to hand you what's been marked
 3 previously as Exhibit 38. If you could look it over and
 4 let me know when you're done, please?
 5 A I'm ready.
 6 Q Okay. Do you recognize Exhibit 38?
 7 A Yes. There's the dissolution of Geier Group in
 8 the State of Georgia, effective April 2011.
 9 Q Okay. And if you look at the second page of
 10 Geier -- excuse me, Geier Group's dissolution, Exhibit
 11 38, who's signature is that at the bottom of the page?
 12 A It appears to be Jim Hull.
 13 Q And does that signature look to you to be the
 14 same as the signature we looked at a moment ago in
 15 Exhibit 39?
 16 A It does.
 17 Q Okay. And are you -- do you -- having seen it
 18 here now, do you recognize that to be Jim Hull's own
 19 handwriting?
 20 A I don't. I couldn't say.
 21 Q And you still don't know whether it might be
 22 Laurie Underwood's handwriting, instead?
 23 A It could be. I don't know.
 24 Q Okay. And was this the date on which Geier
 25 Group Georgia was actually terminated?

1 A Yes, sir.
 2 Q And was -- after this time, were GISF's
 3 investors made aware that Geier Group had been
 4 terminated?
 5 A No, sir.
 6 Q Okay. And for what reason was Geier Group
 7 terminated?
 8 A I think that, you know, the best of my
 9 recollection at this point in time is that all of the
 10 capital account activity and management had effectively
 11 been carried out through Geier Capital, anyway.
 12 We had had a large gain in 2010 and we came to
 13 the conclusion we were going to pay our taxes regardless
 14 of carried interest anyway. And so there really was no
 15 basis to have a second legal entity.
 16 Q Okay.
 17 A And so we, you know, consolidated into the
 18 Geier Capital Delaware entity for purposes of management.
 19 Q And do you have a specific recollection of that
 20 from the April 2011 timeframe? Or are you -- are you --
 21 A This is over a series of discussions from
 22 January to -- concluding now in April.
 23 Q And when we asked you about this the first time
 24 around in March, I think you said that you just assumed
 25 that Jim Hull did this to save on filing fees. Do you

1 remember saying that?
 2 A Yes.
 3 Q Okay. What you're testifying to now is
 4 different. Would you agree?
 5 A It appears that I had discussions relating to
 6 the dissolution of these, so I must have been involved.
 7 Yes.
 8 Q And so what I'm asking you though, was the --
 9 answer you just gave about terminating Geier Group
 10 because you were paying your taxes for Geier Capital
 11 anyway you just may as well have one entity instead of
 12 two, do you have a specific recollection -- recollection of
 13 that being the reason in April of 2011 for dissolving
 14 Geier Group, LLC in Georgia?
 15 A I do not.
 16 Q Okay. What forms the basis of that
 17 understanding now?
 18 A As I look back on all of the facts and the
 19 emails and the fact that I was involved and -- and what
 20 our various considerations were at the time, that it's
 21 the most -- that's the most complete picture I can give
 22 you.
 23 Q But it's your best estimate, basically?
 24 A Yes.
 25 Q Okay. I'll take back Exhibit 38.

1 MR. BAGNALL: Okay, could you mark this next,
 2 please?
 3 (SEC Exhibit No. 75 was marked
 4 for identification.)
 5 BY MR. BAGNALL:
 6 Q Okay, I'm going to hand you what's been marked
 7 as Exhibit 75. Could you look it over and let me know
 8 when you're done, please?
 9 A I'm ready.
 10 Q Do you recognize Exhibit 75, Mr. Gibson?
 11 A Yes.
 12 Q What is it?
 13 A It's a Schedule 13G filing with the SEC
 14 relating to our ownership of TRX shares that exceeded the
 15 10 percent level.
 16 Q Okay. And if you could please turn to Page 11
 17 of this document, which is the signature page. I'm
 18 sorry; they're not numbered. It might be easier to go
 19 from the back, third page in from the end, actually.
 20 A Okay. Okay.
 21 Q May 2nd, Geier Capital, LLC, signed by Chris
 22 Gibson, managing member. Do you see that?
 23 A Yes.
 24 Q Was that Geier Capital Georgia or Geier Capital
 25 Delaware?

1 A Delaware, I presume.
 2 Q Okay. And then the next one down, Geier Group,
 3 LLC, by Chris Gibson. Do you see that?
 4 A Yes.
 5 Q And you see the date that this was signed, May
 6 2, 2011?
 7 A Yes.
 8 Q Did Geier Group exist at that time?
 9 A It did not.
 10 Q By -- it had been dissolved by -- for how long?
 11 A A little over a month.
 12 Q Okay.
 13 A Or a little under a month, I guess.
 14 Q All right. And so why are you signing on
 15 behalf of Geier Group when it didn't exist?
 16 A It's a mistake.
 17 Q Okay. And how did that mistake happen?
 18 A It was an oversight.
 19 Q Okay. And could you turn two more pages,
 20 please? Okay, do you see there's another signature here?
 21 A Yes.
 22 Q For Geier Capital, LLC, signed by you. Do you
 23 see that?
 24 A Yes.
 25 Q And was that Geier Capital Georgia or Geier

1 Capital Delaware?
 2 A Delaware, I presume.
 3 Q Okay. And you can see that, right, actually,
 4 if you turn to the third page in from the beginning?
 5 A Um-hmm.
 6 Q Geier Capital is listed there as -- Geier
 7 Capital Delaware, right?
 8 A Okay.
 9 Q And Geier -- and the fourth page is Geier
 10 Capital Georgia, right?
 11 A Yes.
 12 Q Okay. And so it -- in connection with the
 13 identity -- the identification of Geier Capital Delaware,
 14 is it your contention at this time Geier Capital Delaware
 15 had been substituted in as the managing member of GISF?
 16 A Yes, sir.
 17 Q Okay. And then is it -- is your contention
 18 again that on the Page 4, where Geier Group is identified
 19 as being a Georgia entity, that that -- that was a
 20 mistake?
 21 A Yes, sir.
 22 Q Okay. I mean, it's not -- not that much time
 23 has passed, right? It's only a few weeks that had passed
 24 since you wrote those emails directing Laurie Underwood
 25 to dissolve these entities when you signed these, right?

1 A Yes, sir. That's correct.
 2 Q And so you didn't -- you don't -- you didn't
 3 remember, what, five or six weeks later that you had
 4 dissolved the Geier Group?
 5 A I --
 6 Q March 21st --
 7 A I -- I didn't appreciate the significance of
 8 that. I was -- I read this and read the, you know, share
 9 numbers and so forth, and this was drafted in
 10 consultation with counsel and I didn't -- I made an
 11 oversight and --
 12 Q Okay.
 13 A -- in the signature pages.
 14 Q Okay. And -- and on this page, right?
 15 A Yes.
 16 Q Okay. And when I say "this page," I'm talking
 17 about Page 4.
 18 MR. BAGNALL: Okay, anybody have anything else
 19 on Exhibit 75?
 20 MR. BOHR: I don't think he responded to the
 21 Page 4.
 22 BY MR. BAGNALL:
 23 Q I'm sorry; was it also an oversight at Page 4?
 24 A Yes. It was an oversight on Page 4.
 25 Q Thank you.

1 MR. BAGNALL: Could you mark this next, please?
 2 (SEC Exhibit No. 76 was marked
 3 for identification.)
 4 BY MR. BAGNALL:
 5 Q Okay, I'm handing you what's now been marked as
 6 Exhibit 76. Could you please take a look at Exhibit 76
 7 and let me know when you're done?
 8 A Yes. I'm ready.
 9 Q Okay. What -- what is Exhibit 76?
 10 A It's a Form 3 filed with the SEC by Geier
 11 International Strategies Fund regarding its ownership of
 12 TRX.
 13 Q Okay. And do you see on Page 3 and 4 there are
 14 signatures. Did you authorize your signatures to be used
 15 here?
 16 A Yes.
 17 Q Okay. And so the first signature on Page 3
 18 from May 2, 2011 is for Geier International Strategies
 19 Fund, by Geier Capital, LLC, signed by Chris Gibson.
 20 Which Geier Capital, LLC is that?
 21 A I would presume it was Delaware.
 22 Q Okay. And do you know for sure?
 23 A I -- no.
 24 Q Okay. The next signature is for you, Geier
 25 Capital by you. Do you see that?

1 A Yes, sir.
 2 Q And is that Geier Capital Georgia or Delaware?
 3 A Delaware.
 4 Q Okay. Do you know for sure?
 5 A No, sir.
 6 Q Okay. And then the last signature there is for
 7 Geier Group. Do you see that?
 8 A Yes, sir.
 9 Q And Geier Group didn't exist at that time in
 10 any jurisdiction, right?
 11 A That's correct.
 12 Q Okay. So why -- why did you sign on behalf of
 13 Geier Group on May 2, 2011?
 14 A That was an oversight, as well.
 15 Q Okay. And is the reason for the oversight for
 16 this Form 3 any different than the reasons you gave for
 17 Exhibit 75?
 18 A No, sir. They're the same.
 19 Q Okay.
 20 MR. BAGNALL: Anybody have anything else?
 21 BY MR. BOCKIN:
 22 Q You would agree that this Form 3 is false;
 23 correct?
 24 MR. FERRIGNO: I think he said it was a
 25 mistake.

1 BY MR. BOCKIN:
 2 Q Is it? Is it accurate? Is it accurate or it
 3 is false?
 4 A I would say it's inaccurate.
 5 BY MR. BAGNALL:
 6 Q Is that true, too of Exhibit 75, the 13G, it
 7 was also inaccurate?
 8 A Yes.
 9 Q Okay.
 10 MR. BAGNALL: Could you mark this next, please?
 11 (SEC Exhibit No. 77 was marked
 12 for identification.)
 13 BY MR. BAGNALL:
 14 Q I'm going to hand you what's been marked as
 15 Exhibit 77. Could you please look it over and let me
 16 know when you're done?
 17 A I'm ready.
 18 Q Okay. Do you recognize Exhibit 77?
 19 A It's a Form 4 of Geier International Strategies
 20 Funds ownership of TRX.
 21 Q Okay. And do you see on the second page, at
 22 the very end, there are signatures again?
 23 A Yes.
 24 Q Okay. And it appears that your signature
 25 was -- was listed for each entity. Did your -- did you

1 authorize your signatures to be used on June 14, 2011?
 2 A Yes.
 3 Q Okay. And do you see the first signature again
 4 is for GISF, and the Geier Capital. Which Geier Capital
 5 entity was this?
 6 A Delaware, I presume.
 7 Q Okay. But do you see at the top of the same
 8 page, Geier Capital's address is listed as a Florida
 9 entity. Do you see that?
 10 MR. FERRIGNO: Well, it was a Florida address.
 11 MR. BAGNALL: Excuse me. Thank you.
 12 BY MR. BAGNALL:
 13 Q A Florida address. Do you see that?
 14 A Yes.
 15 Q Okay. So what – had Geier Capital been
 16 registered in the State of Florida at this time?
 17 A Not to my knowledge.
 18 MR. BAGNALL: Bear with me for just a second.
 19 (Pause.)
 20 BY MR. BAGNALL:
 21 Q Are you sure about that? Take a look at
 22 Exhibit 71.
 23 A So we were qualified to do –
 24 Q Okay.
 25 A – business in Georgia.

1 MR. FERRIGNO: Wait.
 2 THE WITNESS: I mean, in Florida. In Florida.
 3 BY MR. BAGNALL:
 4 Q So Geier Capital, at the time, was registered
 5 to do business in Florida when your signature was
 6 appended here in June of 2011, right?
 7 A Yes, sir.
 8 Q Okay. But again, you see you signed here for
 9 Geier Group. Did Geier Group exist in June of 2011?
 10 A No, sir.
 11 Q So was this Form 4 accurate?
 12 A It was – it had – it contained an oversight.
 13 Q Was it accurate?
 14 A In that it contained an oversight it was
 15 inaccurate.
 16 Q Okay. So not accurate. Again "inaccurate"?
 17 A Not accurate.
 18 Q All right. So –
 19 MR. BOCKIN: Go ahead.
 20 BY MR. BAGNALL:
 21 Q So why did you sign for Geier Group in June of
 22 2011 when it didn't exist?
 23 A Again, I didn't look at the entities. I did
 24 this through counsel and I looked at the – reviewed the
 25 numbers of the shares and perpetrated an oversight.

1 Q Okay.
 2 BY MR. BOCKIN:
 3 Q You said you did this through counsel. Who
 4 helped you prepare this SEC Form 4?
 5 A Seward & Kissel.
 6 Q Did you make Seward & Kissel aware that Geier
 7 Group had been dissolved in March of 2011?
 8 A I would have to assert privilege.
 9 Q Okay. I'll ask the same question for the –
 10 MR. BOCKIN: Can you tell me the numbers,
 11 please, George, for those – for the Form 13 and the Form
 12 3?
 13 MR. BAGNALL: So it's Exhibit 76, Exhibit 75,
 14 and the Exhibit 77 that we're talking about.
 15 BY MR. BOCKIN:
 16 Q So let me ask the question so it's clear for
 17 the record. Did you – who – let's start with the –
 18 let's start with Exhibit 75 so it's easiest, which is the
 19 13G.
 20 MR. FERRIGNO: I don't think you want to give
 21 us your attorney work product.
 22 MR. BAGNALL: Yeah, could we get that one back?
 23 I'm sorry.
 24 MR. FERRIGNO: That's okay.
 25 MR. BOCKIN: Sorry about that.

1 MR. BAGNALL: Thank you.
 2 MR. BOCKIN: Here's the other one.
 3 BY MR. BOCKIN:
 4 Q So take a look at Exhibit 75, if you would.
 5 Same question as I asked before; who helped you prepare
 6 this?
 7 A Seward & Kissel.
 8 Q And did you make Seward & Kissel aware before
 9 it was filed that Geier Group, LLC had been dissolved?
 10 A I would have to assert privilege.
 11 Q All right. I'll collect 75 again.
 12 And I'm going to show you 76. The same
 13 question.
 14 A Seward & Kissel. And I would assert –
 15 Q Let me ask the question so it's clear for the
 16 record later on.
 17 So I'm going to show you Exhibit 76, which is
 18 the Form 3, dated April 29, 2011 and filed on May 2,
 19 2011. Do you see that?
 20 A Yes, sir.
 21 Q And who assisted you in the preparation of this
 22 Form 3?
 23 A Seward & Kissel.
 24 Q And did you make Seward & Kissel aware that
 25 Geier Group, LLC of Georgia had been dissolved as of this

1 filing?
 2 A I would have to assert privilege.
 3 Q Okay. Thank you, I'll collect 76, as well.
 4 MR. BAGNALL: Are you don't with 77?
 5 MR. BOCKIN: Yes.
 6 MR. BAGNALL: Okay. I'll take 77 back from
 7 everyone, please.
 8 Could you mark this next, please?
 9 (SEC Exhibit No. 78 was marked
 10 for identification.)
 11 BY MR. BAGNALL:
 12 Q So this is – what I'm handing you now has been
 13 marked Exhibit 78. Could you please look at Exhibit 78
 14 and let me know when you're done, please?
 15 A I'm ready.
 16 Q Okay. What is Exhibit 78?
 17 A It's a Schedule 13G filed by GISF on November
 18 2011 relating to our ownership of TRX.
 19 Q Okay. On the second page from the end, could
 20 you look back there, please, and look at the signatures.
 21 Do you see there's Geier Capital, LLC, signed by Chris
 22 Gibson. Do you see that?
 23 A Yes.
 24 Q Okay. What Geier Capital is that, Georgia or
 25 Delaware?

1 A Delaware, I presume.
 2 Q Do you know for sure?
 3 A I don't.
 4 Q Okay. The next is Geier Group. Do you see
 5 that?
 6 A I do.
 7 Q Did you authorize your signatures to be used on
 8 November 10, 2011 for Geier Capital and Geier Group?
 9 A I did.
 10 Q Okay. Why did you sign for Geier Group when it
 11 didn't exist?
 12 A It was an oversight.
 13 Q Okay. Can you turn to the last page, please?
 14 This is also from November 10, 2011. There's a signature
 15 by you for Geier Capital, and a signature by you for
 16 Geier Group. Do you see that?
 17 A Yes, sir.
 18 Q And did you authorize those signatures on
 19 November 10, 2011?
 20 A Yes, sir.
 21 Q Okay. Is that Geier Capital Georgia or
 22 Delaware?
 23 A Delaware I presume. I'm not sure.
 24 Q Okay. And Geier Group didn't exist so why did
 25 you authorize your signature to be used there?

1 A It was an oversight.
 2 Q Okay. Could you turn, please, to Page 2? This
 3 identifies Geier Capital. Do you see that –
 4 A Yes, sir.
 5 Q – in Paragraph 1?
 6 Look at Paragraph 4 for me, please? Where's
 7 the citizenship of the Geier Capital that's being signed
 8 for here?
 9 A It says Georgia.
 10 Q Did Geier Capital Georgia exist at this time?
 11 A No.
 12 Q Okay. Why – why was Geier Capital making
 13 filings with the SEC when it didn't exist?
 14 A This is an oversight in terms of its
 15 domicile.
 16 Q Okay. The next page is Geier Group, LLC
 17 Georgia. Do you see that?
 18 A Yes, sir.
 19 Q Okay. It's Paragraphs 1 and 4, again. That
 20 didn't exist either, right?
 21 A That's correct.
 22 Q So neither of the entities that are identified
 23 for investors on Pages 2 and 3 of this document exist,
 24 right?
 25 A That's correct.

1 Q Is this 13G that was filed in November of 2011
 2 accurate?
 3 A Not in the sense that the Geier Group was not
 4 around and that Geier Capital was misidentified as a
 5 Georgia entity.
 6 Q Okay. Did – who helped you file this 13G?
 7 A Seward & Kissel.
 8 Q Did you make known to Seward & Kissel that
 9 Geier Capital Georgia didn't exist at this time?
 10 A I would have to assert privilege.
 11 Q Did you make known to Seward & Kissel that
 12 Geier Group Georgia didn't exist at this time?
 13 A I would have to assert privilege.
 14 Q I'll take back 78. Okay, now let me just go
 15 back to Exhibit 43, which we talked about earlier. Could
 16 you please take a look at Exhibit 43 and let me know when
 17 you're ready?
 18 A I'm ready.
 19 Q Okay. Now, could we please focus on Page 3 of
 20 Exhibit 43?
 21 A Yes.
 22 Q Okay. This is – do you see this is a Geier
 23 Capital, LLC Certificate of Formation of the Limited
 24 Liability – excuse me; Certificate of Cancellation. Do
 25 you see that?

1 A Yes.
 2 Q That was December 22, 2011. Is that your
 3 signature there over "Authorized Persons"?
 4 A Yes.
 5 Q Okay. And is that your name printed in type
 6 there at the very last line?
 7 A Yes.
 8 Q And this relates to Geier Capital Delaware;
 9 correct?
 10 A Yes.
 11 Q Okay. So was Geier Capital Delaware dissolved
 12 at the end of December 2011?
 13 A Yes.
 14 Q By your signature, right?
 15 A Yes.
 16 Q Were you aware of that previously?
 17 A I don't have a specific recollection. No.
 18 Q Okay. So when Geier Capital Delaware was
 19 terminated in the end of December 2011, was that your
 20 idea to dissolve this entity?
 21 A No.
 22 Q What was the reason for dissolving Geier
 23 Capital Delaware?
 24 A I do not recall.
 25 Q Was there another entity that was substituted

1 as the managing member of GISF at this time?
 2 A No.
 3 Q So what happened to GISF when Geier Capital
 4 Delaware was dissolved in December of 2011?
 5 A I don't have the legal knowledge to form a
 6 basis or opinion of that.
 7 Q Okay. Based on what we looked at in Exhibits
 8 34 and 35 at the outset today, there -- we -- and we can
 9 pull them back out if you would like, there was some
 10 provisions that we discussed about what would happen
 11 if -- if those entities were dissolved. Do you remember
 12 that?
 13 A I do.
 14 Q Okay. And they are the Confidential Private
 15 Offering Memorandum in Exhibit 34 and the Operating
 16 Agreement in Exhibit 35. All right, and why don't we
 17 start with the Confidential Offering Memorandum.
 18 MR. FERRIGNO: I have two operating agreements,
 19 I think.
 20 MR. BAGNALL: Sorry; here you go. This is 34
 21 and 35. You had two of these, so put that back in the
 22 pile.
 23 MR. FERRIGNO: Yeah.
 24 MR. BAGNALL: Sorry for the confusion there.
 25 BY MR. BAGNALL:

1 Q So if you turn to page ending 387 of Exhibit
 2 34.
 3 A Okay.
 4 Q Do you see the section, "Dissolution of the
 5 Company"?
 6 A Right.
 7 Q "The company may be dissolved at any time by
 8 the managing member whereupon its affairs will be wound
 9 up by the managing member." Right?
 10 The next sentence says, "The retirement,
 11 dissolution, bankruptcy or insolvency of the managing
 12 member will dissolve the company unless (i) at such time
 13 there is another managing member who agrees to continue
 14 the business of the company."
 15 A Right.
 16 Q "Or (ii) an entity controlled by Chris Gibson
 17 is substituted as managing member to continue the
 18 business of the company."
 19 A Correct.
 20 Q Okay. Did either -- (i) or (ii) occur?
 21 A I believe (i) occurred.
 22 Q And what was the -- who was the -- who is the
 23 other managing member that agreed to continue the --
 24 running the company?
 25 A I do not know.

1 Q Then how do you have a basis to believe that
 2 that's what occurred?
 3 A Because the company continued to operate until
 4 the final wind down occurred the next month.
 5 Q Did it do so properly though?
 6 A I believe so.
 7 Q Okay. So who would know what entity was
 8 substituted in? Or who -- what individual or entity
 9 served as the managing member?
 10 A I would defer to Jim Hull, who was largely
 11 managing this process at this point.
 12 Q So in -- this is December of 2011, you were no
 13 longer involved?
 14 A I was involved, but in terms of wind -- the
 15 wind down and how to execute it, I was not involved in
 16 the day-to-day basis.
 17 Q Well, we saw your W-2 from 2012; correct? The
 18 entire year of 2012 you earned something like \$148,000 in
 19 connection with your providing advisory services to GISF;
 20 correct?
 21 A I'm not sure that --
 22 Q I mean, that's your prior testimony.
 23 A Yes. Again, in terms of managing the wind down
 24 and the adjustment and the structure, which occurred in
 25 December of 2011 and January of 2012. I was not involved

1 on a day-to-day basis of that.

2 Q Well, what wind down are you describing because

3 you were paid for the entire year of 2012, and

4 potentially –

5 A I'm not saying --

6 Q -- the -- hold on, I'm not done. And

7 potentially even the first week of 2013, right?

8 A Right.

9 Q So we're talking about potentially 13 months

10 after the time that Geier Capital Georgia was dissolved,

11 your testimony is that you weren't involved?

12 A I -- my testimony is not that I was not

13 involved in Geier International Strategies Fund. That's

14 not my testimony.

15 Q Okay. So please describe what it is?

16 A My testimony is that my involvement in the wind

17 down of these other investors was very limited. And in

18 the involvement in the new -- the dissolution of Geier

19 Capital and the whatever structure took place, I do not

20 recall.

21 Q That's your signature, right? Right there?

22 MR. FERRIGNO: Which document is that?

23 MR. BAGNALL: This is Exhibit 43, right?

24 BY MR. BAGNALL:

25 Q You've always testified that that's your

1 signature dissolving Geier Capital --

2 A I said that that appears to be my signature.

3 Q Is it your signature or not?

4 A I don't know.

5 Q Did anybody else in December of 2011 have

6 authority to sign your name?

7 A No.

8 Q Okay. So who's signature could that be if not

9 yours?

10 A I don't know.

11 Q Okay. So --

12 A Well, I mean, it certainly says my name.

13 Q So you -- it's hard for me to understand how

14 you can testify on the one hand that you're involved, but

15 on the other that it says your name and you've testified

16 that that's either your signature or -- or likely your

17 signature.

18 MR. FERRIGNO: I don't think he said he wasn't

19 involved.

20 MR. BAGNALL: He said that twice.

21 THE WITNESS: I didn't -- I didn't set the

22 policy. If -- if I was presented with a certificate of

23 cancellation to execute, I would have done so.

24 BY MR. BAGNALL:

25 Q And how -- how does that satisfy your fiduciary

1 obligation to your -- to your client? Signing documents

2 without thinking about them? What did you think when you

3 were asked to sign this document in December of 2011?

4 A That it was a routine adjustment in our

5 structure.

6 Q And how was it adjusted?

7 A It was adjusted in that we eliminated the

8 existing legal entity that was the managing member and a

9 new managing member took over.

10 Q And who's that new managing member?

11 A That's what I do not know.

12 Q Okay. Did you know in December of 2011?

13 A No.

14 Q Did you ask anybody in December of 2011?

15 A No.

16 Q Okay. So you had a fiduciary obligation to

17 GISF. You signed a document to dissolve it's managing

18 member. You did so without knowing who the new managing

19 member would be, and without asking whether there would

20 be a new managing member. How does that satisfy your

21 fiduciary obligation to your client, GISF, in December of

22 2011?

23 A I don't recall.

24 Q Okay. Is it possible that the fund should have

25 been dissolved in December 2011 when you signed the

1 document dissolving Geier Capital Delaware?

2 A I sought to want to participate in the wind

3 down of the fund and the management of the wind down of

4 the fund consistent with our offering documents and in

5 terms of the dissolution of that entity. I was not the

6 progenitor of that.

7 Q Let me make sure you understood my question,

8 okay, because what I said -- what I asked you was whether

9 it was possible when you signed this document in December

10 of 2011 that GISF should have been dissolved?

11 A I would say that's not possible.

12 Q Why is that not possible?

13 A Because all of this was done in the context of

14 a thoughtful wind down. And that I was not the

15 progenitor of the dissolution of Geier Capital, LLC in

16 Delaware.

17 Q That's your signature, right?

18 A I -- I would have agreed to do that in

19 consultation with Jim, who was essentially managing this

20 process at this point in time.

21 Q So I don't understand when you're talking about

22 a -- the wind down. The fund continued for at least

23 another year after this.

24 A As --

25 Q And you were paid for work that you did in

1 connection with the fund for that year, to the tune of
2 almost of \$150,000. So what wind down are you talking
3 about?

4 A I'm talking about the redemption of all the -
5 all the small - smaller other investors, with the
6 exception of my family, Jim, and the Marzullos.

7 BY MR. BOCKIN:

8 Q How could it have been a thoughtful wind down
9 when you didn't know who the managing member was?

10 A From a legal perspective I don't know.

11 Q From a practical perspective. If there's no
12 managing member -

13 A There is a -

14 Q - who's managing the fund.

15 A Okay. Okay. Well, then the managing member
16 would be myself and Jim, as it was before and as it was
17 after.

18 BY MR. BAGNALL:

19 Q Okay, as of December 22, 2011, which of the
20 smaller investors that just referred to a moment ago had
21 already withdrawn their funds? Redeemed their full
22 investment in GISF?

23 A I don't recall. But few, if any.

24 Q Okay. So as of this date, the vast majority of
25 the investors were still invested in GISF; is that right?

1 A For the next 38 days, yes.

2 Q Until when, the end of January 2012?

3 A That's my understanding.

4 Q Okay. Were the GISF investors notified in
5 December 22, 2011 timeframe that Geier Capital Delaware
6 had been dissolved?

7 A No.

8 Q Okay. Were the GISF investors notified in the
9 December 2011 timeframe that you and Mr. Hull were
10 potentially the managing members of the fund? Had been
11 substituted in for Geier Capital Delaware?

12 A We would not have substituted ourselves
13 individually as the new managing member. It would be a
14 new legal entity.

15 Q And what's the name of that entity?

16 A That's what I do not know or have a
17 recollection of. But I'm sure it was another LLC.
18 Perhaps Hull Storey Gibson; I'm not sure.

19 Q Okay. And where was that - that substitution
20 memorialized?

21 A It was not.

22 Q Okay. So then how do you know it happened?

23 A Because based upon what is customary. It would
24 be uncanny to eliminate an LLC and assume a
25 partnership like that.

1 Q I mean, I would say it would be uncanny to
2 sign a document like this without knowing what the
3 consequences were. Wouldn't you agree with that?

4 A I agree.

5 Q Okay. Did you seek advice from anybody before
6 you signed that dissolution of Geier Capital Delaware in
7 December of 2011?

8 A Not to my recollection.

9 Q Did you speak with your attorneys at Seward &
10 Kissel?

11 A At this point in time I wasn't - no.

12 Q Okay. Did you speak with Mr. Grovenstein?

13 A I did not. No.

14 Q Did you speak with your father?

15 A No.

16 Q Did you speak with any other attorney before
17 you signed that document in December 2011 dissolving
18 Geier Capital Delaware?

19 A Not to my recollection.

20 Q Okay.

21 BY MR. BOHR:

22 Q When Mr. Bagnall asked you if you spoke with
23 any attorneys at Seward & Kissel at this time, you
24 responded by saying, "I was not at this time," and then
25 you stopped.

1 Did - do you mean that your relationship with Seward
2 Kissel was over by this time of this document?

3 A No, I don't mean that.

4 Q What did you mean? You stopped what you
5 started to say.

6 A If I recall what you're referring to, I think I
7 was saying that, you know, at this point in time we were
8 redeeming the other smaller investors and Jim was heavily
9 involved on the day-to-day management and setting course,
10 and I was complying in those efforts as long as it was
11 consistent with our agreements with our investors and our
12 obligations to them. And I think everything has been.

13 BY MR. BAGNALL:

14 Q Why do you think everything has been?

15 A I don't see any reason why we could not have
16 dissolved Geier Capital Delaware, operated under a new
17 LLC, and for a 38-day period while we dissolved the
18 company.

19 Q That's not the issue, right? The issue is
20 you're saying that but you have absolutely no idea
21 whether another LLC was substituted for Geier Capital
22 Delaware?

23 A That's correct.

24 Q Okay. So what are we supposed to think?
25 There's no entity, right, that you can think of, you just

1 want us to think there must have been one?

2 A Is that a -- I'm not sure if that's a question.

3 Q That is a question. Is that what you want us

4 to think? That there just had to have been one, even

5 though you can't think of it? Where it would be

6 domiciled? What its name would be? That there's no

7 writing about it?

8 A I'm not sure what you want to think -- what I

9 want you to think. I'm trying to answer your questions

10 honestly.

11 Q Right. And what I'm saying is how can you

12 think that everything was done right by GISF --

13 investors --

14 A Because I have high degree of confidence in

15 Jim. And in reading, you know, our obligations again

16 under the confidential offering memorandum and the

17 operating agreement, I don't see anything explicitly

18 inconsistent with dissolving Geier Capital Delaware.

19 Q Other than you can't identify who the new

20 managing member would be?

21 A That's --

22 Q That's a pretty big inconsistency, right? A

23 fund can't operate without a managing member. Look --

24 A You're asking -- you're asking for the legal

25 entity.

1 Q No, look -- please look in front of you --

2 A Right. Right. You're right, I cannot identify

3 the legal entity. That's correct.

4 Q Okay. All right. So that -- that's a big

5 issue, right? Because look -- in front of you is the

6 operating agreement, Exhibit 35, okay. Section 9.02, I

7 have it open there for you. Page ending 085, right.

8 Here, too, this mirrors the language of the confidential

9 private offering memorandum saying that "The retirement,

10 dissolution, bankruptcy or insolvency of the managing

11 member will dissolve the company."

12 The company is GISF, right?

13 A Correct.

14 Q And the dissolution of the managing member,

15 that's what just happened here, right? Geier Capital

16 Delaware was dissolved in Delaware, right?

17 A Correct.

18 Q By your signature; correct?

19 A Correct.

20 Q Okay. So that potentially means that GISF, the

21 fund, is also dissolved, unless you can point to a new

22 managing member?

23 A No. This is --

24 Q No, yes, it does.

25 A Does not say I have to --

1 MR. FERRIGNO: It doesn't say he has to be able

2 to point to it.

3 THE WITNESS: Yeah.

4 MR. FERRIGNO: It just says somebody has to

5 step in.

6 THE WITNESS: Right.

7 BY MR. BAGNALL:

8 Q Unless the -- unless there is a new managing

9 member.

10 A Right.

11 MR. FERRIGNO: Right. It doesn't --

12 THE WITNESS: And I'm saying --

13 MR. FERRIGNO: -- he has to point to it.

14 BY MR. BAGNALL:

15 Q Somebody has to point to it.

16 A No.

17 Q Absolutely.

18 MR. FERRIGNO: Somebody has to -- maybe

19 somebody has to do something, but -- but it's not his

20 responsibility --

21 BY MR. BAGNALL:

22 Q I disagree with that actually because you were

23 the 50 percent owner of the managing member; correct?

24 You were paid approximately \$150,000 for this year,

25 right, to provide services to this fund; correct?

1 A In part, yes.

2 Q Yeah. And you were the majority owner of Geier

3 Capital; correct?

4 A Yes.

5 Q And you were the majority owner of Geier Group;

6 correct?

7 A Correct.

8 Q You were paid for providing investment advisory

9 services to the fund; correct?

10 A Correct.

11 Q Okay. So you did have a responsibility. In

12 fact, you had a fiduciary obligation to GISF, correct, as

13 an investment advisor?

14 A Yes.

15 Q Okay. So you, perhaps more than anybody else,

16 right, had the obligation to identify who the new

17 managing member would be?

18 A And I'm not saying that that didn't occur. I'm

19 saying I cannot recall at this point in time who it is.

20 Q Right. But we haven't seen a single writing

21 identifying a new managing member in the timeframe,

22 right?

23 A No.

24 Q And you just went through an exercise of

25 producing documents to us pursuant to two different

1 subpoenas in this matter; correct?
 2 A Correct.
 3 Q During your review of those documents, did you
 4 ever see any documents identifying who the new managing
 5 member would be in December of 2011?
 6 A No.
 7 Q Okay.
 8 MR. BAGNALL: Does anybody else have anything
 9 else?
 10 (No response.)
 11 MR. BAGNALL: All right, I'll take back Exhibit
 12 35.
 13 Could you mark this next in line, please?
 14 (SEC Exhibit No. 79 was marked
 15 for identification.)
 16 BY MR. BAGNALL:
 17 Q I'm going to hand you what's now been marked as
 18 Exhibit 79. Could you please look at 79 and let me know
 19 when you're done?
 20 (Witness examined the document.)
 21 THE WITNESS: Okay.
 22 MR. FERRIGNO: I'm sorry; just one second.
 23 MR. BAGNALL: Um-hmm.
 24 (Pause.)
 25 MR. BAGNALL: You ready?

1 THE WITNESS: Yes.
 2 MR. FERRIGNO: Just one second.
 3 THE WITNESS: Oh, sorry.
 4 (Pause.)
 5 MR. FERRIGNO: Okay.
 6 BY MR. BAGNALL:
 7 Q And do you recognize Exhibit 79, Mr. Gibson?
 8 A Yes.
 9 Q What is it?
 10 A It's an email from Laurie Underwood to myself,
 11 summarizing what Geier related entities exist and their
 12 formation and dissolution.
 13 Q And at what time was this email written?
 14 A In April of 2012.
 15 Q Okay. And why were you communicating with Ms.
 16 Underwood about the Geier entities and their existence or
 17 non-existence in April of 2012?
 18 A I don't know.
 19 Q Okay. Are the -- is -- to your knowledge is
 20 Ms. Underwood's summary of the current status of these
 21 entities as of April 2012 accurate?
 22 A No.
 23 Q What -- how is it inaccurate?
 24 A I mean, she's not providing a legal opinion and
 25 she's -- she has access to certain administrative

1 records, but as far as this being, you know, for example
 2 her line, "The bottom line is the only Geier entity which
 3 exists is Geier International Strategies Fund, a Delaware
 4 LLC, which is qualified to do business in the State of
 5 Florida," is not necessarily complete.
 6 Q How is it not complete?
 7 A Because there may be another legal entity that
 8 this the -- acting as the managing member at that point
 9 in time.
 10 Q Um-hmm. I thought you testified earlier though
 11 that Ms. Underwood was the person that monitored all of
 12 the entities for you and did all the filings for you for
 13 the entities for GISF? Didn't you testify to that
 14 earlier?
 15 A Typically, yes.
 16 Q Okay. So did she typically make mistakes in
 17 that effort?
 18 A She's imperfect and I --
 19 Q That's not what I asked you. I asked if you
 20 she typically made mistakes in that effort?
 21 A She makes mistakes, but --
 22 Q Are you aware of Ms. Underwood making mistakes
 23 in connection with her job responsibilities maintaining
 24 the entities that were related to the Geier International
 25 Strategies Fund?

1 A No.
 2 Q Okay.
 3 A But it doesn't mean that --
 4 Q You answered the question, Mr. Gibson, okay.
 5 So let me ask you this; if you look, starting
 6 at the bottom of the page ending 954, regarding Geier
 7 International Strategies Fund, was GISF a Delaware LLC
 8 formed by Bradley Tipper on 12/16/08?
 9 A Yes.
 10 Q Okay.
 11 A 12/16/08?
 12 Q That's right. And it was renewed in Delaware
 13 4/9/12?
 14 A That's -- that's not accurate.
 15 MR. FERRIGNO: Where were you employed in '08?
 16 THE WITNESS: Deutsche Bank.
 17 MR. BAGNALL: Okay. When --
 18 THE WITNESS: So --
 19 BY MR. BAGNALL:
 20 Q When was it -- how about if it was '09?
 21 A It would have -- yeah.
 22 Q GISF --
 23 A '09, '09.
 24 Q -- was '09, right?
 25 A '09, yeah.

1 Q So it was potentially a typo by one year?
 2 A Yes.
 3 Q Okay. And was —
 4 A There's an error.
 5 Q Okay. Was — were you aware of that before
 6 this moment?
 7 A No.
 8 Q Okay. Did you identify it now?
 9 A I did.
 10 Q Somebody pointed it out to you, right?
 11 A Yes.
 12 Q Okay. But you didn't identify it then if
 13 somebody pointed it out you.
 14 All right, was GISF qualified in Georgia on
 15 December 17th, '09?
 16 A Was GISF at December 17? Yes.
 17 Q Okay. Was it withdrawn in Georgia in February
 18 of 2011?
 19 A Yes.
 20 Q Was it qualified in Florida in February of
 21 2011?
 22 A Yes.
 23 Q Okay. So other than the typo, potential typo,
 24 are there any other inaccuracies related to her writing
 25 about GISF?

1 MR. FERRIGNO: Do you need to see the other
 2 exhibits with all the cancellations and withdrawals?
 3 THE WITNESS: No. But I would say this — this
 4 is not necessarily complete. Again, this is — you know,
 5 this is not a legal opinion.
 6 BY MR. BAGNALL:
 7 Q Nobody asked you if it was a legal opinion.
 8 A Okay.
 9 Q I asked if any of what was just written was
 10 inaccurate, other than the typo?
 11 A I was just saying it's not complete.
 12 Q I didn't ask you if it was complete. I asked
 13 you if it was inaccurate?
 14 MR. FERRIGNO: Well, it is inaccurate.
 15 THE WITNESS: It is inaccurate.
 16 MR. FERRIGNO: We've got — we've established
 17 that.
 18 MR. BAGNALL: How is it inaccurate?
 19 MR. FERRIGNO: It says a Delaware — Geier
 20 International Strategies Fund LLC, a Delaware LLC formed
 21 by Bradley Tipper on 12/16/08; that's inaccurate.
 22 MR. BAGNALL: Right.
 23 BY MR. BAGNALL:
 24 Q And the question was, other than the typo, is
 25 anything she wrote there inaccurate?

1 A Well, with the exception of the inaccuracy,
 2 it's accurate.
 3 Q Okay. Just that one, right?
 4 A Yeah.
 5 Q Okay. So let's go up the page. "Geier Group,
 6 LLC, a Georgia LLC we formed in April of '09, dissolved
 7 in April of '11." Is that accurate?
 8 A Yes.
 9 Q Okay. "Geier Capital, LLC, a Georgia LLC we
 10 formed in June of '09." Is that accurate?
 11 A Yes.
 12 Q Okay. It was qualified in Florida in December
 13 of 2010. Is that accurate?
 14 A Yes, sir.
 15 Q Okay. Was it dissolved in Georgia in March of
 16 2011?
 17 A Yes.
 18 Q Okay. And was the application for withdrawal
 19 in Florida sent to the Florida Department of State in
 20 April of 2012?
 21 A Yes.
 22 Q Okay. It says, "Also formed in Delaware on
 23 12/9/10, I need to call the Delaware Secretary of State."
 24 Is what she wrote there accurate?
 25 A I — yes.

1 Q Okay. And then she writes to you in another
 2 email that she titles, "P.S. Geier Capital, LLC." "You
 3 signed the initial documents to form this entity in
 4 Delaware on 12/29/10.
 5 "I received this information verbally but
 6 believe Bradley S. Tipper formed the entity, as well.
 7 The entity was canceled in Delaware on 12/23/11. Cost —
 8 the information cost \$10. The bottom —"
 9 Okay, so are those first two paragraphs
 10 accurate?
 11 A Yes. And I would say that, you know, it —
 12 she's implying that, you know, the entity was canceled
 13 and that she was involved down in Georgia doing that.
 14 But go ahead.
 15 Q What — to what are you referring when you
 16 mention her implication?
 17 A "Was canceled" and the "Cancellation will cost
 18 us \$10."
 19 Q So you mean she was finding out that
 20 information from her office in Georgia; is that what
 21 you're saying?
 22 A No. I'm just saying that she and Jim were managing
 23 that at the time.
 24 Q Oh, okay. All right. Is there any reason of
 25 which you're aware that she wouldn't mention for you

1 whatever entity had been substituted in as the managing
2 member of GISF in this email?
3 A I would be surprised if she had.
4 Q Why is that?
5 A Because that's not what she – you know, I – I
6 would stipulate that a new entity was not formed. That
7 doesn't mean that an existing legal entity didn't assume
8 that responsibility.
9 Q Okay.
10 A And she wouldn't include a detail about what –
11 how an existing legal entity assumed that responsibility,
12 because she's only talking about formations and
13 dissolutions in this email.
14 Q Okay. But that's – that's a guess, right?
15 You don't know that for sure?
16 A That's correct.
17 Q Okay. Did you ask Ms. Underwood to do this
18 research?
19 A Not that I recall.
20 Q So why would she have written you on April 17th
21 about the Geier entities history?
22 A I don't know.
23 Q Okay. This is – this is before this SEC
24 investigation began, right?
25 A Yes, sir.

1 Q Okay. So you testified again that you weren't
2 aware of any of this until the SEC investigation began,
3 but we saw emails today in which you were involved at the
4 time the dissolutions were actually happening. And now
5 we see an email in which you received a summary of that
6 in April of 2012; isn't that right?
7 A Yes, sir.
8 Q Okay. And did you just not recall this
9 previously?
10 A That's correct.
11 Q All right.
12 MR. BAGNALL: Does anybody have anything else
13 on 79?
14 (No response.)
15 MR. BAGNALL: I'm going to hand -- sorry,
16 Could you mark this, please, first?
17 (SEC Exhibit No. 80 was marked
18 for identification.)
19 BY MR. BAGNALL:
20 Q Okay, I'm handing you what's been marked as
21 Exhibit 80. Could you look it over and let me know when
22 you're done, please?
23 (Witness examined the document.)
24 THE WITNESS: Yeah, I'm not familiar with this.
25 MR. BAGNALL: Okay.

1 BY MR. BAGNALL:
2 Q Was – your email though is cg@geierfund.com,
3 right?
4 A Yes.
5 Q Okay. Did anybody in November of 2010 have
6 authority to use that email address besides you?
7 A No.
8 Q Okay. So do you believe then that you did send
9 this email to yourself and you just don't remember it
10 now?
11 A Yes.
12 Q Okay. The attachments to this email "Internal
13 Control Cycles for Geier International Strategies Fund
14 LLC doc," what is that document? Do you know?
15 A I have no idea.
16 Q Okay. The way that these were produced to us,
17 I'll represent to you that the second and third page are
18 one of the two attachments. I believe – they appear to
19 be – they appear to be the same; one as a Word document
20 and one as a pdf, so we attached – I attached only one,
21 okay?
22 A Okay.
23 MR. FERRIGNO: I'm sorry; would you say that
24 again?
25 MR. BAGNALL: Sure. Do you see on the first

1 page of Exhibit 80, next to "attachments" it lists two
2 documents; one a .docx and one a .pdf?
3 MR. FERRIGNO: Um-hmm.
4 MR. BAGNALL: Those documents appeared to be
5 the same, substantively, with different formats; one a
6 Word document, one a pdf, only one is attached here.
7 MR. FERRIGNO: And this is which one?
8 MR. BAGNALL: I believe this is the first one,
9 the .doc, but I'm not certain.
10 BY MR. BAGNALL:
11 Q Do you see on the second page, page ending 193
12 of Exhibit 80, the section titled "Profit/Loss Control
13 Cycle."
14 A Um-hmm.
15 Q Do you see it – first of all it says,
16 "Currently, only Chris Gibson is authorized to execute
17 trades. All trades are handled electronically through
18 the Garwood Securities LLC, the prime broker. Electronic
19 trading platform are through executing brokers. Away
20 trades are entered into the prime broker back office
21 system for clearing every afternoon."
22 Do you see that?
23 A Yes.
24 Q Did I read it correctly?
25 A Yes.

1 Q Is that accurate?
 2 MR. FERRIGNO: Well, was it accurate in -- at
 3 the time of the --
 4 BY MR. BAGNALL:
 5 Q Is it accurate now?
 6 A No.
 7 Q Was it accurate in November 2010?
 8 A I don't even -- I do know what this document
 9 is.
 10 Q Did anyone other than you have authorization to
 11 execute trade -- execute trades on behalf of GISF through
 12 Garwood?
 13 A I believe Jim did. He was listed with -- as an
 14 authorized agent.
 15 Q Are you sure about that?
 16 A I'm fairly sure of that, yeah.
 17 Q Okay. Did anybody other than -- see the second
 18 bullet, "No other employee is authorized or has access to
 19 a trading platform. The trading platform is password
 20 protected and the passwords are changed periodically."
 21 Do you see that?
 22 A Yes.
 23 Q Did I read it correctly?
 24 A Yes.
 25 Q Did anyone other than you have access to a

1 trading platform through which you could make trades for
 2 GISF?
 3 A Electronically, no.
 4 Q Okay.
 5 BY MR. BOHR:
 6 Q Was that always the case?
 7 A Yes.
 8 MR. FERRIGNO: When did -- Mr. Gibson, when did
 9 you stop acting on behalf of Geier International
 10 Strategies Fund?
 11 THE WITNESS: December of 2011.
 12 BY MR. BAGNALL:
 13 Q Then why were you paid in 2012?
 14 A I mean, I contributed, again, market commentary
 15 and thoughts, but in terms of my scope of my
 16 responsibility it substantially diminished at that point
 17 in time.
 18 Q Well, that's not what Mr. Ferrigno asked you.
 19 He asked you when did you stop acting on behalf of GISF?
 20 A Like in any capacity?
 21 MR. FERRIGNO: You can start there.
 22 THE WITNESS: In December -- in December of
 23 2012.
 24 MR. BAGNALL: Okay. Anybody have anything
 25 else?

1 BY MR. BOCKIN:
 2 Q At this point, if you look at the first page of
 3 this, in the middle there it says, "Geier Group, LLC is a
 4 registered investment advisor." And "For more
 5 information or to receive a copy of its ADV 2, please
 6 contact info@gelerfund.com."
 7 Do you see that there?
 8 A It's --
 9 Q First page.
 10 A Oh, you're talking about in the disclosure?
 11 Q It's a part of your email.
 12 A Yes. Okay.
 13 Q Did you regularly include that in your emails?
 14 A Through 2010 I think so.
 15 Q Okay. So when -- did you ever use this email
 16 address to contact the other limited partners?
 17 A Yes.
 18 Q Okay. So they would have received this
 19 disclosure listing Geier Group, LLC as a registered
 20 investment advisor?
 21 A During the time I presume that we were, yes.
 22 Q Consistent with what they were told in the GISF
 23 operating agreement?
 24 A Yes, sir.
 25 Q And the offering memorandum?

1 A Yes, sir.
 2 Q Okay.
 3 BY MR. BOHR:
 4 Q Mr. Gibson, I would like to ask a follow-up
 5 question. You mentioned that at one point Mr. Hull was
 6 an authorized person, authorized to affect trades with at
 7 least one broker. Did he ever -- Mr. Hull ever affect
 8 any trades, though?
 9 A No.
 10 Q Did your father ever affect any trades?
 11 A No.
 12 Q Did anyone but you ever affect any trades on
 13 behalf of GISF?
 14 A No.
 15 MR. BAGNALL: Can you mark this next, please?
 16 (SEC Exhibit No. 81 was marked
 17 for identification.)
 18 BY MR. BAGNALL:
 19 Q Okay, I'm handing you what's now been marked as
 20 Exhibit 81. Could you look it over and let me know when
 21 you're done, please?
 22 A I'm ready.
 23 Q Okay What is Exhibit 81?
 24 A It's an email from me to Jim Hull and my father
 25 with year-end marketing materials and an investor letter.

1 Q Okay. And again, do you see that there's
2 attachments listed there?
3 A Yes.
4 Q Two pdfs, right?
5 A Yes.
6 Q The way this was produced to us, those
7 attachments follow this first page.
8 A Right.
9 Q Okay. And the -- the letter begins on the
10 second to last page, the page ending 628.
11 A Okay.
12 Q Okay. And the -- and everything in-between the
13 first page and that page I just referenced is --
14 A It's a presentation.
15 Q -- is -- exactly right, the presentation, okay.
16 Did you send this draft of the document -- did you draft
17 both the presentation and the letter that are attached to
18 this email?
19 A Yes.
20 Q Okay. Did -- did you ever send it to
21 investors?
22 A Yes.
23 Q Was it edited beforehand?
24 A Yes. I actually sent the -- a mistaken draft.
25 But go ahead.

1 Q This is a mistaken draft? Or--
2 A Yes, this presentation is.
3 Q Okay. And why is it mistaken?
4 A Because it -- I sent -- we draft -- I drafted
5 this presentation for the purpose of potentially
6 soliciting investment into the Cayman entities. And I
7 didn't change the legal entities to the entities that --
8 none of which our investors actually invested.
9 Q Okay. So if you turn to page ending 611, is
10 there where you have Geier Group LTD as a Cayman Islands
11 based investment manager?
12 A Yes.
13 Q So that's -- is the whole presentation
14 erroneous?
15 A Yes.
16 Q Okay. And then again on 612, GISF LTD is a
17 Cayman Islands based; same issue?
18 A Right.
19 Q All right. If you could turn your attention
20 now to the letter, beginning -- sorry; ending in Bates
21 number 628, do you see at the bottom of the page there's
22 a section titled "2010, A Self-Review."
23 A Yes.
24 Q The second paragraph under there said, "Let's
25 begin with my outright failure; investor relations.

1 Timely and thoughtful communication is a very important
2 part of my commitment to you, and in 2010 I failed for
3 perform this responsibility."
4 Did you write that?
5 A Yes.
6 Q And did I read it correctly?
7 A Yes.
8 Q Okay. And then the last sentence of that same
9 paragraph on that page ending 628 of Exhibit 81 says,
10 "Next year, monthly investor letters -- letters will be
11 distributed by email in the second week of each month."
12 Do you see that?
13 A Yes.
14 Q Did you write that?
15 A Yes.
16 Q Did you tell that to your investors?
17 A Yes.
18 Q Did you follow through with that?
19 A No.
20 Q How come?
21 A Events overwhelmed my time and I was not able
22 to deliver on that.
23 Q Okay. Did you --
24 BY MR. BOHR:
25 Q What events?

1 A The demands on my time were overwhelming in
2 2011, and I was not able to find the time and resources
3 to make those communications.
4 And then additionally, about halfway through
5 the year, in consultation with Jim, we were concerned
6 about being too communicative about our short-term
7 strategy because one of our limited partners was
8 divulging everything that we said to a professional hedge
9 fund that was on the other side our TRX trade.
10 BY MR. BAGNALL:
11 Q Which LP was that?
12 A John Engler.
13 Q Okay. And why was he doing that?
14 A I don't know.
15 BY MR. BOHR:
16 Q But --
17 BY MR. BAGNALL:
18 Q Did you ever communicate with GISF's investors
19 to tell them that there had been a change in course and
20 that for those reasons you weren't going to be
21 communicating as frequently as you promised?
22 A I think that Jim communicated that to them, but
23 I don't know.
24 Q Did you communicate it to them?
25 A No. I had no direct contact with the investors

1 generally speaking, outside of the ones that I had
2 brought in, like my parents and the Marzullos.

3 BY MR. BOHR:

4 **Q What steps did you take to stop Mr. Engler from**
5 **divulging fund information?**

6 A We stopped communicating with him.

7 **Q You stopped communicating with all the**
8 **investors, though, correct?**

9 A We were thoughtful about how we communicated
10 with them.

11 **Q But you curtailed your communications with all**
12 **investors as a result of the problem with Mr. Engler,**
13 **correct?**

14 A That's true.

15 MR. FERRIGNO: Did Mr. Hull continue to speak
16 to the other investors that he had brought in?

17 THE WITNESS: Yes. He continuously did.

18 BY MR. BAGNALL:

19 **Q In writing?**

20 A Almost exclusively as I understand over the
21 phone.

22 **Q Okay. But did anybody's -- you wrote to the**
23 **investors, right? Did -- was this -- let's back up a**
24 **second.**

25 Was Exhibit 81 sent to the investors?

1 A I'm not sure.

2 **Q Okay. Could you turn to the page ending 629,**
3 **please? And before I get there, you -- you wrote,**
4 **though, you wrote this letter, okay, that may be sent**
5 **to the investors in another communication saying you're**
6 **going to write to them every two weeks now because I**
7 **failed to -- I failed in my communication --**

8 A I don't think I said --

9 **Q Every month in the second week of each month,**
10 **excuse me.**

11 A Yeah.

12 **Q But did you personally ever get back to the**
13 **investors and say, "Look, I know I told you this in**
14 **January of 2011, but that's not going to happen anymore**
15 **and here's why."**

16 A No.

17 **Q Did you get back to them without offering the**
18 **"Here's why." So you just -- you got back to them and**
19 **said, "Look, I know I told you I was going to do this in**
20 **January of 2011, but I'm not going to."**

21 A Not explicitly, no.

22 **Q Okay. In the page ending 629, do you use the**
23 **second full paragraph? I'm going to read that into the**
24 **record, okay? "There's one characteristic of our**
25 **conduct, however, of which I am proud to report to you.**

1 A Yes, sir.

2 **Q In this current form?**

3 A Yes, sir. As I --

4 MR. FERRIGNO: Well, this is Exhibit 81. This
5 wasn't sent, was it? Is this what we're talking about?

6 MR. BAGNALL: That's right.

7 MR. FERRIGNO: Yeah. So this wouldn't have
8 been sent.

9 MR. BAGNALL: Well, that's what I'm asking.

10 BY MR. BAGNALL:

11 **Q And you're saying yes, it was.**

12 A I believe it was. It --

13 MR. FERRIGNO: No. This is -- the cover email
14 is part of the exhibit, so this -- this whole thing --

15 THE WITNESS: Yes.

16 MR. FERRIGNO: -- didn't go; is that right?

17 THE WITNESS: These attachments, as I
18 understand it, were sent to the investors.

19 BY MR. BAGNALL:

20 **Q And were they revised before they were sent to**
21 **investors?**

22 A No.

23 **Q Okay.**

24 A Not to my knowledge.

25 **Q Are you sure?**

1 Every moment without question or hesitation we have
2 placed the interest of our partners first. For example,
3 more than one large investment banking institution
4 attempted to purchase substantial portions of our
5 portfolio at a modest premium to market (but far below
6 their current value) in advance of the bull run our
7 assets that began in September. These offers included
8 guaranteed payments to the investment manager that
9 exceeded the fees that have been, or could be, generated
10 by the fund. Needless to say, we considered such offers
11 unethical, although not surprising in our experience. We
12 deserve no gratitude for refusing such advances, however
13 in the interest of transparency, we feel obliged this
14 occurrence to you. We did not, and will not, forget our
15 fundamental responsibility to you."

16 Did I read that correctly?

17 A Yes.

18 **Q Did you write that?**

19 A Yes.

20 **Q Okay. Why did you write this?**

21 A Because I was approached by two individuals who
22 wanted to purchase our -- basically buyout the fund.

23 **Q Who were those individuals?**

24 A I don't recall.

25 **Q Okay.**

1 BY MR. BOHR:
 2 Q Were they American or non-American?
 3 A Non-American.
 4 Q Were they from Europe? Asia? Middle East?
 5 A Europe.
 6 BY MR. BAGNALL:
 7 Q Were they related or affiliated with Mr.
 8 Sequiera?
 9 A No. Not as I recall.
 10 Q Okay. You wrote that you felt obliged to
 11 report this occurrence to the investors. Why did you
 12 feel obliged to report it?
 13 A I said we feel obliged to report?
 14 Q Yes. In the second to last line, in the
 15 penultimate sentence of the paragraph.
 16 A I'm not sure.
 17 Q Okay. Were you obligated? Do you understand
 18 "obliged" to be a root of "obligated"?
 19 A Yes.
 20 Q Okay. Were you, indeed, obligated to report
 21 this to the investors?
 22 A No.
 23 Q Why not?
 24 A I think our legal obligation was covered in the
 25 offering memorandum and the operating agreement.

1 Q Okay. And the last sentence of this paragraph
 2 you -- you reference your fundamental responsibility to
 3 the investors; is that right?
 4 A Yes.
 5 Q What's the -- what's your fundamental
 6 responsibility to GISF's investors?
 7 A To do right by them. And to never take any
 8 action that harms them.
 9 Q Is it a fiduciary duty you owe them?
 10 A We have fiduciary duty to the fund.
 11 Q Okay. But you're writing here to the invoices,
 12 right, not to the fund?
 13 A No, I'm writing to the fund.
 14 Q So you start this by saying, "Dear Partner."
 15 Your partner is the fund?
 16 A Well --
 17 Q On the page just prior to this?
 18 A I mean, that's an oversight or a typo, but we
 19 have a -- we have a fiduciary responsibility to the fund.
 20 Q Who did you write this letter to?
 21 A To the fund members.
 22 Q Okay. So why are you telling the fund members
 23 that you have a fundamental responsibility to them when
 24 what you seem to be testifying is that the responsibility
 25 runs only to the fund?

1 A That's -- well, that's -- that's how I meant
 2 to -- that's what I meant to say.
 3 Q Okay. Where does the fundamental
 4 responsibility arise from?
 5 A Basic ethics.
 6 Q So wouldn't -- wouldn't -- as you testified
 7 previously in this matter, wouldn't your potential
 8 conflict of interest provision have allowed you to accept
 9 the offer from these individuals?
 10 A Yeah, it would have.
 11 Q Okay. So why did you describe that offer as
 12 unethical?
 13 A Because I felt -- that's a very question. And
 14 because I believed at the time that we had, as I said,
 15 better value in our position than the offer that was made
 16 to us. I believed that imminently the position would be
 17 a far greater value, and that that was the basis of the
 18 offer.
 19 MR. FERRIGNO: The offer that someone from
 20 Europe made was to purchase something from -- that was
 21 held by the fund, right?
 22 THE WITNESS: Yes.
 23 MR. FERRIGNO: Okay.
 24 BY MR. BAGNALL:
 25 Q With guaranteed payments to you, though, right?

1 A It came with winding down the fund and a
 2 supposed salary and so forth to come work for them.
 3 Q These offers included guaranteed payments to
 4 the investment manager that exceed the fees that have
 5 been or could be generated by the fund?
 6 A Yes, sir.
 7 Q Okay. And but now you're saying that that --
 8 those were really just offers for -- to join them in
 9 their work place?
 10 A There was to different -- there was the offer
 11 to buy the assets and basically wind down the fund. And
 12 then there was an employment offer floated to come work
 13 with them.
 14 Q But what you wrote here is guaranteed payments
 15 to the investment manager. What were the guaranteed
 16 payments?
 17 A The -- that would be a compensation -- an
 18 employment agreement.
 19 Q How is that a guaranteed payment?
 20 A A guarantee -- an employment that contained a
 21 guarantee of a certain amount of compensation.
 22 Q Okay. And what was the amount of compensation
 23 you were offered?
 24 A I believe it was a half a million dollars a
 25 year.

1 Q For how many years?
 2 A This was in retrospect, I would say not a
 3 realistic offer and I don't think it was serious. But I
 4 believe it was for two years is what they said.
 5 Q Okay. And what – were your father and Mr.
 6 Hull included in the offer?
 7 A No.
 8 Q Okay. So when you write "investment manager"
 9 you're referring to yourself? "These offers included
 10 guaranteed payments to the investment manager."
 11 A Yes, sir. You're right.
 12 Q Okay. So why did you feel on the interests of
 13 transparency that you had to let the LPs know about this
 14 offer?
 15 A I think in that we felt that they would want to
 16 know that someone, you know, saw great value in our
 17 holdings.
 18 Q So why when you wanted to let them know that
 19 somebody saw great value did you also see fit to say –
 20 to include that last sentence about not forgetting your
 21 fundamental responsibility to them?
 22 A I'm not sure what you're – what you're asking?
 23 Q Well, you –
 24 A What's the inconsistency?
 25 Q You – I asked you why you thought you needed

1 to be transparent and you said you – because you wanted
 2 the LPs to know about the value of the assets the fund
 3 held; is that right?
 4 A Yes.
 5 Q Okay.
 6 A Or the – that we wanted the – that another
 7 professional investor that I deemed serious at the time,
 8 but probably was not, felt motivated to make such an
 9 offer.
 10 Q Okay. But then you go on and talk about a
 11 fundamental responsibility that you owed to the LPs,
 12 right? So –
 13 A Yes.
 14 Q – if you just need to let them know about this
 15 outside party commenting in the value of the fund's
 16 assets, why do you have to have that language about
 17 fundamental responsibility?
 18 A I think it's effusive and unnecessary.
 19 MR. BAGNALL: Anybody have anything about this?
 20 MR. BOHR: I have one question.
 21 BY MR. BOHR:
 22 Q At what point in 2011 did GISF have effectively
 23 all this capital invested in TRX?
 24 A As of the 13G filing in late April.
 25 Q Late April. And let's say in February of 2011,

1 how much of GISF's capital was invested in TRX? February
 2 1 of 2011.
 3 A I would estimate 50 to 70 percent.
 4 Q So my question is this, and I don't mean to
 5 pick on you, Mr. Gibson, but you've testified that you
 6 were too busy in 2011 to communicate with your investors,
 7 and at least effective from April of 2011 on you seemed
 8 to be managing only one stock. And I would just like to
 9 understand why are you so busy managing one stock that
 10 you can't communicate with your investors?
 11 A I don't see a relationship between the number
 12 of stocks and positions you're managing and how much time
 13 it takes.
 14 Q Is that your –
 15 A I think you – I think you can spend an
 16 indefinite period of time managing a single stock.
 17 MR. BAGNALL: Do you have anything else on
 18 this?
 19 MR. BOCKIN: Um-hmm.
 20 MR. BAGNALL: Let's take a quick break. We'll
 21 go off the record at 3:35 p.m., December 21, 2015.
 22 (A brief recess was taken.)
 23 MR. BAGNALL: We'll go back on the record at
 24 approximately 3:43 p.m., December 21, 2015.
 25 BY MR. BAGNALL:

1 Q Mr. Gibson, you recall you're under oath?
 2 A Yes, sir.
 3 Q And to confirm, during the break there were no
 4 conversations of substance between you and the staff;
 5 correct?
 6 A Correct.
 7 MR. BAGNALL: You agree, Mr. Ferrigno?
 8 MR. FERRIGNO: Yes.
 9 MR. BAGNALL: Okay.
 10 (SEC Exhibit No. 82 was marked
 11 for identification.)
 12 BY MR. BOHR:
 13 Q I'm handing a document that I would like to be
 14 marked as Exhibit 82. And I'll give you a second to
 15 familiarize yourself with Exhibit 82, sir. Exhibit 82 is
 16 a two-page exhibit, Bates numbers GISF000051164 and
 17 51165.
 18 A Yes, sir.
 19 Q And the cover page of Exhibit 82 is an email
 20 dated March 1, 2011. Do you see that?
 21 A Yes.
 22 Q And down beneath that, there's an attached
 23 message from you, CG, Chris Gibson, cg@geierfund.com to
 24 Mbert29@aol.com, cc to Idy Leclerc at Kaufman Rossin Fund
 25 Services. Do you see that?

1 A Yes.

2 Q And I would like to read this. It says, "Dear

3 Bert, thank you for your contribution of \$200,000

4 effective 3/1/2011."

5 Did I read that correctly?

6 A Yes.

7 Q And do you recall Exhibit 82?

8 A I do.

9 Q And what is Exhibit 82?

10 A A contribution from Bert Storey to the fund.

11 Q And it's a contribution effective March 1,

12 2011, obviously; correct?

13 A It appears that way.

14 Q Now, earlier we were looking at Exhibit 66, and

15 that was your CRD registration summary for -- with FINRA;

16 correct?

17 A Yes, sir.

18 Q And do you recall that showed that as of

19 December 31, 2010 Geier Group was no longer a registered

20 investment advisor?

21 A Yes.

22 Q Okay. I would like to direct your attention to

23 the bottom of Exhibit 82. There's a footer that says,

24 "Geier Group, LLC, a subsidiary of Geier Capital, LLC, is

25 a registered investment advisor, RIA."

1 Did I read that correctly?

2 A Yes, sir.

3 Q And was that correct as of March 1, 2011?

4 A No, sir.

5 MR. BOHR: I would like to mark another exhibit

6 as Exhibit 83.

7 (SEC Exhibit No. 83 was marked

8 for identification.)

9 BY MR. BOHR:

10 Q And Exhibit 83 bears Bates numbers

11 GISF000050678 through 50685, and the installment of this

12 email chain is an email from Idy Lecterc, I D Y L E C L

13 E R C, at Kaufman Rossin Fund Services to you, and to a

14 Scott Benjamin, dated March 1, 2011.

15 And do you recognize Exhibit 83?

16 A Yes.

17 Q And what is Exhibit 83?

18 A It's an email exchange relating to an

19 investment from Scott Benjamin into the fund.

20 Q And I would like to direct your attention to

21 the third page of this email, which bears Bates number

22 GISF, and it ends in 50680. And there you write, "Dear

23 Scott, thank you for your contribution of \$50,000,

24 effective 3/1/2011."

25 Did I read that correctly?

1 A Yes.

2 Q And so is it fair to say Mr. Benjamin is also

3 subscribing as of March 1, 2011 for a \$50,000 investment

4 in GISF?

5 A Yes, sir.

6 Q And I would like to direct your attention to

7 the last pages of Exhibit 83. You can -- you can go to

8 the next page, which ends in 50681 -- Bates 50681. At

9 the top, again, there is a footer "Geier Group, LLC, is a

10 subsidiary of Geier Capital, LLC, is a registered

11 investment advisor (RIA)."

12 Did I read that correctly?

13 A Yes, sir.

14 Q Do you recall if any other persons joined or

15 subscribed for GISF or increased their contribution to

16 GISF after December 31, 2010?

17 A I believe Will McKnight did, as well.

18 Q Do you recall the time in which he increased or

19 made a subscription to GISF?

20 A I think it was in February.

21 BY MR. BAGNALL:

22 Q Is the information included in your email

23 footer at the page ending 681 of Exhibit 83, identifying

24 Geier Group as a registered investment advisor accurate

25 when it was sent in March of 2011?

1 A No.

2 Q Who is Scott Benjamin?

3 A He's a money manager in Augusta, Georgia.

4 Q Is -- did -- who brought him to the fund?

5 A Jim.

6 Q Okay. We'll take back Exhibits 82 and 83.

7 MR. BAGNALL: Could you please mark this next

8 in line?

9 (SEC Exhibit No. 84 was marked

10 for identification.)

11 BY MR. BAGNALL:

12 Q Okay, I'm going to hand you what's now been

13 marked Exhibit 84. Could you look it over and let me

14 know when you're done, please?

15 A Yes, I'm ready.

16 Q Okay. And what is Exhibit 84?

17 A It's the presentation and investor letter to

18 the investors at the end of -- well, it's the

19 beginning --

20 first -- second week of January of 2011.

21 Q So are -- this is the set of documents that was

22 actually sent to the investors that we looked at a draft

23 of in connection with Exhibit 81; is that right?

24 A Yes, sir.

25 Q Okay. And was the -- and this email, like the

1 one in Exhibit 81, has two attachments: one is a
 2 presentation, one is a letter; is that right?
 3 A Yes, sir.
 4 Q And was the presentation that was attached to
 5 this document that actually went to the investors, was it
 6 accurate?
 7 A No.
 8 Q Okay. And it was inaccurate for the same
 9 reasons that you testified about Exhibit 81, in that it
 10 references the thought about but not executed Cayman
 11 entities Gefer Capital LTD, Gefer Group LTD and GISF LTD?
 12 A Yes, sir.
 13 Q Okay. Did any — after you sent this out, did
 14 any of the GISF investors ask you what it was you were
 15 referring with respect to these Cayman entities?
 16 A No.
 17 Q Did you ever — when did you realize that you
 18 sent an incorrect copy of the presentation to the
 19 investors?
 20 A In the course of this investigation I did. But
 21 I had a feeling that maybe I had read this later and also
 22 noticed that, but I can't be sure.
 23 Q Okay. Did you ever correct the error with the
 24 investors — GISF investors?
 25 A No.

1 Q Okay. Could you turn to the letter now that's
 2 at Page 410 of Exhibit 84? And could you look at the
 3 bottom of Page 410, in the "2010, A Self-Review."
 4 "Timely and thoughtful" — the second paragraph, "Timely
 5 and thoughtful communication is a very important part of
 6 my commitment to you, and in 2010 I failed to perform
 7 this responsibility."
 8 That's a little different than what was written
 9 before, right? In fact, it probably would be easier if
 10 we just had it in front of us.
 11 So if you could turn to the first page of the
 12 letter that's part of Exhibit 81, please, which you can
 13 find at Page 628. When you wrote to your father and Mr.
 14 Hull in Exhibit 81, you said, "Let's begin with my
 15 outright failure; investor relations." But that's not
 16 how the paragraph begins in Exhibit 84, right?
 17 A That's correct.
 18 Q Who suggested that change?
 19 A I don't recall.
 20 Q Okay. The one thing that didn't change, though
 21 is the last sentence. Well, it changed in one respect,
 22 right, instead of "next year" it says "this year." But
 23 what follows remains the same, right?
 24 A Yes.
 25 Q Okay. So that — that part didn't change.

1 Could you turn to the next page of Exhibit 84, which ends
 2 411, please and compare it to the Page 629 that ends
 3 Exhibit 81.
 4 A Okay.
 5 Q All right. Do you see that the paragraph that
 6 beings, "There is one characteristic of our conduct"
 7 doesn't appear in the copy of the letter that was sent to
 8 the investors.
 9 A Yes.
 10 Q Why — why isn't it in the copy of the letter
 11 that was sent to the investors?
 12 A I specifically remember Jim thought that was,
 13 you know, overly self-congratulatory and odd.
 14 Q Okay. So Jim told you to cut it?
 15 A Yeah.
 16 Q Okay.
 17 MR. BAGNALL: Anybody have anything else?
 18 (No response.)
 19 MR. BAGNALL: Okay, I'll take back Exhibits 84
 20 and 81.
 21 Okay, can you mark this next, please?
 22 (SEC Exhibit No. 85 was marked
 23 for identification.)
 24 BY MR. BAGNALL:
 25 Q Okay, I'm going to hand you what's now been

1 marked as Exhibit 85. Could you look it over and let me
 2 know when you're done, please?
 3 A Okay.
 4 Q What were you discussing with Mr. Hull in the
 5 two oldest emails in the thread in Exhibit — sorry; do
 6 you recognize Exhibit 85?
 7 A It's an email exchange between me and Mr. Hull,
 8 relating to TRX's performance in August 2011.
 9 Q Okay. Do you see in the email that Mr. Hull
 10 wrote to you on August 5, 2011, he writes, "I am meeting
 11 with Wells Fargo bankers tomorrow and I know tax will
 12 come up."
 13 What's Wells Fargo bankers? Did Wells Fargo
 14 have any connection — at the very —
 15 A Oh, got it, sorry. Got it.
 16 Q — have any connection to GISF? For example,
 17 did GISF hold any accounts at Wells Fargo?
 18 A No. His Wells Fargo bankers are his bankers
 19 for his commercial real estate business, and they're
 20 making a credit assessment of his — or an assessment of
 21 his credit profile. And insofar as he has a large tax
 22 liability or something like that, it's relevant.
 23 Now, what he's specifically referring to in
 24 taxes here I'm not sure.
 25 Q Okay. In the email in which you responded,

1 "Once the financing deal is approved by the regulators,
2 there will be a string of positive news."

3 Are you writing about TRX?

4 A Yes.

5 Q Okay. And were you – why would that
6 information about TRX be relevant to him in his meeting
7 with Wells Fargo?

8 A That this, you know, I think he's using his
9 investment in Geier as a collateral or as a – an asset
10 on his balance sheet and they're wondering about the
11 liquidity and actual value of it.

12 Q Okay. Is this an example of you helping Mr.
13 Hull with his investments outside of GISF?

14 A No.

15 Q Okay. Could you look at the email from Mr.
16 Hull, the most recent email in the thread that's at the
17 very top of the page ending 123 of Exhibit 85? Mr. Hull
18 responds to your description of TRX. And the last
19 sentence of his email to you he writes, "You may consider
20 issuing some form of communication to your investors who
21 have not heard from you in some time."

22 Did I read that correctly?

23 A Yes.

24 Q Okay. We just looked at a document that you
25 sent to your investors in January of 2011 saying you're

1 Q The prior month?

2 A Yeah. It would have been after the 10 percent
3 filing. And it would have been before the substantial
4 move down in the stock in mid-September. And it would
5 have been before, I believe, John Engler withdrew at the
6 end of August. So it would have been sometime in July or
7 August.

8 Q Why did John Engler withdraw at the end of
9 August?

10 A I'm not sure.

11 MR. BAGNALL: Okay, I'll take back Exhibit 85.

12 BY MR. BOHR:

13 Q And that's – to be clear about John Engler's
14 withdrawal, that's at the end of August 2011?

15 A Yes, sir.

16 Q So, that would remove the major impediment to
17 communicating with investors; correct?

18 A I think he maintained a de minimis amount. He
19 was still an investor but had a very, very small amount.

20 MR. BAGNALL: Can you mark this next, please?

21 THE WITNESS: And he sat in the same office as
22 the McKnights.

23 (SEC Exhibit No. 86 was marked
24 for identification.)

25 BY MR. BAGNALL:

1 going to write to them monthly on the second week of each
2 month. And this seven months later, less than seven
3 months later where Mr. Hull is telling you that your
4 investors haven't heard from you in some time. Why is
5 that the case?

6 A Competing obligations.

7 Q So in August of 2011 – between January of 2011
8 and August of 2011, what had been your competing
9 obligations?

10 A We were very busy managing the position.

11 Q Okay.

12 MR. BAGNALL: Anybody have anything else?

13 MR. BOCKIN: Yeah.

14 BY MR. BOCKIN:

15 Q You indicated that you and – in your earlier
16 testimony that you and Jim Hull had agreed not to
17 communicate with the investors. This emails seems to
18 indicate to the contrary, doesn't it?

19 A Yes.

20 Q Can you explain that?

21 A This is inconsistent with that discussion that
22 we had had.

23 Q When did you have that discussion with Mr.
24 Hull?

25 A I believe it was July.

1 Q I just handed you what's been marked as Exhibit
2 86. Can you look it over and let me know when you're
3 done, please?

4 A Yes, I'm ready.

5 Q And what is Exhibit 86?

6 A This is an email exchange between myself and
7 Tim Strelitz.

8 Q Okay. And could I focus your attention,
9 please, on the email that Mr. Strelitz wrote to you
10 October 24th. The header of which is at the bottom of
11 page ending 236, and the body of which is on the page
12 ending 237 in Exhibit 86?

13 A Okay.

14 Q He writes, "Hi, Chris. I've not heard from you
15 for some time. I also do not think I have received any
16 statements recently. Please let me know what is going
17 on."

18 Did I read that right?

19 A Yes.

20 Q So when I asked you earlier today if you had
21 received any complaints from investors about not having
22 heard from you, you said that you never got any. But
23 doesn't this amount to a complaint? It's a polite one,
24 but he's – he's complaining that he hasn't heard from
25 you, wouldn't you say?

1 A He's alerting me to that fact, yes.
 2 Q Okay. But is a complaint?
 3 A I don't see it as a complaint, no.
 4 Q Okay. And you write back to him, "Hi, Tim.
 5 Three things that I've not stated to investors in writing
 6 because it comprises our efforts, but should catch you up
 7 on."
 8 MR. FERRIGNO: I think you misspoke.
 9 MR. BAGNALL: You're right, I did. Thank you.
 10 BY MR. BAGNALL:
 11 Q "Three things I've not stated to investors in
 12 writing because it compromises our efforts, but should
 13 catch you up on. One, I believe I have a buyer at
 14 current levels for our entire remaining TRX position and
 15 plan to liquidate the fund and return capital to most
 16 investors, including you." And then, "I have stopped the
 17 statements to save money. And I believe I can have a
 18 wire ready for you November 1, but would like to talk
 19 when you have – when I have clarity regarding one, which
 20 I will have by end of
 21 this – by the end of this week. I'm sorry for the radio
 22 silence. It has been in an effort to ensure best
 23 execution on everyone's behalf. Can we please speak on
 24 Friday?"
 25 Did I read that right?

1 A Yes.
 2 Q Okay.
 3 BY MR. BOHR:
 4 Q Did you write those words?
 5 A Yes.
 6 MR. BAGNALL: Okay.
 7 BY MR. BAGNALL:
 8 Q When you write here that your radio silence has
 9 been an effort to ensure best execution on everyone's
 10 behalf, what do you mean?
 11 A I mean that alerting anyone who could provide
 12 our intentions to the broader market puts everyone at
 13 risk.
 14 Q So what do you mean by that?
 15 A I mean that preserving discretion vis-à-vis our
 16 intentions from the market would optimize our chances of
 17 getting best execution.
 18 Q And why is that?
 19 A If people knew that we wanted to sell, then all
 20 of a sudden they would offer less and they would try and
 21 sell before us.
 22 Q Okay. And is that – is that like the – the
 23 description of front running you mentioned earlier in
 24 testimony today?
 25 A That's one interpretation.

1 Q Is that a type of front running that you just
 2 described a moment ago?
 3 A Yes.
 4 Q Okay. And so – so is it fair to say that you
 5 didn't want to communicate the fund's intentions to
 6 liquidate its entire TRX position because you didn't want
 7 the fund to get front run?
 8 A It – that's one – yeah, that's one risk.
 9 Yes.
 10 Q Okay. What are the – what's the other risk?
 11 A That if we alerted, that if other shorts could
 12 come in ahead of us. Or that the buyers that were lined
 13 up might question the – our intellectual conviction and
 14 might not want to buy the stock anymore.
 15 Q Was there buyers lined up on October 24, 2011?
 16 A Yes. Yes.
 17 Q What investors were lined up?
 18 A Platinum Partners and The Sheikh.
 19 Q Okay. And if you – look at the most recent
 20 email in the thread. After Tim Strelitz's response to
 21 your three-paragraph email saying he didn't know you were
 22 liquidating the fund, you wrote back, "Given our
 23 performance, that is my intention. Since we had a
 24 concentrated position, I have not made this known, even
 25 to investors in order to ensure we can achieve good

1 execution on the sale of our position."
 2 So taking that into account, what specifically
 3 were you worried about happening if you had communicated
 4 to investors that you were going to liquidate GISF's TRX
 5 position?
 6 A That – there wasn't anything specific. I
 7 mean, it was a risk that was unnecessary to assume. But
 8 you know, taken to of context, if we make a communication
 9 to investors and it gets back to Platinum or The Sheikh
 10 or someone else, it might change their approach in some
 11 way and I didn't want to take any risks.
 12 Q Okay. And what were you worried – what would
 13 the risks have been had they materialized?
 14 A They could be less interested in buying our
 15 position. They could be less interested in acting
 16 quickly. They could – they could change their conduct
 17 in some manner.
 18 Q Okay. And was any part of this concern that
 19 some other entity might front run the fund's TRX trades?
 20 A That's a possibility.
 21 Q Okay. Were you aware in the October 2011
 22 timeframe that front running – someone front running
 23 GISF TRX trades could be profitable to them and
 24 potentially harmful to GISF?
 25 A It's a potential, yes.

1 Q But were you aware of that in the — in the
 2 October 2011 timeframe?
 3 A Yes.
 4 Q Okay.
 5 MR. BAGNALL: Anybody have anything else?
 6 (No response.)
 7 MR. BAGNALL: I'll take back Exhibit 86,
 8 please.
 9 Could you mark this next, please?
 10 (SEC Exhibit No. 87 was marked
 11 for identification.)
 12 BY MR. BAGNALL:
 13 Q Okay, I'm handing you what's been marked as
 14 Exhibit 87. Could you take a look at Exhibit 87 and let
 15 me know when you're done, please?
 16 (Witness examined the document.)
 17 THE WITNESS: Okay.
 18 BY MR. BAGNALL:
 19 Q Do you recognize Exhibit 87?
 20 A Yes.
 21 Q What is Exhibit 87?
 22 A It's an email from myself to Craig.
 23 Q And it's from April 29, 2011, right?
 24 A Yes.
 25 Q And you wrote, "Do not speak to any other

1 individual about this order request. We are approved and
 2 I do not want anyone to know and possibly front run us.
 3 I repeat, only you and I know. Do not tell any other
 4 individual."
 5 Did I read that correctly?
 6 A Yes.
 7 Q What order are you talking about?
 8 A The order to purchase TRX.
 9 Q Okay. And you were trying to purchase TRX for
 10 GISF; is that right?
 11 A Yes.
 12 Q And what was the size of the order?
 13 A I don't recall. Half a million shares, a
 14 million shares.
 15 Q Okay. And when you wrote, "I do not want
 16 anyone to know and possibly front run us," what did you
 17 mean?
 18 A I meant that he's a broker and I didn't want
 19 him telling anyone who could possibly buy some shares
 20 directly in front of us.
 21 Q And what would be the harm of somebody buying
 22 shares directly in front of GISF?
 23 A That — that would drive the price up.
 24 Q Okay. And so that would — it would benefit
 25 the person who front run you — front run GISF because

1 they got shares at a lower price that then went up after
 2 GISF's trades are executed; correct?
 3 A Correct. Correct.
 4 Q So then they would end up with shares that were
 5 immediately profitable; is that right?
 6 A Correct.
 7 Q Okay. So you were aware of this front running
 8 concern in the — it's fair to say right at the end of
 9 April of 2011?
 10 A Yes.
 11 Q Okay. I'll take back Exhibit 87.
 12 MR. BAGNALL: Can you mark this next one in
 13 line, please?
 14 (SEC Exhibit No. 88 was marked
 15 for identification.)
 16 BY MR. BAGNALL:
 17 Q Okay, I'm handing you what's been marked
 18 previously (sic) as Exhibit 88. Will you let me know
 19 when you've read it, please?
 20 (Witness examined the document.)
 21 THE WITNESS: Okay.
 22 BY MR. BAGNALL:
 23 Q Do you recognize Exhibit 88?
 24 A Yes.
 25 Q What is Exhibit 88?

1 A It's people that I went to college with who I
 2 had been touting TRX to.
 3 Q Okay. And, so you wrote an email to Nathaniel
 4 Gibson and Bryan LaPlant — LaPlant, excuse me, September
 5 27, 2011. And you wrote the following, right, "Sell your
 6 TRX. You get to punch me in the face the next time you
 7 see me. And beers on me if I can afford them. Sorry
 8 guys about this one."
 9 Did I read it correctly?
 10 A Yes.
 11 Q Why were you telling Nat Gibson — sorry;
 12 Nathaniel Gibson and Bryan LaPlant to sell their TRX
 13 shares on September 27, 2011?
 14 A I think that was the weekend that, you know,
 15 the stock had gone down a lot and I didn't feel
 16 comfortable, you know, having told them to hold the stock
 17 anymore.
 18 Q Okay. Did — did GISF engage in any TRX trades
 19 around that time, 9/27/2011?
 20 A I'm not sure what day that is, but we would
 21 eventually start selling, yes.
 22 Q Okay. Why — why could you tell Nat Gibson and
 23 Bryan LaPlant to sell TRX on September 27, 2011 but you
 24 couldn't tell your own investors, including Mr. Strelitz,
 25 that GISF was planning to liquidate its TRX holdings, as

1 late as October 24th?

2 A Well, my investors were in touch with other
3 very sophisticated investors who had significant
4 positions in the stock. These individuals had extremely
5 de minimis positions that that had no impact on the stock
6 or the liquidity.

7 Q Okay. And what investors were you referring to
8 that had connections to other investors?

9 A All of my investors, as far as I could tell.

10 Q Okay. And how did you know that?

11 A Based upon our experience with John Engler, who
12 was among the least sophisticated person I know, and yet
13 he was giving all of our information directly to one of
14 the most sophisticated hedge funds that is in existence;
15 a multibillion dollar hedge fund.

16 Q But -- but as of October 24th, John Engler was
17 no longer in the fund; correct?

18 A And he was sitting directly next to the
19 McKnights, and I was paranoid about that at that point.

20 Q Okay. But you weren't paranoid about telling
21 these -- these people that you went to college with?

22 A They were totally unsophisticated and they had
23 no connection to the stock or anyone else who would own
24 it.

25 Q How do you know that?

1 side of the trade. That was not the case for these two
2 individuals.

3 BY MR. BAGNALL:

4 Q Well, one person did that, right? One
5 investor.

6 A Who sits with basically the entirety of the
7 other investors that Jim brought in.

8 Q Did the McKnights ever tell anybody about what
9 GISF's activities were?

10 A Not to my -- not explicitly to my knowledge,
11 no.

12 Q Okay. Do you have any reason to believe that
13 the McKnights ever told any other investors about GISF's
14 activities with TRX?

15 A Yes, because they sit and work with the -- with
16 John Engler, who did that.

17 Q Okay. So if -- so because John Engler did it,
18 it's fair to assume --

19 A And when we -- and when --

20 Q Hold on, I didn't finish the question. So
21 because John Engler did it, it's fair to assume that all
22 the McKnights did the same thing; is that what you're
23 testifying?

24 A It's a risk. It's unreasonable risk. And --

25 Q But --

1 A I was confident of that. And I am confident of
2 that.

3 Q I didn't ask you that. I asked you how do you
4 know that?

5 A Because they are not sophisticated and they are
6 not -- they don't have a large position or a meaningful
7 position.

8 BY MR. BOHR:

9 Q Do these two individuals, Bryan LaPlant and
10 Nathaniel Gibson, were your classmates at Williams
11 College?

12 A Yes.

13 Q And they're unsophisticated?

14 A Yes.

15 Q But the construction personnel in Augusta,
16 Georgia, don't -- you don't want them to know, but you
17 can tell the unsophisticated Williams classmates? Do I
18 understand that correctly?

19 A I'm not sure what you're implying, but --

20 Q Well, your -- your Williams classmates you
21 characterize as unsophisticated, so they can be told sell
22 your TRX, but you can't communicate with your investors?

23 A Again, my investors have been following the TRX
24 story for a year and a half in great detail and had been,
25 you know, communicating that stuff to people on the other

1 A -- when we --

2 Q Hold on a second. What I asked you was, did
3 you know whether the McKnights actually told any other
4 investors what GISF's TRX activities were?

5 A No, I do not.

6 Q Okay. Is Nathaniel Gibson your friend?

7 A Yes.

8 Q Is Bryan LaPlant your friend?

9 A Yes.

10 Q Okay. Did you tell Nathaniel Gibson -- does he
11 go by Nathaniel Gibson?

12 A Yes.

13 Q Or does he go by Nat Gibson?

14 A He goes by Chip.

15 Q Chip, okay. Did you tell Nathaniel Gibson to
16 purchase TRX initially?

17 A Yes.

18 Q Okay. Did you tell Bryan LaPlant to purchase
19 TRX initially?

20 A I mean, I didn't tell them to purchase it. I
21 told -- I talked a lot about how great TRX was and how I
22 was completely invested into it, and they bought the
23 stock and then told me that they had bought it.

24 Q Okay. And when did that conversation occur?

25 A Uh --

1 Q And let me be clear, because I think you
2 testified about a couple conversations. When did the
3 conversation occur in which Nathaniel Gibson told you
4 that he purchased TRX shares?

5 A I don't recall.

6 Q Was it in 2011?

7 A Yes.

8 Q Okay. When did the conversation --

9 A But I -- I don't know if they own any TRX,
10 actually, but I presume they did.

11 Q Okay. And why do you presume that they did?

12 A Because with Chip, he visited me in St. Kitts
13 and I was working essentially the entire time and it came
14 up what I was working on and he said it sounded like a
15 great, you know, opportunity, and I presumed from that
16 that he was going to buy shares. But he didn't
17 explicitly tell me that.

18 Q Did Chip -- Nathaniel Gibson stay with you in
19 St. Kitts?

20 A Yes.

21 Q Okay. So it's -- it's a close enough
22 relationship that when he visited you in a foreign
23 country he stayed with you where you were living?

24 A Yes.

25 Q Okay. Did he pay you for staying with you?

1 A No.

2 Q Did he pay to stay with you, I should have
3 said.

4 A No.

5 Q Okay. What makes you think that Mr. LaPlant
6 bought TRX shares?

7 A I think that he had heard from Chip and he was
8 telling me about some stock he was buying, and I was
9 telling him about TRX.

10 Q Okay. What does Mr. Gibson -- Nathaniel Gibson
11 do for a living?

12 A He works in web development and search engine
13 optimization.

14 Q Who does he work for?

15 A Himself.

16 Q And what -- who are his clients?

17 A I'm not familiar. I guess I'm one of them.

18 Q Did -- did Mr. Gibson -- Nathaniel Gibson
19 create GISF's web page?

20 A I don't think so.

21 Q So how are you one of his clients?

22 A I am now. But actually, I don't think I -- we
23 had any relationship at this point in time.

24 Q Okay. You're -- how -- in what capacity are
25 you one of his clients now?

1 A I'm actually no longer, but I did some web
2 hosting for a website related to my engagement, and --
3 and then a website that my father has.

4 Q Okay. So why did you say you're his client?

5 A Well, because I have purchased his services
6 previously.

7 Q Okay. And what does Mr. LaPlant do for a
8 living?

9 A He's an attorney.

10 Q And where does he practice law?

11 A I'm not sure.

12 Q Where does he live?

13 A He lives in New York now.

14 Q Okay. What kind of law does he practice?

15 A I don't know.

16 Q Is it -- is he a transactional attorney?

17 A I -- I think so.

18 Q For example, does he work on mergers and
19 acquisitions? Or private placements?

20 A I really don't know.

21 Q Okay. Do you know what firm he works for?

22 A I don't.

23 Q Does he work for a firm?

24 A Yes.

25 Q Okay. He -- for -- he's not a solo

1 practitioner?

2 A No.

3 Q Okay. What conversation did you have with Mr.
4 LaPlant? Sorry if this is redundant; when did the
5 conversation that you had with Mr. LaPlant occur in which
6 you suspected that he purchased TRX shares?

7 A At some time during the summer of 2011.

8 Q Okay.

9 A It was when the stock was in the \$7 area.

10 Q Um-hmm.

11 A I recall that because I was, you know, excited
12 enough to where I wasn't, you know, hesitant.

13 Q Okay. Were there any confidentiality
14 provisions in the GISF offering documents?

15 A Not to my knowledge.

16 Q Not to your knowledge. For example, were you
17 permitted to tell your friends that your -- that TRX was
18 heavily invested -- excuse me; that GISF was investing in
19 TRX?

20 A I don't think that I was precluded from doing
21 that. No.

22 Q Okay. And just to be clear before we move on,
23 the reason that you were able to tell Nathaniel Gibson
24 and Bryan LaPlant to sell their TRX shares, but not your
25 own GISF investors, is because these two gentlemen, the

1 ones that you wrote to in Exhibit 88 are unsophisticated?
 2 A Did not have existing relationships with longs
 3 and shorts in the stock, were not following it closely,
 4 and had a small de minimis position, if anything.
 5 Q After they invested in TRX, how do you know
 6 they didn't follow the company?
 7 A I don't.
 8 Q Okay. So then how can you be sure of your
 9 testimony when you say that they -- they didn't know the
 10 company and they couldn't follow the company or whatever
 11 the words were that you used?
 12 A That's my strong suspicion.
 13 Q Okay. But you don't know for sure?
 14 A No.
 15 Q Okay. I'll take back Exhibit 88.
 16 Okay, could you mark this next, please?
 17 (SEC Exhibit No. 89 was marked
 18 for identification.)
 19 BY MR. BAGNALL:
 20 Q Okay, I'm going to hand you what's been marked
 21 as Exhibit 89. Can you look it over and let me know when
 22 you're done, please?
 23 A I'm ready.
 24 Q Okay. What's Exhibit 89?
 25 A It's an email to TR Reddy from me.

1 shares?" And he said, you know, "I think TR has some
 2 you should email him, and I'll call other investors."
 3 What should we say?"
 4 Q So was that conversation you had with Jim Hull
 5 before or after GISF liquidated its TRX position?
 6 A After.
 7 Q Okay.
 8 BY MR. BOHR:
 9 Q And what was the time of this email to Mr.
 10 Reddy in Exhibit 89?
 11 A This timestamp again is always off. This would
 12 probably be late evening on the 10th.
 13 Q Okay.
 14 BY MR. BAGNALL:
 15 Q Why didn't you ask to see if any of your GISF
 16 investors had outside long positions in TRX before you
 17 took the action in GISF on the 10th that you did?
 18 A Because they're not my clients.
 19 Q Well, you spoke to some of them, though, right?
 20 A I've spoken to a lot of people.
 21 Q Well, on the 10th, specifically about what GISF
 22 was doing, you -- you took action for the Marzullos,
 23 right?
 24 A Yes.
 25 Q You spoke to your --

1 Q And do you recognize it as such?
 2 A Yes.
 3 Q Okay. And you wrote to him on November 10,
 4 2011, "TR, I think you should sell your TRX shares
 5 immediately. I will call you as soon as possible to
 6 discuss. Thanks. Chris."
 7 Did I read that correctly?
 8 A Yes.
 9 Q Okay. Why did you tell TR Reddy to sell his
 10 TRX shares, as late as November 10th, when you told
 11 LaPlant and Nat Gibson in November 27 -- excuse me,
 12 September 27th, you know, over a month earlier to sell
 13 their shares?
 14 A I didn't know anyone outside -- other investors
 15 had outside shares until the 10th, in the afternoon Jim
 16 told me that and said, "What are we going to do about
 17 these other investors?"
 18 Q Okay. So you had a conversation with Jim Hull
 19 before you sent this email to TR Reddy?
 20 A Yes.
 21 Q Okay. And what was the conversation you had
 22 with Mr. Hull?
 23 A He -- we talked about the execution on the day
 24 of the 10th. And then Jim said, "Well, what about the
 25 shares that other investors have?" And I said, "What

1 A He was my client.
 2 Q You spoke to your father; correct?
 3 A Who was my client.
 4 Q So their -- yes, you spoke to the Marzullos --
 5 or yes, you took action for the Marzullos; correct?
 6 A Yes.
 7 Q Okay. And yes, you spoke to your father;
 8 correct?
 9 A Yes.
 10 Q Okay. And what memorializes the Marzullos
 11 as -- the client relationship you have with the
 12 Marzullos, what -- what memorializes that relationship?
 13 A There is no formal documentation.
 14 Q Okay. And what memorializes the client
 15 relationship that you had with your father in the
 16 November 2011 timeframe?
 17 A There's no formal documentation.
 18 Q Okay. So what -- what is the basis for your
 19 testimony that your father was your client in this
 20 timeframe?
 21 A That he did solicit my advice. He did come to
 22 me individually and asked me about outside accounts that
 23 he was managing. And that other investors did not. If
 24 they had approached me and sought my counsel on outside
 25 shares, I would have engaged them in that effort.

1 Q Okay. Why — why did your father come to you
2 and ask you about that? What precipitated his asking
3 you?
4 A Specifically on this day, my understanding is
5 that he came to Jim and said, you know, "I've bought a
6 bunch of shares outside of the fund. And what are you
7 doing with yours and what's going on?" And Jim directed
8 him to me.
9 Q Okay. So your father knew to ask, right,
10 because he had somebody that was involved in what GISF
11 was doing, telling him that he ought to talk to you?
12 A He came to that person. Everyone else could
13 have come to Jim and had the same access if they wanted.
14 Q Why was your father speaking with Jim Hull that
15 day?
16 A Because he works there.
17 Q Right.
18 A They work next to each other.
19 Q Do the other investors have the same
20 opportunities to talk to Jim Hull —
21 A Yes.
22 Q — at work?
23 A There's plenty of forms of communication today
24 that will make that very easy.
25 Q Okay.

1 A Jim Hull's very accessible.
2 Q Okay. And how about the Marzulos, did they
3 come to talk to you?
4 A The Marzulos talked to me every day since late
5 2008 about markets, their investments, and everything.
6 Q But you took action in an account in
7 Francesca's name without speaking to them at all on the
8 10th, right?
9 A That's correct.
10 Q Okay. So they didn't come to you about this,
11 like your father did?
12 A No, that's correct.
13 Q Okay. So then why help them?
14 A Because they're suitability is entirely
15 distinct from every other investor in the fund. All of
16 their assets, outside of their primary residence, is in
17 the fund. They are the most substantial investor behind
18 Jim Hull. They had no income. And they were in their
19 late 70s.
20 BY MR. BOHR:
21 Q I want to jump off on that. You identified
22 Giovanni and Suejin Marzullo as your clients; correct?
23 A Suejin, yes, sir.
24 Q They're in their 70s, they have no income;
25 correct?

1 A Yes, sir.
2 Q They invested almost all their net worth
3 outside of I think you said their residence, in GISF;
4 correct?
5 A Yes.
6 Q And then you put GISF in a single stock;
7 correct?
8 A Correct.
9 Q Is that prudent investment advisor to give your
10 70-year old retired clients, as you view them, with no
11 other income? That they have all their eggs in the GISF
12 basket?
13 A To answers. In retrospect, no. And secondly,
14 they were made aware that we were taking a great deal of
15 risk.
16 BY MR. BAGNALL:
17 Q So then they had the same information as all
18 the other investors, right?
19 A They did. And you know —
20 Q So, wait. So, you answered the question. So
21 why not treat all the other investors similarly?
22 A Because their potential for loss is different.
23 Q Okay.
24 BY MR. BOHR:
25 Q And if their potential for loss is so great

1 why did they have all their investments, other than their
2 residence, in GISF when they're in their 70s and they
3 have no income and you're their investment advisor?
4 A Because that was consistent with their desire.
5 BY MR. BAGNALL:
6 Q Did you ever counsel them to diversify?
7 A When we were up in 2010, at the end of the
8 year, I said that they should take half off the table and
9 they said, no, let's — let's keep going.
10 BY MR. BOHR:
11 Q What suitability analysis did you do for the
12 Marzulos as investors?
13 A I looked at their assets, income, and future
14 expenses.
15 Q And, so you had time to speak to the Marzulos
16 on a daily basis, going back to as far as 2008; correct?
17 But during 2011 you didn't have time to report on a
18 monthly basis to your GISF investors?
19 A I was very close to the Marzulos physically
20 every day.
21 Q You — okay.
22 MR. FERRIGNO: Just a second, I want to talk to
23 him for just one second.
24 MR. BOHR: Well, I'm in the middle of a
25 question.

1 MR. FERRIGNO: You had a question? I thought
2 you were done.
3 BY MR. BOHR:
4 **Q Okay, you said TR Reddy was not your client,**
5 **did I hear that correctly?**
6 **A That's correct.**
7 **Q So Mason McKnight, III, also not your client?**
8 **A Correct.**
9 **Q Mason McKnight, IV, also not your client?**
10 **A I only had clients being Jim Hull, my father,**
11 **the Marzullios, and that's it.**
12 BY MR. BAGNALL:
13 **Q So if TR Reddy is not your client --**
14 **A And the fund.**
15 **Q -- why not -- why write to him at all?**
16 **A Because Jim asked me to.**
17 BY MR. BOHR:
18 **Q I just want to walk through this. So --**
19 BY MR. BAGNALL:
20 **Q Did you tell Jim, "No, I'm not going to, he's**
21 **not my client"?**
22 **A I did not.**
23 **Q Why not?**
24 **A Because asked me as a favor to get people I**
25 **thought in a very specific situation.**

1 BY MR. BOHR:
2 **Q So Matthew McKnight, not your client?**
3 **A Not my client.**
4 **Q Marshall McKnight, not your client?**
5 **A Not my client.**
6 **Q Tim Strelitz, not your client?**
7 **A Not my client.**
8 **Q Bert Storey, not your client?**
9 **A Not my client.**
10 **Q Doug Cates, not your client?**
11 **A Not my client.**
12 MR. FERRIGNO: Are you done? I just want to --
13 MR. BOHR: I have to finish, yes.
14 MR. BOCKIN: Well, do we -- do we still have
15 questions pending?
16 MR. BAGNALL: Not for me.
17 MR. BOHR: Or -- are you done with this
18 exhibit?
19 MR. BAGNALL: I am. Do you need --
20 MR. FERRIGNO: This will only take a second.
21 MR. BAGNALL: Do you want to --
22 MR. FERRIGNO: Yeah, we'll step out. Yeah.
23 Okay.
24 MR. BOHR: I don't think you need to step out.
25 MR. BAGNALL: I'm done. I don't --

1 MR. BOHR: Okay, I'm finished with Exhibit --
2 MR. BAGNALL: 89?
3 MR. BOHR: -- 89.
4 MR. BAGNALL: Would you like to take a break?
5 MR. FERRIGNO: Yeah.
6 MR. BAGNALL: Okay, we'll go off the record
7 at --
8 MR. FERRIGNO: This will take five -- five
9 minutes at the most.
10 MR. BAGNALL: -- 4:28 p.m., December 21, 2015.
11 (A brief recess was taken.)
12 MR. BAGNALL: All right, we'll go back on the
13 record at 4:35 p.m., December 21, 2015.
14 BY MR. BAGNALL:
15 **Q Mr. Gibson, do you recall you're under oath?**
16 **A Yes, sir.**
17 **Q And to confirm, during the break there were no**
18 **conversations of substance between you and the staff; is**
19 **that right?**
20 **A Correct.**
21 MR. BAGNALL: And you agree, Mr. Ferrigno?
22 MR. FERRIGNO: Yes.
23 MR. BAGNALL: Okay, Mr. Ferrigno, you would
24 like to ask Mr. Gibson a question?
25 MR. FERRIGNO: Yes, thank you.

1 Mr. Gibson, with respect to your father, and
2 any dealings you may have had with him regarding
3 securities, did you receive a fee for anything that you
4 did with your father?
5 THE WITNESS: No.
6 MR. FERRIGNO: Did you receive a fee from
7 the -- Mr. and Mrs. Marzullo?
8 THE WITNESS: No.
9 MR. FERRIGNO: Did you receive a fee from
10 Francesca Marzullo?
11 THE WITNESS: No.
12 MR. FERRIGNO: Okay.
13 MR. BOCKIN: Let me ask a follow-on question on
14 that.
15 BY MR. BOCKIN:
16 **Q Did you live with the Marzullios?**
17 **A Yes.**
18 **Q Did they charge you rent?**
19 **A No.**
20 **Q Okay.**
21 BY MR. BAGNALL:
22 **Q Other than money, did your parents provide you**
23 **with places to live or things to eat or clothes to wear**
24 **in the November 2011 timeframe that you didn't have to**
25 **pay for?**

1 A From my parents?
 2 Q Um-hmm.
 3 A No.
 4 Q Did they buy you flights home, for example?
 5 A Not to my recollection.
 6 Q Yeah. And you paid your own way entirely in
 7 that timeframe?
 8 A That's my recollection, yes.
 9 Q Okay.
 10 BY MR. BOCKIN:
 11 Q But just to be clear, your father paid Mr. Hull
 12 the entire balance of your debt to him; correct?
 13 A That's correct.
 14 Q And how much was that?
 15 A \$700,000.
 16 Q Okay.
 17 MR. FERRIGNO: When was that?
 18 THE WITNESS: I believe at the beginning of
 19 2013.
 20 (SEC Exhibit No. 90 was marked
 21 for identification.)
 22 BY MR. BAGNALL:
 23 Q I'm going to hand you what's been marked as
 24 Exhibit 90. If you could look it over please and let me
 25 know when you're done?

1 A Okay.
 2 Q Do you recognize Exhibit 90, Mr. Gibson?
 3 A Yes.
 4 Q What is Exhibit 90?
 5 A It's an email exchange between myself and Jim
 6 Hull.
 7 Q Okay. On November 10th you wrote, "Your
 8 daughters are out TRX, FYI."
 9 Do you see that?
 10 A Yes.
 11 Q Did I read it correctly?
 12 A Yes.
 13 Q Were you managing money for Jim Hull's
 14 daughters?
 15 A No.
 16 Q Why -- why are you informing Mr. Hull that his
 17 daughters are out of TRX?
 18 A He asked me to effect the trade for his
 19 daughters, to sell through Fidelity.
 20 Q Did you have access to Mr. Hull's daughters
 21 Fidelity accounts?
 22 A I did.
 23 Q How did you get that access?
 24 A Mr. Hull gave me the passwords.
 25 Q Why did -- when? That day?

1 A I'm not sure.
 2 Q Why did you need the passwords to Mr. Hull's
 3 daughters Fidelity accounts?
 4 A Jim's assistant Laurie had them and gave them
 5 to me, and asked to -- me to execute a trade for him.
 6 Q This trade right now?
 7 A Yes.
 8 Q That's in part of Exhibit 90?
 9 A Yes.
 10 Q Okay. Did you ever execute any other trades
 11 for Mr. Hull's daughters?
 12 A Not to my recollection. No.
 13 Q Okay. Why did Mr. Hull ask you to get his
 14 daughters out of transaction on November 10th?
 15 A Because we were telling everyone to sell.
 16 Q When did you execute those trades for Mr.
 17 Hull's daughters?
 18 A After the fund.
 19 Q Okay.
 20 BY MR. BOCKIN:
 21 Q Wait a minute, you said you were telling
 22 everyone; so you didn't tell everyone, did you?
 23 A Everyone who came to us with outside accounts
 24 at that point in time.
 25 BY MR. BAGNALL:

1 Q Did Mr. Hull's daughters come to you?
 2 A No.
 3 Q So how does that hold up?
 4 A Jim -- Jim Hull came to me with the extra
 5 accounts, of which I wasn't, you know, aware at that
 6 time.
 7 BY MR. BOHR:
 8 Q Did he have you do any transactions on account
 9 of any other Hull relatives?
 10 A No. Not to my knowledge. Recollection.
 11 Q When did you first obtain passwords to the
 12 account of any Hull family member?
 13 A I believe it was this day.
 14 Q Okay.
 15 BY MR. BAGNALL:
 16 Q And then Mr. Hull wrote back to you, "Thanks.
 17 Please remember at some point when you have more time,
 18 that we need to work with the bank to move the LPS
 19 account to a 'custodial' account, as the bank as
 20 custodian at Fidelity, where you have the ability to
 21 trade, but at Fidelity online commission structure. Also
 22 need to challenge Fidelity on commission on last silver
 23 trade in X-account. Thanks."
 24 What is Mr. Hull writing to you about there?
 25 Did I read that correctly, by the way?

1 A Yes.
 2 Q Okay.
 3 A It's very clumsily worded. I'm not quite
 4 sure. But –
 5 Q What's the LPS account?
 6 A I think he means LPL.
 7 Q Okay.
 8 A Which is the – the executing broker end of
 9 Georgia Bank and Trust. And I think maybe he's talking
 10 about – I don't know why it needs to be moved to a
 11 custodial account.
 12 Q Is this a discussion about the investment
 13 advisory services you provided to Mr. Hull outside of
 14 GISF?
 15 A Yes.
 16 Q Okay.
 17 MR. BAGNALL: Does anybody have anything else?
 18 (No response.)
 19 MR. BAGNALL: I'll take back Exhibit 90.
 20 Mark this next, please.
 21 (SEC Exhibit No. 91 was marked
 22 for identification.)
 23 BY MR. BAGNALL:
 24 Q Okay, I'm going to hand you what's been marked
 25 as Exhibit 91. Could you look it over and let me know

1 when you're done, please?
 2 (Witness examined the document.)
 3 THE WITNESS: Okay.
 4 BY MR. BAGNALL:
 5 Q Do you recognize Exhibit 91, Mr. Gibson?
 6 A It's an email from me to Jim.
 7 Q Okay. And did you write it?
 8 A Yes.
 9 Q Okay. And the subject was "Accounting Call
 10 Options and Markets." Is that right?
 11 A Yes.
 12 Q And you wrote it November 28, 2011; is that
 13 right?
 14 A Yes.
 15 Q Okay. Was this a conversation about your work
 16 as a – providing financial advisory services to Mr. Hull
 17 outside of GISF? At least in part?
 18 A It seems to me all related to GISF.
 19 Q So you write in the second sentence of the
 20 first paragraph – excuse me, third sentence of the first
 21 paragraph, "If you're asked, it's our Fidelity LPL and 80
 22 percent of Geier."
 23 Is his –
 24 A Yes.
 25 Q – Fidelity assets associated with Geier?

1 A No.
 2 Q Is his LPL assets associated with Geier?
 3 A No.
 4 Q How do you know about his Fidelity assets?
 5 A Those – that would be my outside relationship,
 6 yes.
 7 Q Is that true, as well, of LPL?
 8 A Yes, sir.
 9 Q Okay. Were you compensated for this effort?
 10 A No.
 11 Q Okay. How many accounts did you manage for Mr.
 12 Hull outside of GISF?
 13 A The Fidelity account and the LPL account.
 14 Q What was – in the end of November 2011, what
 15 was the total assets in Mr. Hull's Fidelity account?
 16 Total amount of assets, not the actual assets, what they
 17 are, but how – what was the value of those assets?
 18 A I don't recall.
 19 Q What's your estimate? Was it –
 20 A I think it was zero, because I think that that
 21 was all contributed to the fund.
 22 Q Okay. And what about his LPL account?
 23 A I don't – I don't recall.
 24 Q Okay. Was it more than \$1 million?
 25 A It could – if it had anything, it might have

1 been 2 million or 2-1/2 million.
 2 Q Okay.
 3 A But –
 4 Q Are there –
 5 A – I don't – I don't recall.
 6 Q Sorry. Other than Fidelity and LPL, were you
 7 responsible for any other accounts that – of Mr. Hull's
 8 outside of Geier?
 9 A No.
 10 Q What was the total value of the assets that you
 11 managed for Mr. Hull outside of Geier?
 12 A At most \$3 million.
 13 Q Okay.
 14 MR. FERRIGNO: Did you actually manage the
 15 assets or did you just provide some services?
 16 THE WITNESS: I provided – provided some
 17 service. I didn't actively manage it.
 18 BY MR. BAGNALL:
 19 Q So did you have access to his accounts?
 20 A Yes.
 21 Q Did you log into them online?
 22 A Yes.
 23 Q Could you execute trades?
 24 A Yes.
 25 Q Did you ever do that for him?

1 A Yes.
 2 Q Okay.
 3 A But I didn't execute any trades without his
 4 directive for each individual trade.
 5 Q So you didn't -- it wasn't a discretionary
 6 relationship, in other words?
 7 A That's correct.
 8 Q Okay. So you managed his money, but needed his
 9 authority to do so; is that right?
 10 A On an individual trade basis, yes.
 11 Q Okay.
 12 MR. BAGNALL: Anybody have anything else for
 13 91?
 14 MR. BOHR: No.
 15 MR. BAGNALL: I'll take back 91.
 16 Okay, could you mark this next in line, please?
 17 (SEC Exhibit No. 92 was marked
 18 for identification.)
 19 BY MR. BAGNALL:
 20 Q Okay, I'm going to hand you what's been marked
 21 as Exhibit 92. Could you look it over and let me know
 22 when you're done, please?
 23 A Okay.
 24 Q Do you recognize Exhibit 92, Mr. Gibson?
 25 A Yes.

1 Q What is it?
 2 A It's an email from Jim to me, cc'ing his
 3 daughters and my father and Laurie.
 4 Q Is Coles on of Mr. Hull's daughters?
 5 A Yes.
 6 Q Okay. And is knhull6 -- who is
 7 [REDACTED]
 8 A I presume his other daughter.
 9 Q Okay. What's her name?
 10 A I don't know.
 11 Q Okay. It's -- and then he wrote to you, "As
 12 discussed, we will open a Fidelity account for \$20,000 on
 13 Tuesday for Coles. All of Coles' other investment funds
 14 are in a bank, CD or savings. Additionally, Karen and I
 15 putting in 10 of the 20 on Coles' behalf, thus I want
 16 this account to be viewed from both a long-term, no
 17 withdrawal needs, and full risk profile. 25-year old who
 18 has absolutely no other risk exposure. As discussed,
 19 please be very aggressive with the investment choices in
 20 this account. Thanks so much, Chris, for helping me on
 21 this."
 22 Did I read that correctly?
 23 A Yes.
 24 Q What is Mr. Hull writing to you there?
 25 A This is evidently an account related to

1 Coles --
 2 Q Did you manage --
 3 A -- his daughter.
 4 Q Sorry, I didn't mean to cut you off there. Did
 5 you manage an account for Coles Hull?
 6 A I must have executed the initial purchases of
 7 this account, as well, yeah.
 8 Q Okay. Is that not providing advisory services
 9 to Coles Hull?
 10 A I wasn't compensated and I was doing it. I
 11 viewed it as more as carrying out, you know, a trade
 12 order for Jim.
 13 Q Really a trade order. So what -- what trade
 14 did you execute at this direction --
 15 A I bought TRX.
 16 Q Hold on a second, I didn't finish the question.
 17 "Thus, I want this account to be viewed from both a
 18 long-term, no withdrawal, and full risk profile."
 19 What -- what security is that a direction to
 20 buy?
 21 A TRX is my understanding.
 22 Q Okay. And how did you know that that was
 23 for -- a direction to buy TRX?
 24 A That's the guidance. If I recall, he wanted to
 25 mirror what we were doing in GISF.

1 Q Where -- which line does it say mirror what
 2 we're doing in GISF in this email in Exhibit 92?
 3 A It doesn't say that in --
 4 Q Okay.
 5 A -- this email.
 6 Q And so what -- what was -- what security were
 7 you to purchase on this direction, "As discussed, please
 8 be very aggressive with the investment choices in this
 9 account."
 10 A This email is misleading in the sense that he
 11 was directing me to actively manage this account. That
 12 was not my understanding.
 13 Q Well, even -- even if it's as you say or as you
 14 testified a direction to do the initial trades, what --
 15 how do you know what trades to execute?
 16 A Because we had discussed this over the phone.
 17 I didn't read this email.
 18 Q You didn't read this email. Is -- is your --
 19 is your email address C. Gibson -- did you ever have the
 20 email address cgibson@hullstoreygibson.com?
 21 A I did. But I don't recall this.
 22 Q Okay.
 23 A This is in 2010?
 24 Q That's right, September of 2010. Did GISF own
 25 TRX at that time?

1 A Yes.

2 Q How much of it?

3 A I don't recall.

4 Q Was it 100 percent TRX?

5 A No.

6 Q So if you're supposed to mirror what was going

7 on in GISF, what other assets did you buy for Coles Hull

8 after you got this email from Mr. Hull?

9 A I -- I don't recall.

10 Q Okay.

11 BY MR. BOCKIN:

12 Q Do you want to revise your earlier testimony

13 that the first time you heard about the Hull's daughter

14 account was on November 10, 2011?

15 A Yes.

16 Q And how do you -- would you like to revise it?

17 A That I did execute initial trades to open that

18 account.

19 Q That when you initially -- when you initiated

20 those trades in that account, you purchased TRX at that

21 time?

22 A That would be my understanding.

23 Q Thank you.

24 BY MR. BAGNALL:

25 Q And so did you have access to their accounts in

1 September of 2010?

2 A I must have.

3 Q Okay. Did you login to their Fidelity

4 account -- did you login to Coles Hull's Fidelity account

5 to buy TRX shares for her in September of 2010?

6 A I presume I did.

7 Q Okay. Take back 92.

8 MR. BAGNALL: Could you mark this next, please?

9 (SEC Exhibit No. 93 was marked

10 for identification.)

11 BY MR. BAGNALL:

12 Q Okay, I'm going to hand you what's been marked

13 as Exhibit 93. Can you look it over, please, and let me

14 know when you're done?

15 A I'm ready.

16 Q What is Exhibit 93?

17 A It's an email I sent to myself in December of

18 2010.

19 Q Okay. About what?

20 A It's a code of ethics that I found off of the

21 Internet.

22 Q And a code of ethics for Geier -- you found a

23 code of ethics for Geier Group LTD on the Internet?

24 A No. This is a boilerplate code of ethics that

25 we didn't, you know, implement, and that was prospective

1 and contemplated for the Cayman entities.

2 Q Okay. Was -- was it ever -- let me ask you

3 this; when -- you say it was boilerplate off the

4 Internet, where did you find it?

5 A I Googled "code of ethics."

6 Q Code of ethics for any particular type of

7 entity?

8 A Maybe investment manager code of ethics.

9 Q Okay. And so the way you found it, was it --

10 was it presented in such a way, like this was sort of a

11 standard code of ethics for investment advisors?

12 A I don't think there's such a thing as a

13 standard. But this was one that was on the Internet.

14 Q Well, make sure you understand the question,

15 okay. I asked you if when you found this one, wherever

16 you found it, was it presented as embodying a standard

17 code of ethics for investment advisors?

18 A No.

19 Q What, if -- how, if at all, was it

20 characterized when -- in the place where you found it?

21 A It was characterized as a code of ethics.

22 Q For investment advisors?

23 A For investment -- the investment management

24 industry in some capacity. Yes.

25 Q Okay. And on what website did you find it?

1 A I don't recall.

2 Q Who drafted it?

3 A I don't know.

4 Q Was it a trade association for the investment

5 advisors industry, perhaps?

6 A It could have been.

7 Q Okay. Was it a law firm that was trying to

8 solicit business for investment advisors?

9 A It could have been.

10 Q Okay. Talking about it more, have you thought

11 any more about what it -- what the source of it might

12 have been?

13 A No.

14 Q Okay. And what was the purpose of -- of even

15 doing the search to look for a code of ethics like this?

16 A We needed to come up with one for the Cayman

17 entities, to the degree that we pursued them.

18 Q And why is that?

19 A I think that the Ogier counsel asked --

20 MR. FERRIGNO: Well, you need --

21 THE WITNESS: Oh, sorry.

22 MR. FERRIGNO: -- be careful about privilege.

23 THE WITNESS: Yeah.

24 BY MR. BAGNALL:

25 Q Is Ogier a law firm?

1 A Yes.

2 Q Okay. And were they GISF's law firm?

3 A Insofar as they were advising us on the

4 formation of the Cayman entities, yes.

5 Q Okay. And why – why did you need to have a

6 code of ethics created for Geier Group LTD to incorporate

7 in the Caymans?

8 A We didn't.

9 Q Okay. So why – why did you draft this?

10 A I didn't draft it.

11 Q Who did?

12 A I found it on the Internet.

13 Q Okay. Could you look at the page ending –

14 actually, unfortunately, they're all 004, so the second

15 page in.

16 A Um-hmm.

17 Q So the first sentence says, "High ethical

18 standards are essential for the success of Geier Group

19 LTD, had advisor."

20 You found that on the Internet?

21 A Well, I obviously substituted our name for

22 whatever the generic entity that was on – that was

23 there.

24 Q Do you see the title, it says "Geier Group

25 LTD." Did you find that on the Internet like that?

1 A No. As I said I put our name into it.

2 Q So let me ask you again, who drafted this

3 attachment to this email in Exhibit 93?

4 A I drafted to the degree that I added our name

5 for the generic name.

6 Q Okay. And why did you undertake that effort if

7 you didn't need to, as you just testified a moment ago?

8 A Because I was compiling the possible codes of

9 ethics to review and diligencing the formation of the

10 entities.

11 Q But why did you need a code of ethics?

12 A We – I'm not sure we did need one. That I

13 was – my understanding was that we may need to have one,

14 to the degree we pursued it.

15 Q Okay. And why did you believe you may need to

16 have one?

17 MR. FERRIGNO: Again, don't get into –

18 THE WITNESS: Yeah, unfortunately I'll have to

19 assert privilege.

20 MR. BAGNALL: Okay.

21 BY MR. BAGNALL:

22 Q When – are the statements in here, for

23 example, on the first paragraph at the end of the second

24 page, four lines in the sentence begins, "We have a

25 fiduciary duty to clients, to act solely for the benefit

1 of our clients."

2 Did that apply to Geier Group –

3 MR. FERRIGNO: Which Geier Group?

4 MR. BAGNALL: I'm not done with the question.

5 BY MR. BAGNALL:

6 Q Geier Group Georgia?

7 A Absolutely not.

8 Q So Geier Group did not have a fiduciary duty to

9 clients, act solely for the benefit of its clients?

10 A You're saying this specific language does – if

11 I read it – interpreted your question as saying, does

12 any of this have anything to do with Geier Group Georgia,

13 and the answer's no.

14 Q Okay. Are you saying because this – this

15 document is drafted for Geier Group LTD –

16 A And it was never executed. And the entities to

17 which it relates were never operational.

18 Q okay. And but – I understand that. And I'm

19 asking a different question. Do the statements in here,

20 whether this document was drafted for Geier Group Georgia

21 or not, apply to Geier Group?

22 MR. FERRIGNO: Which Geier Group?

23 BY MR. BAGNALL:

24 Q Geier Group Georgia.

25 A In so – the statements that govern Geier Group

1 Georgia's conduct are captured in the confidential

2 offering memorandum, the operating agreement, and our

3 subscription agreement.

4 Q Okay.

5 A To the degree that they are consistent with

6 this, then yes. To the degree they are inconsistent,

7 then no.

8 Q So is there – are there any statements in here

9 that – are you saying – let me just make sure I

10 understand this. That unless a statement in here has got

11 a perfect analog in the offering documents for GISF it

12 doesn't apply?

13 A That's precisely what I'm saying.

14 Q Okay. Let me – let me ask you this; there's a

15 line in here that says, "All personnel of the advisor

16 must also comply with all federal securities laws."

17 Does that not apply to the personnel of Geier

18 Group Georgia?

19 A I certainly have to comply with all federal

20 securities laws.

21 Q Is that written in the offering documents?

22 A I'm not sure.

23 Q Okay. I'm not – do you want to look at it?

24 A I wouldn't imagine that needs to be written in

25 the offering documents.

1 **Q** Okay. So but it's not in – but therefore
2 it's – what you just testified to a moment ago isn't
3 true, right? That – that statement is not in the
4 offering documents but it's applicable to GISF, right?
5 And to Geier Group and Geier Capital?

6 MR. FERRIGNO: Well, that wasn't the question
7 before.

8 THE WITNESS: Yeah, that wasn't – yeah.

9 MR. BAGNALL: Yeah, it was.

10 MR. FERRIGNO: No, it wasn't.

11 MR. BAGNALL: Okay. What was the question?

12 MR. FERRIGNO: No. That wasn't it. It's –

13 I'll leave it to you to ask your questions, but that's
14 not what you asked.

15 MR. BAGNALL: What -- okay.

16 BY MR. BAGNALL:

17 **Q** I asked you is it true – is it fair – is your
18 testimony that if doesn't – if there's not a perfect
19 analog in the operating – offering documents for GISF,
20 but it is in here, then it doesn't apply to the fund?

21 MR. FERRIGNO: He's saying that the offering
22 documents, the confidential offering memorandum is what
23 controls.

24 MR. BAGNALL: Let's – counsel, let's –

25 MR. FERRIGNO: But that's what he's saying.

1 MR. BAGNALL: – let him testify for himself,
2 counsel.

3 MR. FERRIGNO: Yeah. Well, you asked me
4 what –

5 MR. BAGNALL: And you said you weren't going to
6 answer. So let's let him testify, okay?

7 MR. FERRIGNO: Well, yeah. Okay.

8 BY MR. BAGNALL:

9 **Q** Go ahead.

10 A I'm sorry; can you ask the question again?

11 **Q** Yeah. I asked you if there – if it was
12 your – a fair characterization of your testimony that
13 what you testified to was that if there wasn't an exact
14 analog in the GISF operating – offering documents that's
15 found in here, anything that's not in here doesn't apply
16 to the GISF entities; is that – is that fair?

17 A Does not necessarily apply.

18 **Q** Does not necessarily apply. So for example,
19 some of it does apply, right?

20 A To the degree that you're saying that – does
21 Geier have to comply with federal securities laws, yes, I
22 would agree.

23 **Q** Okay. Does – does the investment manager of
24 GISF, whether it be Geier Capital or Geier Group, have a
25 fiduciary duty to clients to act solely for the benefit

1 of their clients?

2 A Insofar as that's consistent with our conflicts
3 clause and with – with the other, you know, numerous
4 disclosures that we've made in the confidential offering
5 memorandum and the operating agreement.

6 **Q** So that's a no or a yes? I don't know. I
7 don't understand the answer.

8 A I couldn't answer your question as a yes or no.

9 **Q** And why is that?

10 A Because it's a – there's a nuanced answer.

11 **Q** So – well, either Geier Group and Geier
12 Capital owe a fiduciary duty to its clients to act solely
13 for their benefit or they don't, right? So do they or do
14 they not?

15 A Geier Capital and Geier Group have a fiduciary
16 responsibility to the fund.

17 **Q** Okay. Do they have the fiduciary duty to act
18 solely for the benefit of their clients?

19 A Not insofar as there are conflicts.

20 **Q** Okay. Because if there are conflicts they
21 have – your testimony is they owe no fiduciary duty at
22 all?

23 A No.

24 **Q** Okay. Well, what's – so what do you mean?

25 A That conflicts arise in managing

1 responsibilities to different parties, and that nothing
2 in the offering agreements that we provided prevents us
3 from carrying out those varying obligations.

4 **Q** Okay.

5 MR. FERRIGNO: Are the fiduciary duties that
6 Geier Capital and Geier Capital may have owed to the fund
7 qualified by the disclosure in the offering memorandum?

8 THE WITNESS: Yeah. Yes.

9 BY MR. BAGNALL:

10 **Q** And what – how – what forms the basis for
11 your testimony on that topic? Why do you say that?

12 A How and why are they qualified in the –

13 **Q** Um-hmm. How do you know that? How do you know
14 that your fiduciary duties are qualified by the operating
15 agreement?

16 A Because that was a critical pretext of – that
17 is the pretext of engaging these clients.

18 **Q** Engaging what clients?

19 A Engaging members for the fund.

20 **Q** But what clients? You said "clients," plural.
21 What clients?

22 A I refer as a misstatement; the fund.

23 **Q** Okay. You have – because you have one client,
24 right? That's what you've been saying?

25 A I have Geier, I have my father, I have the

1 Marzullus, and I have Jim Hull.
 2 Q Okay. And so who – did anybody else tell you
 3 that the fiduciary duty that owed to your client was –
 4 what was the word you used? Conditional. Based on the
 5 operating agreement?
 6 A I would have to assert privilege.
 7 Q Okay. Attorney/client privilege?
 8 A Yes, sir.
 9 Q Okay. Did you discuss this code of ethics with
 10 any attorneys for GISF?
 11 A No. It was not relevant.
 12 Q Okay. Did – did you – did anyone ever ask –
 13 did you ever discuss this draft code of ethics with
 14 anybody?
 15 A No. Not to my recollection.
 16 Q Okay.
 17 MR. BOHR: I have a question.
 18 BY MR. BOHR:
 19 Q You made a comment earlier that Mr. Bagnall
 20 asked you if this was – he asked you if this document in
 21 Exhibit 93 was a standard code of ethics or perhaps he
 22 referred to it as a standard code of ethics. But you
 23 made a statement that there was no standard code of
 24 ethics for investment advisors. Did I hear that
 25 correctly?

1 A Yes, sir.
 2 Q But would you agree that there are ethical
 3 principles for investment advisors that are standard
 4 within the investment advisor industry?
 5 MR. FERRIGNO: Wait, say that again?
 6 BY MR. BOHR:
 7 Q Would you agree that there are ethical
 8 principles for investment advisors that are standard
 9 within the investment advisor industry?
 10 A I would say that there are ones that are
 11 customary.
 12 Q And what would those be?
 13 A I couldn't list them for you.
 14 Q Could – could you throw out a couple for me?
 15 A No.
 16 Q Could you – could you name one ethical
 17 principle that is – that you consider to be fairly
 18 standard within the investment advisor industry?
 19 A Don't steal money from your clients' accounts.
 20 Q Could you name another?
 21 A Don't kill your clients. I mean, I – I
 22 really – no.
 23 Q Could you name another, besides don't kill your
 24 clients and don't steal money from your clients'
 25 accounts?

1 A No.
 2 Q Is there a – is there a duty of loyalty?
 3 A That's a very generally phrased, you know –
 4 Q Do you have an answer to that question, either
 5 way?
 6 A I –
 7 Q Yes or no?
 8 A I would say – I would say yes, there's a duty
 9 of loyalty.
 10 Q Is there a duty of care?
 11 A Yes.
 12 Q Is there a duty of obedience?
 13 A I'm not sure.
 14 Q Is there – do you have any duty to adhere to
 15 any legal document? Any governing legal document in your
 16 investment structure?
 17 A The agreements that govern the relationship,
 18 yes.
 19 Q Do you have any duty of good faith?
 20 A Yes.
 21 Q So does my naming a few duties help you now to
 22 recall a few ethical principles or duties that are
 23 standing within the investment advisor industry?
 24 A I suppose, yes.
 25 MR. FERRIGNO: And Mr. Gibson, is it your

1 understanding that the duties can be qualified by
 2 disclosures?
 3 THE WITNESS: Yes.
 4 BY MR. BOCKIN:
 5 Q Did you consult with counsel each time you
 6 believed there was a conflict?
 7 A I would have to assert attorney/client
 8 privilege.
 9 Q For each – each time that you did it every
 10 trade?
 11 MR. FERRIGNO: Each time he did what?
 12 MR. BOCKIN: Each time he consulted with
 13 counsel to see if there was a conflict.
 14 MR. FERRIGNO: Wait, I'm sorry, I'm not
 15 following the question.
 16 MR. BOCKIN: Go ahead.
 17 MR. BOHR: So I would like to ask a question
 18 again and start over.
 19 BY MR. BOHR:
 20 Q Did – whenever you identified a client, did
 21 you consult with counsel about resolving that conflict
 22 with the client?
 23 MR. FERRIGNO: What conflict?
 24 BY MR. BOHR:
 25 Q Whenever you had a conflict or whenever you

1 perceived that there might be a conflict, did you consult
2 with counsel about how to address that conflict?

3 MR. FERRIGNO: Well, why don't we ask it
4 another way.

5 MR. BOHR: No, let's not. I like --

6 MR. BAGNALL: We'll ask the questions.

7 MR. FERRIGNO: Well, don't disclose privileged
8 communications, if you respond otherwise.

9 THE WITNESS: I'm trying to be responsive and
10 think of an example where I did not consult a
11 client -- an attorney when there was a potential
12 confidentiality -- or conflict, and I cannot think of
13 one.

14 BY MR. BOHR:

15 Q How many times would you say a conflict arose
16 or potential conflict arose where you consulted with
17 counsel?

18 A I can't think of a single one.

19 Q You can't think of a single instance on which
20 you knew of a conflict of interest or perceived that
21 there could possibly be a conflict of interest and
22 consulted with counsel about how you might proceed in the
23 face of that conflict of interest?

24 A I cannot.

25 MR. BAGNALL: You done, Paul?

1 Schwab in May of 2014?

2 A I don't recall.

3 Q Okay. He writes back, "I do have an account,
4 but I don't think any transfer at this point is smart. I
5 can be added as the signatory to the existing account.
6 That would be a lot easier."

7 Did I read that right?

8 A Yes.

9 Q And would -- in that last phrase I wrote was in
10 the email "WD," correct?

11 A Yes.

12 Q Okay. Why do you think your father didn't
13 think it would be smart the transfer the GISF fund
14 account to him?

15 A I couldn't say.

16 Q Okay. So you don't remember this
17 communication?

18 A I do remember it.

19 Q Okay. So but you just don't -- you remember
20 the communication but you don't remember why you were
21 asking to transfer the fund?

22 A I don't remember that. And I don't remember
23 why. And I couldn't speculate as to why he had the view
24 he did.

25 Q Um-hmm. Okay. Do you know when you received

1 MR. BOHR: Yes.

2 MR. BAGNALL: Could you mark this next, please?
3 (SEC Exhibit No. 94 was marked
4 for identification.)

5 BY MR. BAGNALL:

6 Q Okay, I'm going to hand you what's been marked
7 as Exhibit 94.

8 Can you please look at that and let me know
9 when you're done?

10 A Sure.

11 Q Are you done?

12 A I'm done.

13 Q Okay. Do you recognize Exhibit 94?

14 A Yes.

15 Q What is Exhibit 94?

16 A It's an email exchange between my father and I.
17 And me.

18 Q Okay. And you wrote in May of 2014, "Do you
19 have a Charles Schwab account? I would like to transfer
20 the Geier International Strategies Fund account to you,
21 please."

22 Did I read that right?

23 A Yes.

24 Q Why did you want to transfer the Geier
25 International Strategies Fund to your father at Charles

1 our first subpoena in this matter?

2 A I think it was April.

3 Q April of what year?

4 A Of 2014.

5 Q Did your receipt of our subpoena in this matter
6 prompt you to ask your father to take the GISF account in
7 his Schwab account?

8 A It's possible.

9 MR. FERRIGNO: Do you have that subpoena, just
10 so we can refresh his recollection about the date?

11 MR. BAGNALL: We could get it.

12 MR. FERRIGNO: Or you could represent to us
13 what the date is. I thought it was May 14th or something
14 like that.

15 MR. BAGNALL: I -- I believe it's very close in
16 time to this, as well.

17 Paul, would you mind grabbing it?

18 MR. BOHR: Yeah.

19 MR. FERRIGNO: I don't think it's April.

20 THE WITNESS: Okay.
21 (Counsel confer.)

22 MR. BAGNALL: So we can come back to that, if
23 you would like. We'll just keep going along here.

24 THE WITNESS: Okay.

25 MR. BAGNALL: Okay, could you mark this next in

1 line, please?
 2 (SEC Exhibit No. 95 was marked
 3 for identification.)
 4 BY MR. BAGNALL:
 5 Q I'm handing you what's been marked as Exhibit
 6 95. Could you please take a look at Exhibit 95 and let
 7 me know when you're done?
 8 A I'm ready.
 9 Q And what is Exhibit 95?
 10 A It's my personal Charles Schwab account from
 11 the month of September 2011.
 12 Q Okay. The page ending -- by looking at the
 13 page ending 058, can you tell at the end of September
 14 2011 what assets you held in your Charles Schwab account?
 15 A A silver trust for \$9,000.
 16 Q Just under, right?
 17 A I'm sorry, yes. And then cash.
 18 Q Okay. For a total account value of
 19 approximately 9300?
 20 A Yes.
 21 Q Okay. So just cash and the SLV fund; is that
 22 right?
 23 A Yes, sir.
 24 Q Okay. Could you then look at the page ending
 25 059?

1 A Okay.
 2 Q In the section "Investments Activity," do you
 3 see that?
 4 A Yes.
 5 Q Okay. The first entry under there is a
 6 purchase of the SLV, right?
 7 A Yes.
 8 Q Okay. The remaining five entries are what?
 9 A Sales of TRX.
 10 Q Okay. These are sales of TRX on a trade date
 11 of September 26; is that right?
 12 A Yes.
 13 Q Okay. How many shares of TRX did you sell from
 14 your personal Schwab account on September 26th?
 15 A Two thousand.
 16 Q Two thousand shares. And what was the lowest
 17 price you obtained for selling those shares of TRX from
 18 your personal account on September 26th?
 19 A 4 spot 05.
 20 Q 4 spot 05. So nothing below \$4.05; correct?
 21 A Correct.
 22 Q Okay. Why did you sell all -- did you have any
 23 other TRX shares after these transaction -- did you have
 24 any other TRX shares in your personal Schwab account
 25 after these transactions on September 26th?

1 A No. I don't believe so.
 2 Q Okay. So why did you sell all of your personal
 3 TRX shares on September 26, 2011?
 4 A Stock was down 20 percent in the last two days,
 5 and I didn't feel like I could maintain that risk profile
 6 for this, above and beyond additional liquidity that I
 7 basically needed for very, very short-term liquidity
 8 needs.
 9 Q Okay. Was there anything about September 26th
 10 in particular that you chose that date to liquidate all
 11 your TRX shares from the personal Schwab account?
 12 A It was the fact that the stock was down 20
 13 percent over the preceding two days.
 14 Q Okay. And why did you sell all of your TRX
 15 shares in five separate transactions? Why not sell all
 16 2,000 in one block?
 17 A I -- I did sell it at one block. It just
 18 appears this way.
 19 Q Why does it appear this way?
 20 A That's common, in my experience.
 21 Q And why is it common in your experience? What
 22 kind of order did you enter?
 23 A I'm sure I entered a market order to sell 2,000
 24 shares.
 25 Q And so Charles Schwab tried to get for you the

1 best prices it could, is that right, when it executed the
 2 trade?
 3 A I think just electronically when they execute a
 4 market order like this it goes to -- there are various
 5 algorithms and exchanges that are all buying and you
 6 know, it just gets routed, as it gets routed. And if it
 7 gets -- if there's a different individual buy for each
 8 little quantity of shares, they'll actually, you know,
 9 show that level of detail.
 10 Q But there's a method to that madness, right?
 11 Those algorithms that you testified to, those are all
 12 designed to get you the best price for your market order,
 13 right?
 14 A To get the highest bid, yes.
 15 Q Yes. And that's because Charles Schwab owes
 16 you that, right, as your client -- as you, as their
 17 client?
 18 A They have an obligation to -- for best
 19 execution, yes.
 20 Q Okay. And so this is broken down because
 21 Charles Schwab was able to get to sell some of your TRX
 22 shares for prices better than \$4.05, right?
 23 A Okay.
 24 Q Yes?
 25 A I don't -- I'm not sure if that's why it was

1 broken down. It was broken down because the –
 2 **Q** All right, let me ask the question a different
 3 way. Was Charles Schwab able to get for you for some of
 4 your TRX shares prices better than \$4.05?
 5 **A** Yes.
 6 **Q** Okay.
 7 **A** But not better than \$4.06. So.
 8 **Q** Okay. Do you think you got better prices for
 9 some of these trades because they were sold in smaller
 10 lots?
 11 **A** No.
 12 **Q** Why not?
 13 **A** Because the sum of – these 2,000 shares did
 14 not – were not, you know, significant to the market.
 15 **Q** Um-hmm. You don't think it's the fact that you
 16 were able to hit an order in the book for 100 shares at
 17 \$4.053 cents, but not more than that?
 18 **A** I – I'm very confused by the line of
 19 questioning. No, I don't think that – that 2,000 shares
 20 moved the market in any material way.
 21 **Q** I didn't ask you that.
 22 **A** Okay.
 23 **Q** I didn't ask you that. I asked –
 24 **A** I think you implied in your questions that it
 25 would have to –

1 **Q** No.
 2 **A** – if you didn't – if you didn't break it down
 3 to smaller –
 4 **Q** No.
 5 **A** – chunks.
 6 **Q** No. I'm not going to ask you any implied
 7 questions. I'm going to ask you direct questions, okay.
 8 So is it possible that you hit an order in the book for
 9 100 shares that was at \$4.0535 cents, but there wasn't
 10 any additional shares – an offer to buy shares at that
 11 price beyond 100?
 12 **A** Yes.
 13 **Q** Okay. And so it – it hit that price, and then
 14 it went to another order with an offer lower in the book,
 15 right?
 16 **A** Precisely. But that would have been the same
 17 if they just hit 2,000.
 18 **Q** Right.
 19 **A** Because that's where just the bid stack was.
 20 So the bid stack was 4.0500 all the way through 4.0535,
 21 and it was stacked in this – a manner at that very
 22 moment in time that the market order went through.
 23 **Q** Right. So would you – would it be your guess
 24 that the – the last one executed was the \$4.05 entry?
 25 The last of the five?

1 **A** It may have been. It may not have been.
 2 **Q** Um-hmm.
 3 **A** May have been the first. There might have been
 4 some other shares, a demand coming in at that very moment
 5 that drove the price, you know, very, very modestly
 6 higher.
 7 **Q** Okay. Did you notify GISF's – did you notify
 8 GISF that you were going to be selling your personal TRX
 9 shares from your personal Schwab account on September
 10 26th?
 11 **A** By "GISF," who do you mean?
 12 **Q** You tell me.
 13 **A** I didn't notify a legal entity, no.
 14 **Q** Okay. Did you notify any representative of
 15 GISF?
 16 **A** No.
 17 **Q** Okay. Did you notify – did you get
 18 authorization from anyone capable of giving it from GISF
 19 for you to sell your personal shares from your Schwab
 20 account on September 26th?
 21 **A** No.
 22 **Q** Okay. Did you notify GISF's investors that you
 23 were going to be selling your personal TRX shares on
 24 September 26th?
 25 **A** No.

1 **Q** Okay. Did you get authorization from any of
 2 GISF's investors to sell your personal shares –
 3 **A** No.
 4 **Q** – on September 26th?
 5 **A** I'm sorry. No.
 6 **Q** Okay. Let's leave this out.
 7 MR. BAGNALL: So can you mark this next,
 8 please?
 9 (SEC Exhibit No. 96 was marked
 10 for identification.)
 11 BY MR. BAGNALL:
 12 **Q** Okay, I'm going to hand you what's been marked
 13 as Exhibit 96. Could you look at Exhibit 96 and let me
 14 know when you're done, please?
 15 **A** I'm ready.
 16 **Q** Okay. Do you recognize Exhibit 96?
 17 **A** It's Francesca Marzullo's personal Schwab
 18 account from September 2011.
 19 **Q** Okay. Did you have access to Ms. Marzullo's
 20 Schwab account in September 2011?
 21 **A** Yes.
 22 **Q** Did you have authority to make trades in Ms.
 23 Marzullo's Schwab account in September 2011?
 24 **A** I did.
 25 **Q** Did you actually make trades in Ms. Marzullo's

1 Schwab account in September 2011?
 2 A Yes.
 3 Q Okay. Could you turn to the page ending 464,
 4 please, and look at the "Investment Detail" section and
 5 tell me what assets did Ms. Marzullo in her Schwab
 6 account at the end of September 2011?
 7 A The silver and gold trusts.
 8 Q Okay.
 9 A In the amounts of 15 and 31,000 dollars
 10 respectively, plus 3600 in cash.
 11 Q Okay. No TRX; correct?
 12 A Correct.
 13 Q All right. If you look at the "Transaction
 14 Detail" beginning on that same page, Page 464, and
 15 finishing on the page ending 465, did you sell all of Ms.
 16 Marzullo's TRX shares on September 26th?
 17 A Yes.
 18 Q Okay. How many shares did you sell on
 19 September 26th? Do you know?
 20 A I can add it up if you would like?
 21 Q Okay. So I — I did that beforehand. Does
 22 approximately 18,900 sound right?
 23 A Yes.
 24 Q Okay. And how did you enter that order?
 25 A Market order.

1 Q To sell all 18,900 at once?
 2 A I think so.
 3 Q Okay. But you're not sure?
 4 A I'm not sure.
 5 Q Okay. What was the lowest price that you got
 6 for Ms. Marzullo on any of these 18,900 TRX shares that
 7 you sold for her on September 26, 2011?
 8 A 4 spot 03.
 9 Q Okay. And so that's the lowest, right?
 10 Nothing below \$4.03, right?
 11 A Correct.
 12 Q Why did you sell all of Ms. Marzullo's TRX
 13 shares on September 26, 2011?
 14 A Because the stock was down 20 percent.
 15 Q Okay. Was there any other reason?
 16 A They had an excessive exposure to TRX already.
 17 Q Who's they?
 18 A Francesca and her parents.
 19 Q Are — is — if you look at the first page of
 20 Exhibit 96, are her parents listed as an account holder?
 21 A No. But she's a — she and her parents are one
 22 financial entity from my perspective.
 23 Q Okay. Did you notify GISF or someone competent
 24 to be notified on GISF's behalf that you were selling Ms.
 25 Marzullo's personal TRX position on 9/26/2011?

1 A No, sir.
 2 Q Okay. Did you get authority from anybody
 3 competent to give it to you on behalf of GISF to sell Ms.
 4 Marzullo's TRX shares from her personal account on
 5 September 26, 2011?
 6 A No, sir.
 7 Q Did you notify any of GISF's investors that you
 8 would be selling Ms. Marzullo's TRX — all of Ms.
 9 Marzullo's TRX shares on September 26, 2011?
 10 A No, sir.
 11 Q Did you get authorization from any of GISF's
 12 investors to sell your personal — excuse me, to sell all
 13 of Ms. Marzullo's personal TRX shares on September 26,
 14 2011?
 15 A No, sir.
 16 Q Okay. Keep this on, too. Just set it to the
 17 side.
 18 MR. BAGNALL: Could you mark this next, please?
 19 (SEC Exhibit No. 97 was marked
 20 for identification.)
 21 BY MR. BAGNALL:
 22 Q Okay, I'm going to hand you what's now been
 23 marked as Exhibit 97. Could you please look at 97 and
 24 let me know when you're done?
 25 A I'm ready.

1 Q Okay. What is Exhibit 97?
 2 A Geier Group's corporate Schwab account for the
 3 period August and September 2011.
 4 Q Okay. Did you have control over this account
 5 during that time period?
 6 A Yes.
 7 Q Did anybody else have control over this
 8 account?
 9 A No, sir.
 10 Q Okay. Did anybody other than you access this
 11 this account during the August 1, 2011 to September 30,
 12 2011 time period?
 13 A No, sir.
 14 Q Okay. And could you please turn to the page
 15 ending — and unfortunately there are two Bates stamps on
 16 here, so look at the Bates stamp that's perpendicular to
 17 the actual view in the bottom left hand corner.
 18 A Um-hmm.
 19 Q SEC-SHWAB-E-0001570.
 20 A Yeah.
 21 Q On the page ending 570 of Exhibit 97, can you
 22 look at the "Investment Detail" and tell me what assets
 23 Geier Group held in this account at the end of September
 24 2011?
 25 A The silver trust.

1 Q Anything else?

2 A No.

3 Q Any TRX shares?

4 A No.

5 Q Okay. Could you then look on the page ending

6 571, under the "Transaction Detail, Purchase and Sale"

7 section.

8 A Yes.

9 Q You see three entries there for sales of TRX.

10 A Yes.

11 Q All trade date of 9/26/2011; correct?

12 A Yes.

13 Q And how many shares is it?

14 A A thousand shares.

15 Q One thousand shares. And what's the lowest

16 price at which you were able to sell some to Geier

17 Group's 1,000 shares – TRX shares on September 26, 2011?

18 A 4 spot 0501.

19 Q Okay. So nothing below \$4.0501; correct?

20 A Correct.

21 Q All right. Why did you sell Geier Group's TRX

22 shares on September 26, 2011?

23 A Because the stock was down 20 percent, and the

24 capacity to sustain additional losses on this above and

25 beyond exposure was diminished.

1 Q Okay. And what do you mean by that, "was

2 diminished"?

3 A The volatility had exceeded my expectations and

4 we had liquidity needs.

5 Q Was there any other reason that you sold all of

6 Geier Group's TRX shares on September 26, 2011?

7 A No.

8 Q Okay.

9 BY MR. BOCKIN:

10 Q You said "we had liquidity needs." Who's "we"?

11 A The managing members of Geier Group.

12 Q Geier Group – just for the record Geier Group,

13 LLC was not an operating entity at this time, right?

14 A That's correct.

15 BY MR. BAGNALL:

16 Q So what liquidity needs did it have then?

17 A Insofar as it's a reflection in spirit of Geier

18 Capital, LLC.

19 Q Okay. "A reflection is spirit," is that what

20 you said?

21 A Those are my words.

22 Q Okay. Did you notify GISF, someone competent

23 to be notified on behalf of GISF that you would be

24 selling all of Geier Group's TRX shares on September 26,

25 2011?

1 A No.

2 Q Okay. Why not?

3 A Because that was not consistent with our

4 obligations.

5 Q Okay. Did you get authorization from anyone

6 from GISF who's competent to give it for you to sell

7 Geier Group's TRX shares on September 26, 2011?

8 A No, because that was not one of our

9 obligations.

10 Q Okay. And what obligations are you referring

11 to? "Not one of our obligations," what obligations are

12 you referring to?

13 A Well, explicitly not based on the language in

14 the conflicts clause. Namely that we can trade in stocks

15 and financial instruments that – in which the fund has a

16 position ourselves, even if it is in conflict with the

17 fund, which this wasn't.

18 Q Okay. It's not in conflict with the fund?

19 A Absolutely not.

20 Q How come?

21 A Because these are de minimis amounts and the –

22 they reflect an additional commitment to the positions of

23 the fund that we need not have had in the first place.

24 Q That's true of Geier Group?

25 A Yes.

1 Q Okay. Did you notify any of GISF's investors

2 that you would be selling all of Geier Group's TRX shares

3 on September 26, 2011?

4 A No.

5 Q Okay. Did you get authorization from any

6 GISF's investors that you could sell all of Geier Group's

7 TRX shares on September 26, 2011?

8 A No.

9 Q Okay.

10 MR. BAGNALL: Could you mark this next, please?

11 (SEC Exhibit No. 98 was marked

12 for identification.)

13 BY MR. BOCKIN:

14 Q Since Geier Group didn't exist in 2011, what

15 authority did you use to trade their account?

16 A Again, that was an oversight and --

17 BY MR. BAGNALL:

18 Q What was an oversight?

19 A That we had the Schwab account in the name of a

20 legal entity that had been dissolved.

21 BY MR. BOCKIN:

22 Q What's the oversight? You were the one who

23 directed that it be dissolved. We went over that

24 earlier; correct?

25 A Yes. And I am capable of making mistakes.

1 Q I understand. But this is now several months
2 later. You're still trading in an account that the
3 entity doesn't exist. And so my question stands; on what
4 authority did you use to trade in the account of Geier
5 Group?

6 A The beneficial owners remained the same. The
7 management remained the same. And it was a proxy for
8 Geier Capital.

9 Q Did you check with either Hull – Mr. Hull or
10 your father before you made these trades?

11 A No.

12 Q So essentially you acted on your after Geier
13 Group, LLC was dissolved?

14 A Correct.

15 BY MR. BOHR:

16 Q When you made the trades we've discussed in
17 Exhibit 95, 96, 97, did you consult with counsel in
18 advance to see if there was any conflict of interest
19 issue?

20 A I would have to assert attorney/client
21 privilege.

22 BY MR. BAGNALL:

23 Q I'm going to hand you what's been marked as
24 Exhibit 98. If you could look at Exhibit 98, let me know
25 when you're done, please?

1 Q Do you see particularly on the page ending 151,
2 on September 27th several journal entries transferring
3 assets out of this account? Do you see that?
4 Particularly the fourth row down, journaling out –

5 A Yes.

6 Q – approximately 9.1 million shares –

7 A Yes.

8 Q – of TRX. Do you see that?

9 A Yes.

10 Q Does – does that jog your memory about what
11 happened to the assets in the GISF Garwood account in
12 September 2011?

13 A It was transferred to another Penson account at
14 Casimir Capital.

15 Q And so all of GISF's Garwood assets were
16 journaled to the Casimir account, is that right?

17 A That appears to be the case. Yes.

18 Q Okay.

19 MR. BAGNALL: Would you mark this next, please?

20 (SEC Exhibit No. 99 was marked
21 for identification.)

22 BY MR. BAGNALL:

23 Q Okay, I'm handing you what's been marked as
24 Exhibit 99. Could you please look at 99 and let me know
25 when you're done?

1 A I'm ready.

2 Q Okay. What – do you recognize Exhibit 98?

3 A This is the GISF Garwood Penson statement from
4 September of 2011.

5 Q Okay. And if you look at the first page here,
6 the page ending 147, can you tell what assets GISF held
7 in this account at the end of September?

8 A Not that I see.

9 Q I'm sorry?

10 A I'm sorry. I'm not sure what page you're
11 talking about.

12 Q Oh, sorry. Let me just try that again. The
13 page ending 150.

14 A Okay.

15 Q I think I gave you the wrong page, I apologize.

16 A It's no problem. I don't see –

17 Q The "Portfolio Positions," the top section on
18 that page.

19 A It seems blank.

20 Q Right. So did – did your Garwood account at
21 the end of September have any assets in it?

22 A Evidently not.

23 Q Okay. Can you look down the next section, the
24 "Account Activity" section.

25 A Yes, sir.

1 A I'm ready.

2 Q Okay. What is Exhibit 99?

3 A It's Geier International Strategies Fund
4 Casimir/Penson account from September 2011.

5 Q Okay. And if you look at the page ending 344,
6 do you – can you tell me what assets were held in this
7 account at the end of September?

8 A 5,389,395 – sorry, 5,389,396 thousand (sic)
9 shares of TRX.

10 Q And various TRX options, right?

11 A Correct.

12 Q And some cash?

13 A Correct.

14 Q Is that right?

15 A Correct.

16 Q Approximately \$12.9 million of cash, right?

17 A Correct.

18 Q All right. If you look at the page ending 345,
19 please, you see a journal entry four down of 9.144 –
20 excuse me, 9,144,184 shares of TRX coming, right? That's
21 coming in from the Garwood account, right?

22 A Yes, sir.

23 Q And the other journals on here are the other
24 assets coming in from Garwood; is that right?

25 A Yes, sir.

1 Q Okay. Can you see on the second row down
2 there's an entry in GISF's margin account at Casimir
3 Capital, right, on – for a trade date of September 27,
4 2011 in which GISF sold 3,734,395 shares of TRX; correct?
5 A That's correct.
6 Q Did you initiate that order?
7 A Uh –
8 Q On behalf of GISF?
9 A Yes.
10 Q Okay. And what was the average price for which
11 those 3 – approximately 3.7 million shares of TRX were
12 sold?
13 A \$3.50.
14 Q Okay. And how many days had passed between the
15 time that you sold your personal TRX shares in your
16 Schwab account?
17 A A day.
18 Q Okay. How many days had passed since you sold
19 all of Francesca Marzullo's TRX shares?
20 A A day.
21 Q And how many days had passed since you sold all
22 of Geier Group's TRX shares?
23 A A day.
24 Q And were – we went through in each instance
25 the lowest price that you got on your personal sales,

1 A Because there are a lot of crosscurrents going
2 on at this point in time.
3 Q Okay. What are all the crosscurrents that are
4 going on?
5 A We're down 20 percent in the preceding two days
6 before. I sold out of Geier Group, Francesca's and mine.
7 And Richard Sands had told us that he could take out our
8 whole position at the market or perhaps even higher.
9 Q Okay.
10 A And we didn't know what would happen on the
11 27th. There was a lot of, you know, basis for a bounce
12 in stock after having been down 20 percent. Would not
13 have been surprised to learn that the stock went up to
14 4.20, 4.40, 4.50, retraced the move down. I –
15 Q Did the stock go up by that amount?
16 A I'm sorry?
17 Q Did the stock go up as you – as you were just
18 testifying?
19 A No, it did not.
20 Q Okay. Did it retrace, as you testified?
21 A No, it didn't.
22 Q Okay. When did you learn that you were going
23 to be selling the 3.7 – approximately 3.7 million shares
24 of GISF's TRX holdings?
25 A About a half an hour before we ended up doing

1 Francesca's personal sales, and Geier Group's personal
2 sales? Do you remember doing that?
3 A Yes.
4 Q Were any of those lowest prices that you got
5 less than \$3.50?
6 A No.
7 Q Were they all, in fact, higher than \$3.50?
8 A Yes.
9 Q And were they all higher by at least 50 cents?
10 A Yes.
11 Q Okay. Is – did you get better prices for
12 yourself, Francesca Marzullo and Geier Group by trading
13 the day before GISF?
14 A I didn't know that we were going to trade a
15 large block on 9/27. And additionally, Richard had said
16 that he was going to –
17 Q Sorry, did you understand the question? I
18 asked if you got a better price by selling your personal
19 shares, Francesca's personal shares and Geier Group's
20 personal shares because you sold a day before Geier
21 Group? Excuse me, before GISF?
22 A Did I because of that? No.
23 Q You didn't?
24 A No.
25 Q Okay. And why not?

1 it.
2 Q Okay. So you were able to journal all of these
3 shares from Garwood over to Casimir in 30 minutes?
4 A Well, we contemplated working to sell our
5 shares with Casimir for – since the 20 –
6 Could you tell me what day of the week the 27th
7 was? Or can I look that up?
8 MR. FERRIGNO: It's a Tuesday.
9 THE WITNESS: I think it's a Tuesday, yeah.
10 So I think that on that Sunday was the day that
11 Jim said that he had, you know, no tolerance for
12 additional loses, so –
13 BY MR. BAGNALL:
14 Q So that's Sunday the 25th?
15 A Correct.
16 Q Okay.
17 A Then on the 26th I sold our, you know,
18 additional above and beyond positions and began, you
19 know, investigating our options to sell the TRX – the
20 GISF position. And in order to accurately affect or to
21 bring
22 out – to make that even possible, we journaled the
23 shares over, I believe, on the 26th.
24 Q Okay. So you got the directive from Mr. Hull
25 on the 25th –

1 A Correct.

2 Q -- to begin the efforts to -- to sell all of

3 GISF's TRX shares; is that what you're saying?

4 A Not to sell -- well, to effectively, yes.

5 Q Okay. So the 25th of September is before the

6 26th of September; correct?

7 A Yes.

8 Q Okay. So you got that directive the day before

9 you sold your personal shares; correct?

10 A Correct.

11 Q And the day before you sold Francesca's shares;

12 correct?

13 A Correct.

14 Q And the day before you sold Geier Group's

15 shares; correct?

16 A Correct.

17 Q Okay. Isn't that front running on your own

18 definition that you gave us earlier today?

19 A No, it's not.

20 Q Why not?

21 A Because I did not -- that's -- there's an

22 incredible amount of crosscurrents. Again, the stock is

23 down 20 percent. If you have a stable stock and you have

24 a large amount of shares certainly coming into market, I

25 mean there's a potential basis for that. But that is not

1 my assessment of what occurred here.

2 BY MR. BOHR:

3 Q What are all the other crosscurrents? Are

4 there any other crosscurrents?

5 A A tremendous -- okay, a short position that is

6 extremely large relative to the float and is paying at 30

7 percent borrow. Another professional investor that made

8 a \$30 million investment at 5.75 a share weeks prior.

9 And two other large investors, as well, who were frothing

10 to buy more of the stock. And all of whom had indicated

11 to me they were very, very hungry for our position.

12 BY MR. BAGNALL:

13 Q Now, wait a minute, though. You were aware of

14 at least one big investor, GISF, right, that held a

15 position over nine million -- of over nine million

16 shares, right?

17 A Right.

18 Q You learned from at least one other party

19 involved with GISF on the 25th that the direction was to

20 get rid of all of those TRX shares; correct?

21 A At good prices.

22 Q At good prices, right. On the 25th. The

23 following day, the day after you got that information,

24 you sold all your personal shares, you sold all of

25 Francesca's shares, and you sold all of Geier Group's

1 shares; correct?

2 A It's also the first --

3 Q Wait. Is that correct?

4 A Yes.

5 Q Okay. And then the following day after that,

6 so now three total days have passed, GISF lo and behold

7 sells over 3.7 million shares of TRX; correct?

8 A Correct.

9 Q Okay. So how does the fact that there's a

10 short out there mean that those salient facts don't

11 amount to front running?

12 MR. FERRIGNO: Where are the three days?

13 MR. BAGNALL: The 25th, the 26th and the 27th

14 of September 2011. He has a conversation with Mr. Hull

15 on the 25th.

16 MR. FERRIGNO: The 25th.

17 MR. BAGNALL: He sells all the personal shares

18 on the 26th. And GISF sells 3.7 million --

19 MR. FERRIGNO: Right, there's only two --

20 MR. BAGNALL: -- shares.

21 MR. FERRIGNO: -- trading days.

22 MR. BAGNALL: There are three days that are

23 relevant to this story.

24 THE WITNESS: So the --

25 MR. BAGNALL: At least.

1 THE WITNESS: So the 23rd is the Friday when

2 the stock goes down 20 percent or completes its two day

3 round trip down 30 percent -- or 20 percent. And over

4 the weekend I had determined we were going to sell our

5 positions outside of -- outside of the fund, in the

6 absence of Mr. Hull's directive.

7 BY MR. BOCKIN:

8 Q Did you identify this as a potential conflict?

9 A No.

10 Q So you didn't seek counsel? Seek advice of

11 counsel based on any of these three transactions?

12 A No.

13 BY MR. BOHR:

14 Q Did you go back and look at the potential

15 conflicts of interest provision prior to these

16 transactions?

17 A I knew that clause well, and that that was why

18 I believe we have the authority to hold these positions

19 in the first place. If we were not able to sell, then we

20 couldn't have bought the positions in the first place.

21 BY MR. BOCKIN:

22 Q So it's not a question of being able to sell,

23 it's a question of selling with knowledge that you're

24 going to also sell for GISF the next day?

25 A I didn't know that at that time, anyway.

1 BY MR. BOHR:

2 Q But you could have reasonably anticipated it
3 since you were journaling the shares over on September
4 26th?

5 A As a potential, yes.

6 BY MR. BOCKIN:

7 Q And that you would receive the guidance, as you
8 put it, from Mr. Hull that no more losses were
9 acceptable, and you took that to mean time to get out of
10 the -- time to get out of TRX.

11 A At good prices. And I presumed that we would
12 be in the -- in the 4's on that.

13 Q And you had got that guidance from Mr. Hull on
14 Sunday, September 25th; correct?

15 A Yes.

16 BY MR. BAGNALL:

17 Q And wait a minute, you were in the 4's, right?

18 A Yes.

19 Q And Francesca was in the 4's, right?

20 A Yes.

21 Q And Geier Group was in the 4's, right?

22 A Yes.

23 Q Was GISF?

24 A No.

25 Q Okay. Let me hand you back what's been

1 words, this is an order with our broker who has -- he's
2 not selling is -- this is within, you know, moments of
3 the transaction.

4 Q Why is that relevant?

5 A In other words, if you're buying right before a
6 transaction, like within seconds, that's very clear. A
7 day, in this market where the stock is moving 17 percent
8 in a day, no one knows.

9 Q So it's your testimony that because you traded
10 a day in advance of GISF's trades you weren't front
11 running?

12 A Yes. I think that, you know --

13 Q Okay.

14 A -- in of itself precludes it.

15 MR. BAGNALL: Does anybody have anything else
16 on this topic?

17 (No response.)

18 BY MR. BAGNALL:

19 Q Let me ask you this; was GISF's sale on
20 September 27, 2011 visible to the market?

21 A Yes.

22 Q Okay. So the market knew that over 3.7 million
23 shares had been sold on that day; is that right?

24 A Yes, sir.

25 Q And what, if anything, would you expect to

1 marked -- that we talked about before, Exhibit 87, okay?
2 In April of 2011 when you were about to purchase TRX, you
3 said very clearly to Mr. Gantar, "Do not speak to any
4 other individual about this order request. We are
5 approved and I do not want anyone to know and possibly
6 front run us. I repeat, only you and I know. Do not
7 tell any other individual."

8 Remember talking about this earlier?

9 A I do.

10 Q Okay. Why when in April of 2011 when GISF was
11 going to buy TRX were you worried about getting front
12 run, but in September of 2011, when GISF was about to
13 sell a bunch of TRX shares, you weren't worried? And in
14 fact, you yourself traded ahead of the fund?

15 A Number one, I didn't know that we were about to
16 sell 3.7 million or 1 million or I didn't know what was
17 going to happen on the 27th. We were entering into an
18 exploration of doing that, and my expectation was that we
19 had already gotten to very, very low prices and that
20 there was a substantial basis for an improvement in the
21 stock price. So I don't have a crystal ball.

22 Q And none of those factors were present in April
23 of 2011 when you were trying to purchase GISF? There
24 weren't crosscurrents then at that time?

25 A There were. But this is me saying -- in other

1 happen to the share price when an order of that size is
2 entered on a single day?

3 A It -- anything could happen.

4 Q That's not what I asked you. What would you
5 expect to happen?

6 A Well, Richard Sands expected the stock to close
7 in the mid-4's that day.

8 Q I asked what you expected, not what Mr. Sands
9 expected.

10 A That's what -- that's what I expected.

11 Q Okay. And so go ahead and finish your
12 sentence.

13 A The stock was down 20 percent over the
14 preceding two days. There was tremendous value
15 underlying its assets, as far as I was -- believed at the
16 time. And moving the stock from what was perceived at
17 this time, weak hands to strong hands, could have been
18 very bullish for the stock.

19 Q And so what would you -- so you expected the
20 stock price to go up when you sold 3.7 million shares; is
21 that what you're saying?

22 A It was a distinct possibility that the stock
23 would, before we went into the market being down 20
24 percent over the preceding couple of days, would bounce
25 to some degree. Say go up into the mid-4's. And then we

1 would price somewhere around that area. And that once
2 news got out that we had reduced our position and that
3 any potential overhang was diminished, could have gone a
4 lot higher.

5 Q Okay. So that's what you expected before the
6 trade on the 27th, right?

7 A That was a -- that would be my base case
8 probably, yeah.

9 Q Okay. And what actually happened?

10 A The stock went down by 50 cents.

11 Q Okay. And 50 cents off of \$4.00 is what? What
12 percentage would you say?

13 A An eighth.

14 Q An eighth of a percent? It went down -- it
15 lost a full eighth you're saying?

16 A Yes. Yes.

17 Q So what percentage is that?

18 A Twelve and a half percent.

19 Q Okay. So it went down 12-1/2 percent in one
20 day, the day that GISF sold 3.7 -- over 3.7 million
21 shares; is that right?

22 A Yes.

23 Q Okay. Did you try and break up or have Richard
24 Sands at Casimir break up the approximately 3.7 million
25 share order into smaller lot sizes to get a better price?

1 Exhibit 100. Look it over please and let me know when
2 you're done.

3 (Witness examined the document.)

4 THE WITNESS: Okay.

5 BY MR. BAGNALL:

6 Q Okay, so who is Joseph Faskowitz?

7 A He's an employee at Casimir Capital.

8 Q And who is JC Stamler?

9 A Someone else at Casimir.

10 Q Okay. Do you recognize Exhibit 100, Mr.
11 Gibson?

12 A I do.

13 Q Okay. And what is it?

14 A It's an email exchange between me and the
15 various individuals at Casimir.

16 Q Okay. And so Joseph Faskowitz wrote you on the
17 27th and said, "JC Stamler's our head trader. He will
18 give you the details from your TRX sale."

19 Do you see that --

20 A Yes.

21 Q -- in the page ending 324?

22 A Yes.

23 Q And then JC, excuse me, writes shortly
24 thereafter to say, "Today you sold 3,734,395 shares of
25 TRX at 3.5018."

1 A He originally said up until the moment
2 before -- literally the moment before we priced that he
3 was going to clean up the entire position near about the
4 market. Then he came back to us and said, and this is
5 actually very important, and said, "Well, I've had this
6 very, very broad discussion with all of my buyers and I
7 can get you out for 3.7 million at 3.50, which was
8 substantially lower than we had expected, and less -- and
9 fewer shares.

10 We talked -- I talked to Jim, and we determined
11 that, you know, now that he's already had the
12 conversation we're in a position of weakness. We can't
13 really -- you know, people now know that we're thinking
14 about selling, and he's already aggressively gone out and
15 solicited bids. So though it was very disappointing and
16 not consistent with our expectations or the guidance he
17 had given us up until that moment, we felt like we were
18 in a position where we had to take it.

19 Q Okay.

20 MR. BAGNALL: So let me hand -- let me mark
21 this, please.

22 (SEC Exhibit No. 100 was marked
23 for identification.)

24 BY MR. BAGNALL:

25 Q What I'm handing you now has been marked as

1 Correct?

2 A Correct.

3 Q You write, "We didn't sell anything on the way
4 down."

5 What did you mean by that?

6 A In the moment before we executed the trade, I
7 was on the phone with Richard, who said that what we were
8 going to do is sell that number and were just going to
9 hit all the bids going down. So my expectation was that
10 the average execution would be somewhere above 3.50.

11 Q Okay. And so you thought that -- and is that
12 part of what you're describing earlier would cause the
13 price to rise of TRX?

14 A Well, no, that was already -- that was
15 determined after Richard had already said it was going to
16 price below.

17 Q Okay. And then in response to your question --

18 A You --

19 Q -- Trum -- sorry; go ahead.

20 A You seem to think I had a crystal ball at every
21 moment in time and I think that that's just terribly
22 inconsistent with reality. But I --

23 Q Well, I'm asking you questions to figure out --

24 A Yeah, okay.

25 Q -- what happened, okay?

1 A Okay.

2 Q So you can answer the questions, all right.

3 The buying was all done, Trumball Fisher responds, "The

4 buying was all done through me out of Toronto. The

5 selling was done through Casimir NYC, so I'm not sure how

6 much we sold on the way down, but I will look for you."

7 What does that mean, "The buying was done

8 through me out of Toronto, but the selling was done

9 through Casimir NYC."

10 A It's very confusing.

11 Q You were selling shares; correct?

12 A Yes.

13 Q Okay. So what buying would have been done?

14 A I think that what Trumball is saying is that

15 all of the buyers who came in to actually be benefit --

16 new beneficial owners of the stock originated through

17 Casimir Capital's office in Toronto, in Canada. And that

18 the seller, i.e. me, was working through the office in

19 New York.

20 Q Okay. Is that how you understood the

21 transaction would be executed?

22 A I didn't know who the buyers were until this.

23 Q Okay. You write, "The reason I'm curious is my

24 understanding was we would price say 3 million shares at

25 \$3.50, but in addition sell shares on the way down, and

1 therefore achieve an average price of 3.55, et cetera."

2 What did you mean when you wrote that?

3 A I meant that in the moment that Richard came to

4 us and retraded us materially, and instead of delivering

5 all of the shares at the market or at above the market,

6 he gave us a third of the shares at below the market. At

7 that moment, on thing he did say was that in order to

8 execute that volume, we would stop selling at a price of

9 3.50, that would be the low point, and a substantial

10 number of shares would be sold at that point.

11 But that if the market was at \$4.10 when that

12 conversation was occurring, he would go in an hit all the

13 bids on the way down until we got to that point where

14 whatever bids were remaining would be there, which would

15 result in an average price of higher than 3.50.

16 Q I see.

17 A So it seemed to me that we sold all the way

18 to -- who was selling all the way down to 3.50, why

19 didn't we get the benefit of those sales?

20 Q Okay. And so his response to you, did it

21 answer that question?

22 A It is not a sufficient answer, no.

23 Q Okay. So what did you understand him to be

24 telling you when he responded in his email that begins,

25 "Not at all. You can see all the prints. The paperwork

1 took all day to get ready. When we had both sides lined

2 up, there was no much stock, I'm assuming, down to 3.50,

3 Frank. You and your LPs are fortunate to get off how

4 much you did. Trumball and I are dealing with the

5 aftermath. The buyers want a lower price, also, so

6 please, leave well enough alone."

7 What -- what is the aftermath he's referring

8 to?

9 A He's just, you know, talking out both sides of

10 his mouth, as he always has been. And you know, he

11 enticed us to, you know, move the shares over on one

12 offer and then now he's whining, you know, about how --

13 what a good -- what a good value he got for us, even

14 though it was inconsistent with what he -- he promised

15 originally. And then what he ever promised in the

16 moments before the trade. But --

17 Q Did you have a written agreement with him

18 before -- for that -- the initial offer that you

19 mentioned?

20 A No.

21 Q Why didn't you secure one of those?

22 A It wasn't customary. It wasn't on the table.

23 Q I'm sorry; it wasn't what?

24 A It wasn't on the table and offered.

25 Q What do you mean it wasn't on the table?

1 A In other words, it would have been -- it was

2 not customary and we wouldn't have been able to get it.

3 Q So if you had asked him for a written

4 agreement, he would have said no?

5 A Yes.

6 Q Okay. Did you have an obligation to seek a

7 written agreement, though, to get best execution for your

8 fund?

9 A No.

10 Q Why not?

11 A I think it's customary to trade in this manner.

12 Q Okay. And why do you think that?

13 A It's consistent with my experience and the --

14 what I've observed of others.

15 Q Okay.

16 MR. BAGNALL: Anybody have anything else of --

17 with Exhibit 100?

18 (No response.)

19 MR. BAGNALL: Do you want to take a quick break

20 before -- this is a switch to our last topic.

21 THE WITNESS: I'm fine.

22 MR. BAGNALL: It's a natural stopping point.

23 THE WITNESS: I'm fine to keep going.

24 MR. FERRIGNO: No, let's -- let's go. And if

25 we breakdown, we'll ask for a break.

1 MR. BAGNALL: All right. Could I have those
2 exhibits back, please? Thank you.
3 I mean, we're effectively going to be taking a
4 break here while I put these away, so do you want to step
5 out?
6 MR. FERRIGNO: Christopher, it's up to you.
7 THE WITNESS: I'm fine.
8 MR. BAGNALL: Okay. He'll just wait, all
9 right.
10 (Pause.)
11 MR. BAGNALL: So this – I'm going to, before
12 we move onto the next topic –
13 (Counsel confer.)
14 BY MR. BAGNALL:
15 Q I'm going to hand you back Exhibit 94, okay.
16 This is the exhibit we were talking about just before Mr.
17 Bohr left to find the date of the subpoena that we sent
18 to you initially in this – in this matter, and that was
19 dated May 6, 2014.
20 A Okay.
21 MR. FERRIGNO: Okay. Do you have that? Can we
22 take a look at it?
23 (Pause.)
24 MR. BAGNALL: I have only one copy of the
25 exhibit that was previously entered as Exhibit 30.

1 (Pause.)
2 THE WITNESS: Okay.
3 BY MR. BAGNALL:
4 Q So it was nine days before you wrote this email
5 to your father; is that right?
6 A Yes, sir.
7 MR. FERRIGNO: Can you – can you tell us how
8 this was delivered?
9 MR. BAGNALL: It was sent by FedEx to Mr.
10 Gibson at that address.
11 BY MR. BAGNALL:
12 Q Is that – do you recall receiving it in that
13 manner probably the following day, May 7th?
14 A Yes.
15 Q Okay. Does seeing this Exhibit 30 refresh your
16 recollection as to why nine days later you were asking
17 your father if you could transfer the GISF fund account
18 to his Charles Schwab account?
19 MR. FERRIGNO: Okay. Just one caution –
20 THE WITNESS: Yeah.
21 MR. FERRIGNO: – you can testify as to, I
22 believe, as to the account, but you have to be careful
23 this is the start of the investigation and you
24 know, communications with your father. Some of them may
25 be privileged.

1 THE WITNESS: Yeah, that's what I was going to
2 say. I don't recall the specific reason. And to the
3 degree I – I did, it would be – I would have to assert
4 privilege.
5 MR. BAGNALL: Okay.
6 BY MR. BAGNALL:
7 Q Were you seeking legal advice from your father
8 when you asked him if you could transfer GISF's account
9 to his Charles Schwab account?
10 A No.
11 Q Okay. Were you – did you believe when he
12 responded that he did – he does have an account but it
13 wouldn't be smart that he was providing legal advice to
14 you?
15 A Yes.
16 Q Okay. So –
17 MR. FERRIGNO: Well --
18 BY MR. BAGNALL:
19 Q Do – well, I'm going to ask you, do you want
20 to claim privilege on this document then?
21 MR. FERRIGNO: Yeah. Well, if this is part
22 of –
23 Christopher, if this is part of a privileged
24 communication, then you know, this shouldn't have been
25 produced back in time. And you shouldn't elaborate or –

1 THE WITNESS: Then I would assert –
2 MR. FERRIGNO: – discuss it.
3 THE WITNESS: – attorney/client privilege.
4 MR. BAGNALL: Okay.
5 BY MR. BAGNALL:
6 Q Is it included on your privilege log?
7 MR. FERRIGNO: I believe this would have been
8 produced before I was involved.
9 MR. BAGNALL: Yes. We also wrote you a letter
10 explaining that there were documents like this and
11 explaining that it's your – you and your client's
12 responsibility to assert privilege, even on documents
13 that were produced before you got involved. Did you
14 receive that letter?
15 MR. FERRIGNO: Yes, I received the letter.
16 MR. BAGNALL: Okay. So –
17 MR. FERRIGNO: Yeah.
18 MR. BAGNALL: – do you plan to undertake an
19 effort to review what was produced previously to see if
20 there are other documents –
21 MR. FERRIGNO: I plan to deal with the issue.
22 I – what exactly I do is – is my determination. But if
23 it's – if it relates to a privileged –
24 MR. BAGNALL: Let me ask –
25 MR. FERRIGNO: – communication, you know, it

1 shouldn't have been produced. And -- and we'll assert
2 privilege on it.
3 MR. BAGNALL: Have you responded to our letter?
4 MR. FERRIGNO: No.
5 MR. BAGNALL: Do you plan to respond to --
6 MR. FERRIGNO: Yes.
7 MR. BAGNALL: -- that letter?
8 MR. FERRIGNO: Yes.
9 MR. BAGNALL: Okay. When can we expect a
10 response from you?
11 MR. FERRIGNO: I don't know, because I'm going
12 to do the privilege logs first.
13 MR. BAGNALL: Okay.
14 MR. FERRIGNO: Yeah.
15 MR. BAGNALL: The -- this is a question about
16 the privilege logs, though.
17 MR. FERRIGNO: Well, but that -- the privilege
18 logs I referred to earlier today are the ones that relate
19 to the documents that we've produced. I'm going to take
20 care of those first.
21 MR. BAGNALL: When you say "we," who do you
22 mean?
23 MR. FERRIGNO: Me. Brown Rudnick.
24 MR. BAGNALL: Okay. On behalf of your
25 clients --

1 MR. FERRIGNO: Right. That relate to the
2 documents Brown Rudnick has been producing. I'm going to
3 take care of that first.
4 MR. BAGNALL: Okay.
5 MR. FERRIGNO: I will deal with this issue.
6 MR. BAGNALL: And you say "this issue," do you
7 mean potentially privileged documents --
8 MR. FERRIGNO: Produced by someone else.
9 MR. BAGNALL: By your client?
10 MR. FERRIGNO: I'm -- by, yeah, by my client,
11 by someone else.
12 MR. BAGNALL: All --
13 MR. FERRIGNO: Who acted on his behalf.
14 MR. BAGNALL: All -- our position is that all
15 of these documents were produced by your client. Who he
16 chose as his counsel is his choice, okay.
17 MR. FERRIGNO: Yeah. Well.
18 MR. BAGNALL: So when you say that "you
19 produced them," that's not quite right, right? You --
20 MR. FERRIGNO: Produced on behalf of him.
21 MR. BAGNALL: Okay.
22 MR. FERRIGNO: Yeah.
23 MR. BAGNALL: Right. But there's still 30-some
24 odd thousand documents that were produced before you got
25 involved --

1 MR. FERRIGNO: Um-hmm.
2 MR. BAGNALL: -- that need to be dealt with.
3 MR. FERRIGNO: Well, I doubt 30,000 of them are
4 privileged.
5 MR. BAGNALL: Right. And all I'm asking for
6 you is to tell us can you be more specific beyond "after
7 I deal with the documents that Brown Rudnick" --
8 MR. FERRIGNO: I don't know how long it's going
9 to take, because I don't how many documents there are
10 that are privileged. I can't tell you that until I
11 review them. And if the number's X, it's one thing. If
12 it's 10-X, it's another thing. If it's 100-X, it's a
13 different thing. So I don't know what we're dealing
14 with.
15 MR. BAGNALL: I understand that. And what I'm
16 asking you is for more details on our plan for dealing
17 with it and when we can expect to hear from you?
18 MR. FERRIGNO: Well, I'll deal with it as soon
19 as I -- I'll start to deal with it as soon as I finish
20 the privilege logs.
21 MR. BAGNALL: So sometime after Wednesday?
22 MR. FERRIGNO: Yeah, after Wednesday.
23 MR. BAGNALL: So that -- but you can't be any
24 more specific than that?
25 MR. FERRIGNO: The -- the only issue is I don't

1 know how many there are. If it's 10, it's one thing. If
2 it's 100, it takes longer. If it's 200 it takes longer.
3 I just don't know what the number is until I look at
4 them.
5 MR. BAGNALL: I understand that.
6 MR. FERRIGNO: Yeah.
7 MR. BAGNALL: But when you --
8 MR. FERRIGNO: I can't tell you -- I can't say
9 it's going to take X-amount of time or Y-amount of time.
10 I don't -- I don't know.
11 MR. BAGNALL: Yeah. I understand. Take --
12 I'll take back 94. You'll be sure to let us know when
13 you get around to it whether these are privileged.
14 Could you mark this next, please?
15 (SEC Exhibit No. 101 was marked
16 for identification.)
17 BY MR. BAGNALL:
18 Q I'm handing you what's been marked as Exhibit
19 101. Mr. Gibson, please look at it and let me know when
20 you're done.
21 (Witness examined the document.)
22 THE WITNESS: Okay.
23 BY MR. BAGNALL:
24 Q Okay, what is Exhibit 101?
25 A It's an email from me to our brokers at

1 Garwood.
 2 Q Okay. Craig Gantar and Dennis Gerecki; is that
 3 right?
 4 A Correct.
 5 Q Okay. And the subject is "Game Plan"?
 6 A Yeah.
 7 Q And you sent it October 16, 2011; is that
 8 right?
 9 A Yes, sir.
 10 Q Okay. And you wrote, "Tomorrow a.m., see email
 11 on which you were BCC'd. A transfer of \$8 million in
 12 cash will come into account. Immediately tomorrow a.m.,
 13 I want you file the full ACAT."
 14 Did I read that right?
 15 A Yes.
 16 Q What does that mean?
 17 A I have no – I don't know.
 18 Q Why – what ACAT were you asking for them to
 19 file in full?
 20 A I don't remember.
 21 Q Were you trying to get your – Geier – GISF's
 22 assets back from Casimir?
 23 A Yes. Yes.
 24 Q Okay. And what was the purpose of telling them
 25 about \$8 million in cash coming in?

1 A Just that – to be aware of that so that they
 2 make sure to credit the account.
 3 Q Are they related, those two sentences?
 4 A I don't think so.
 5 Q So it wasn't –
 6 A I don't think that one was contingent on the
 7 other. No.
 8 Q So for example, was a pre-condition of their
 9 filing the ACAT that you transfer in \$8 million? Did you
 10 have a margin balance, for example, or anything like
 11 that?
 12 A I don't think so. No.
 13 Q Okay. So to the best of your recollection
 14 they're not related?
 15 A Yes.
 16 Q Okay. The next paragraph reads, "We will be
 17 closing our TRX position in the next few weeks with a
 18 pre-arranged buyer beginning tomorrow a.m. Please make
 19 sure I have the capability to sell TRX shares at
 20 tomorrow's open. Please confirm. Thanks. Chris."
 21 Did I read that correctly?
 22 A Yes.
 23 Q Why were you asking or why were you seeking to
 24 ensure that you call TRX shares at the open on October
 25 17, 2011?

1 A Because I didn't have an inventory of shares at
 2 Garwood. And that was a very hard to borrow stock.
 3 Q Okay. So you didn't want them to think you
 4 were entering short sales?
 5 A Well, I – that would have been a potential –
 6 a possibility in the absence of it being a hard to borrow
 7 stock, but my point is, is that it was actually not
 8 possible to borrow the – I mean, you couldn't have done
 9 that operationally, anyway.
 10 Q Okay. So you couldn't have entered a short
 11 sale; is that what you're saying?
 12 A Practically speaking, my understanding at this
 13 time was no. You couldn't.
 14 Q Okay.
 15 A You couldn't. I mean, you could have done so
 16 naked illegally, but – which apparently was happening,
 17 but –
 18 Q Okay. Was it true that you – you were going
 19 to be closing your TRX position in the next few weeks
 20 with a pre-arranged buyer?
 21 A Yes. That was –
 22 Q Who – sorry.
 23 A That was my expectation.
 24 Q Who's the pre-arranged buyer?
 25 A The – either Platinum, The Sheikh or BPI.

1 Q Okay.
 2 MR. BAGNALL: Anybody have anything else about
 3 Exhibit 101?
 4 (No response.)
 5 MR. BAGNALL: I'll take back 101.
 6 BY MR. BOHR:
 7 Q Is that BPI as in Bravo, Papa, India?
 8 A Yes.
 9 MR. BAGNALL: Could you please mark this next?
 10 (SEC Exhibit No. 102 was marked
 11 for identification.)
 12 BY MR. BAGNALL:
 13 Q I'm going to hand you what's now been marked
 14 Exhibit 102. Please let me know when you've had a chance
 15 to review it.
 16 (Witness examined the document.)
 17 THE WITNESS: Yeah.
 18 MR. BAGNALL: Okay.
 19 BY MR. BAGNALL:
 20 Q So this is an email to the same two employees
 21 at Garwood, right –
 22 A Correct.
 23 Q – Mr. Gantar and Mr. Gerecki?
 24 A Correct.
 25 Q That you sent October 17, 2011; is that right?

1 A Correct.
 2 Q Okay. Do you remember sending it?
 3 A Yes.
 4 Q Okay. And you write – wrote in the subject
 5 "Please do everything you can to get us able to sell
 6 5,945,000 TRX shares starting ASAP."
 7 Is that right?
 8 A Yes.
 9 Q You wrote that?
 10 A Yes.
 11 Q What – why were you writing that to Mr. Gantar
 12 and Mr. Gerecki on October 17th?
 13 A I had – The Sheikh had indicated he would buy
 14 our entire position that day.
 15 Q Okay. So as of October 7th – 17, 2011, was
 16 GISF's entire TRX position, 5 – approximately 5.9
 17 million shares of TRX?
 18 A That would be my understanding.
 19 Q Okay. And did you think that The Sheikh was
 20 going to buying those shares that day?
 21 A Yes.
 22 Q Okay. And what – why did you have that
 23 impression?
 24 A Because Luis had explicitly said he would.
 25 Q Okay. Luis Sequeira?

1 A Yes.
 2 Q Did it happen?
 3 A No.
 4 Q Why not?
 5 A Luis went radio silent at the time he said he
 6 was going to.
 7 Q Okay.
 8 MR. BAGNALL: Could you mark this next, please?
 9 (SEC Exhibit No. 103 was marked
 10 for identification.)
 11 BY MR. BAGNALL:
 12 Q Okay, I'm going to hand you what's been marked
 13 as Exhibit 103 now. Could you look at that and let me
 14 know when you're done, please?
 15 A Okay.
 16 Q Do you recognize Exhibit 103, Mr. Gibson?
 17 A Yes.
 18 Q What is it?
 19 A It's an email from me to Jim Hull.
 20 Q Okay. And you responded to Mr. Hull, in which
 21 he wrote an email to you, with a subject that had a
 22 question, "Any news today?"
 23 Is that right?
 24 A Yes.
 25 Q And you wrote, "No. Just down day with TRX.

1 Appears off 5 percent plus."
 2 And then you asked him a question, right, "Do
 3 you still require the credit line at LPL that is using
 4 the TRX shares as collateral? Can we combine those
 5 shares with Geier, as it might help me for regulatory and
 6 other reasons, and Geier no longer charges fees."
 7 Did I read that right?
 8 A Yes.
 9 Q Were the shares at – that you're describing in
 10 the first question, the one related to collateral, are
 11 those shares that are owned by Mr. Hull in his personal
 12 capacity?
 13 A Yes.
 14 Q Okay. And did he hold them in LPL?
 15 A Yes.
 16 Q Okay. And you asked him in the second
 17 question, "Can we combine those shares with Geier, as it
 18 might help me for regulatory and other reasons."
 19 Is that right?
 20 A Yes.
 21 Q What regulatory reasons would combining Mr.
 22 Hull's shares with GISF's shares solve?
 23 MR. FERRIGNO: You can respond, if you can.
 24 But again, if there's a privileged communication that's
 25 involved don't disclose that. But if you can respond, go

1 ahead.
 2 THE WITNESS: It – Jim had a significant
 3 position. I think it was 2-1/2 million dollars' worth of
 4 shares. So in all other contexts of outside shares, of
 5 which I was aware, it was a very – you know, very small.
 6 And so combining them so that we could sell them in the
 7 same structure seemed ideal.
 8 EVENING SESSION
 9 BY MR. BAGNALL:
 10 Q What regulatory reasons did combining the
 11 shares solve?
 12 A I would have to assert privilege.
 13 Q Okay. Did you – did you communicate with
 14 counsel in the October 17, 2011 timeframe about this
 15 proposed trade?
 16 A Yes.
 17 Q What counsel did you seek advice from?
 18 A Seward.
 19 Q Okay. And you sought advice from Seward &
 20 Kissel on the regulatory implications of purchasing Mr.
 21 Hull's shares?
 22 A I would have to assert attorney/client
 23 privilege.
 24 Q Okay.
 25 BY MR. BOHR:

1 Q Did you seek that advice by phone? Email?
 2 A Phone.
 3 BY MR. BOCKIN:
 4 Q And who did you speak to at Seward?
 5 A David Mullé.
 6 Q Okay.
 7 BY MR. BAGNALL:
 8 Q Did you tell Mr. Mullé that you wanted to buy
 9 Mr. Hull's personal shares for GISF?
 10 MR. FERRIGNO: Well, don't get into the back
 11 and forth.
 12 THE WITNESS: Yeah. I would have to assert
 13 attorney/client privilege.
 14 MR. BAGNALL: Okay.
 15 BY MR. BAGNALL:
 16 Q Did you tell Mr. Mullé why you wanted to buy
 17 Mr. Hull's shares?
 18 A I would have to assert attorney/client
 19 privilege.
 20 Q Okay. Did Mr. Mullé tell you that it would be
 21 permissible for you to buy Mr. Hull's shares on behalf of
 22 GISF?
 23 A I would have to assert attorney/client
 24 privilege.
 25 Q Okay. Did you ask Mr. Mullé whether GISF's

1 BY MR. BOHR:
 2 Q In Exhibit 103, you say, "It might help me for
 3 regulatory and other reasons."
 4 What are the other -- Mr. Bagnall asked you
 5 about regulatory reasons. I'm wondering, what are the
 6 other reasons you cite in Exhibit 103?
 7 THE WITNESS: I think that was poor --
 8 MR. FERRIGNO: You can --
 9 THE WITNESS: Yeah.
 10 MR. FERRIGNO: -- you can respond to that if
 11 those are not privileged communications that are the --
 12 connected to that.
 13 THE WITNESS: I think it's very poorly worded,
 14 and I would have to cite a privilege.
 15 BY MR. BAGNALL:
 16 Q Cite it? You mean assert it?
 17 A Assert privilege, thank you.
 18 Q Did Mr. Hull know that you spoke with Seward &
 19 Kissel about this transaction?
 20 A No.
 21 Q Did you tell -- otherwise tell Mr. Hull that
 22 you sought counsel from Seward & Kissel about this
 23 transaction?
 24 MR. FERRIGNO: It -- don't repeat the substance
 25 of the communication with counsel.

1 offering documents allowed you to purchase Mr. Hull's
 2 personal TRX shares on behalf of GISF?
 3 A I would have to assert attorney/client
 4 privilege.
 5 BY MR. BOHR:
 6 Q Did you ask anyone else?
 7 MR. BAGNALL: Hold on a second.
 8 BY MR. BAGNALL:
 9 Q Did -- did GISF -- did Mr. Mullé tell you that
 10 it would be acceptable for you to purchase Mr. Hull's
 11 personal TRX shares on behalf of GISF because the fund's
 12 offering documents allowed you to do so?
 13 A I would have to assert privilege.
 14 Q Okay.
 15 MR. BAGNALL: Sorry, Paul, go ahead.
 16 BY MR. BOHR:
 17 Q Did you ask any other attorneys the questions
 18 Mr. Bagnall just asked you in connection with Exhibit
 19 103?
 20 A No, sir.
 21 BY MR. BAGNALL:
 22 Q So the only attorneys you spoke to about this
 23 trade were at Seward & Kissel?
 24 A Yes.
 25 Q Okay.

1 THE WITNESS: Can you say your question again?
 2 MR. BAGNALL: Sure.
 3 BY MR. BAGNALL:
 4 Q Did you -- I asked you if Mr. Hull asked you
 5 about the fact that you sought counsel from -- advice
 6 from Seward & Kissel. I'm -- and you said no. And I
 7 asked you, did you otherwise tell Mr. Hull that you
 8 sought advice from
 9 Seward --
 10 A I thought -- I thought that your first question
 11 was did I tell Mr. Hull, and the answer's no.
 12 Q Okay. Well, let -- I apologize. I probably
 13 muddled that up. If my -- I do want to know that. Did
 14 you tell Mr. Hull that you sought advice from Seward &
 15 Kissel about this transaction?
 16 A No.
 17 Q Okay. Did Mr. Hull ask you whether you had
 18 sought advice about the -- from Seward & Kissel about
 19 this transaction?
 20 A Did Mr. Hull ask me if --
 21 Q If you had sought --
 22 A No. He didn't.
 23 Q -- Seward & Kissel's advice?
 24 A No. He did not.
 25 Q Okay. And just so that's clear on the record,

1 let me ask the whole -- whole question, okay, and then
 2 you can answer it.
 3 MR. FERRIGNO: I think you got it.
 4 MR. BAGNALL: Well, I think it was titled.
 5 BY MR. BAGNALL:
 6 Q So did -- did Mr. Hull ask you whether you had
 7 sought Seward & Kissel's advice about this transaction?
 8 A No, sir.
 9 Q Okay. To your knowledge, by any other means,
 10 whether you telling him or him asking, excluding those
 11 which you've testified about, was Mr. Hull aware that you
 12 sought Seward & Kissel's advice on this -- for this
 13 trade?
 14 MR. FERRIGNO: He -- again, don't disclose a
 15 privileged communication.
 16 THE WITNESS: I think he -- he may have been,
 17 based upon the discussion that we had, but I didn't
 18 explicitly go into that.
 19 BY MR. BAGNALL:
 20 Q The discussion you had with Mr. Hull in the --
 21 A We discussed the specific mechanic by which it
 22 could happen. And I imagine that he thought I had gotten
 23 a refresher on that.
 24 Q Okay.
 25 MR. BAGNALL: Anybody have anything else about

1 Q What is it?
 2 A That's the sale of Jim's shares at LPL to the
 3 fund at the market price of 10/18.
 4 Q Okay. So does this -- does this indicate that
 5 GISF purchased 680,636 TRX shares from Mr. Hull at \$3.60
 6 per share?
 7 A Yes, it does.
 8 Q For a total of -- purchase amount of
 9 \$2,550,589.60?
 10 A Yes.
 11 Q Okay. And is that your signature there above
 12 you name, printed name?
 13 A Yes.
 14 Q Is that Mr. Hull's signature above his printed
 15 name?
 16 A Yes.
 17 Q Is that -- was that signature made by hand or
 18 by a stamp?
 19 A Looks like a stamp to me.
 20 Q Okay. Do you know from your experience as his
 21 partner and working with him, whether Mr. Hull uses a
 22 rubber stamp for some of his signatures?
 23 A I do believe he does, yes.
 24 Q Okay. And have you ever seen that rubber stamp
 25 signature before?

1 103?
 2 (Counsel confer.)
 3 BY MR. BAGNALL:
 4 Q Yeah, what do you mean when you say you had a
 5 discussion with Mr. Hull about the mechanics by which
 6 this transaction would occur?
 7 A In other words --
 8 MR. FERRIGNO: Same -- same caution. I mean,
 9 you can -- if you can answer it without disclosing a
 10 privileged communication, you can answer it.
 11 THE WITNESS: Yeah, I guess I would have to
 12 assert privilege.
 13 MR. BAGNALL: Okay. Could you mark this next,
 14 please?
 15 (SEC Exhibit No. 104 was marked
 16 for identification.)
 17 BY MR. BAGNALL:
 18 Q Okay, I'm going to hand you what's been marked
 19 as Exhibit 104. Could you take a look at it and let me
 20 know when you're done, please?
 21 A Yes.
 22 Q Does that mean you're done?
 23 A Yes.
 24 Q Okay. What -- do you recognize Exhibit 104?
 25 A Yes.

1 A The -- this -- yes. I haven't seen the rubber
 2 stamp itself, but I've seen this.
 3 Q And does the signature that appears on Exhibit
 4 104 for Mr. Hull look like the rubber stamp signature
 5 you've seen for Mr. Hull in your experience dealing with
 6 him?
 7 A Yes. In particular the missing bottom part.
 8 Yeah.
 9 Q The missing bottom part of the "J," correct?
 10 A Yeah. Yeah.
 11 Q All right. What -- at this time, right, based
 12 on the exhibits that we just realized, GISF was already
 13 planning to liquidate all of its TRX holdings, why would
 14 be interested in purchasing an additional 6 --
 15 approximately 680,000 shares of TRX?
 16 A I did not think that it would adversely affect
 17 the fund. To the degree I did, it would adversely affect
 18 me, my parents, the Marzullos who represented the
 19 substantial majority of the other investors outside of
 20 Mr. Hull. And as far as my relationship with Mr. Hull, I
 21 did believe I needed to advise him on the sale of his TRX
 22 shares outside of the fund, and in order to main --
 23 manage those dual responsibilities, I felt this was the
 24 most effective manner to manage -- maintain my
 25 obligations to both the fund and to Mr. Hull.

1 Q So I'm -- I'm not sure that answered my
 2 question, okay.
 3 A Okay.
 4 Q What I asked you was based on the exhibits that
 5 we just looked at before 104 --
 6 A Yes.
 7 Q -- there were emails in which you described
 8 knowing prior to the date, October 10, 2011, that GISF
 9 would be selling all of its TRX shares; correct?
 10 A That was contemplated, yes.
 11 Q Okay. So at a time when you already knew that
 12 GISF would be selling all of its TRX shares, why would
 13 GISF, your client GISF, be interested in purchasing an
 14 additional 680,636 shares of TRX?
 15 A It wasn't a -- it was not to the disadvantage
 16 of GISF. I would not say that either it was -- it was
 17 not of some, you know, of a benefit, either.
 18 Q So is there any reason why GISF would want
 19 those 680 -- additional 680,000 shares at this time?
 20 A Yes. In that it would be better for GISF to
 21 manage the sale of the sum of those two blocks of shares,
 22 namely the GISF original shares and Jim's shares outside,
 23 rather than Jim selling them haphazardly or less
 24 professionally than we otherwise could in the market.
 25 Q Why not just sell all of GISF's shares before

1 Q Sure. The 2.5 -- approximately \$2.5 million,
 2 was that fund money?
 3 A Yes.
 4 Q Okay. And since it was fund money, does that
 5 mean that each investor in GISF was entitled to a pro
 6 rata portion of that cash, based on the amount of their
 7 investment in GISF?
 8 A When you say "entitled to it," before it was
 9 disbursed to Mr. Hull, when exchanged for the 680 --
 10 Q That's correct, yeah.
 11 A Yes. Yes.
 12 Q Okay. And then after it was disbursed to Mr.
 13 Hull, they then had a right to some amount of the value
 14 of those 680,000 shares; correct?
 15 A Yes, sir.
 16 Q Okay. And after -- excuse me, October 18,
 17 2011, how many additional shares did GIF -- TRX shares
 18 did GISF purchase?
 19 A None.
 20 Q These are the last 680,636 TRX shares that GISF
 21 purchased; is that right?
 22 A Yes.
 23 Q Okay. Did -- at the time that you engaged in
 24 this -- Mr. -- you, on behalf of GISF and Mr. Hull
 25 engaged in this transaction, to the extent that you felt

1 Mr. Hull could sell his 680,000 shares?
 2 A Because it's Mr. Hull's -- you know, Mr. Hull
 3 has the right to sell his shares, too.
 4 Q Right. Precisely. So why get involved at all?
 5 A Because I have a relationship with him.
 6 Q You're -- is -- are --
 7 A An advisory relationship.
 8 Q You're talking about your personal advisory
 9 relationship with Mr. Hull?
 10 A Yes.
 11 Q Okay. So did you then engage in this
 12 transaction because it was the right thing to do for Mr.
 13 Hull? Or because it was the right thing to do for GISF?
 14 A It was the right thing to do for GISF, in that
 15 it better managed the exit of these 2-1/2 million -- the
 16 sale of these 2-1/2 million shares in a -- in an
 17 effective manner.
 18 Q Okay. Where did the approximately \$2.5 million
 19 come from that purchased those 680,000 dollar (sic)
 20 shares?
 21 A From the sale of TRX shares in the market.
 22 Q Okay. So did GISF's investors own an interest
 23 in that approximately 2.5 million shares (sic) pro rata
 24 based on the amount of their investment in GISF?
 25 A I'm not sure I understand the question.

1 they still existed, was Mr. Hull still a 35 percent owner
 2 of Geier Group and Geier Capital?
 3 A Yes.
 4 Q Okay. Were -- was GISF, somebody competent to
 5 be notified on behalf of GISF, notified that GISF and Mr.
 6 Hull would be engaging in this transaction?
 7 A I'm sorry; can you say that again?
 8 Q Yes. I'm sorry. Was GISF notified, the fund
 9 notified that Mr. Hull would be engaging in this
 10 transaction with GISF?
 11 A The entity, no.
 12 Q Okay. Anybody competent to accept such
 13 notification on behalf of the entity? Was anybody
 14 notified?
 15 A I -- I was.
 16 Q Okay. And who notified you?
 17 A Myself.
 18 Q Okay. And at the time, though, you were
 19 engaging in this transaction in part to satisfy your
 20 personal obligations to Mr. Hull in your advisory
 21 capacity to him outside the fund; is that right?
 22 A I was managing both my responsibility to the
 23 fund and to Mr. Hull. That's correct.
 24 Q Okay. So that's a yes, right?
 25 A Yes.

1 Q All right. And did GISF, anybody at GISF
2 competent to do so authorize this transaction that Mr.
3 Hull engaged in with GISF?

4 A Other than myself there would be no one
5 competent to do so.

6 Q Okay. How about your father?

7 A He was not engaged on the day-to-day basis.

8 Q Okay. How about GISF's investors, were GISF's
9 investors notified that Mr. Hull would be engaging in
10 this transaction with the fund?

11 A No.

12 Q Did any of GISF's investors authorize this
13 transaction between the fund and Mr. Hull?

14 A No. And nor were they entitled to the
15 disclosure based upon the conflicts clause that we have
16 in our --

17 Q Okay, you've answered the question, Mr. Gibson

18 MR. BAGNALL: I'll take back 104, unless
19 anybody has anything else?

20 MR. BOHR: I have some questions about it.

21 BY MR. BOHR:

22 Q As of the time when GISF bought Mr. Hull's
23 shares on October 18, 2011, when was the previous
24 occasion on which GISF had bought any shares of TRX?

25 MR. BAGNALL: The most recent previous?

1 BY MR. BOHR:

2 Q The most recent previous occasion prior to
3 October 18, 2011?

4 A The moment that we went above 10 percent and
5 filed our 13G at the end of April 2011. I believe.

6 (Counsel confers with client.)

7 MR. BOHR: I see you gentlemen are talking.

8 MR. FERRIGNO: Yeah, there's no question.

9 MR. BOHR: Well, there's a line of related
10 questions pending.

11 MR. FERRIGNO: Okay.

12 MR. BAGNALL: Are you going to -- telling him
13 how to answer?

14 MR. FERRIGNO: No. I asked him a question.

15 MR. BAGNALL: Okay.

16 BY MR. BOHR:

17 Q I want to make sure --

18 MR. FERRIGNO: Well, let me -- let me do it
19 this way, could I see that exhibit that had the account
20 statement for the fund?

21 MR. BAGNALL: I don't know. We've looked at a
22 lot of account statements.

23 MR. FERRIGNO: There's -- you -- there was an
24 account statement, it was either August or September
25 2011.

1 THE WITNESS: The Garwood and --
2 MR. FERRIGNO: The Garwood statement. I just
3 wanted to see it.

4 MR. BAGNALL: The Garwood statement or the
5 Casimir statement?

6 MR. FERRIGNO: No. Well, I think it's before
7 the transfer to Garwood -- to Casimir, yeah, so it was
8 Garwood.

9 MR. BAGNALL: Okay.

10 MR. BOHR: Let me ask a question while Mr.
11 Bagnall's looking for that.

12 BY MR. BOHR:

13 Q We don't have the benefit of a real time feed
14 of your transcript, but if I heard you correctly, when
15 Mr. Bagnall asked at the beginning of his questions about
16 Exhibit 104, and the contract for the sale of the 680,000
17 odd shares, I think you said you did not think buying the
18 shares from Mr. Hull would affect the fund, GISF. And to
19 the extent it did, it would mostly hurt your mother, your
20 father, and the Marzillos. Did I hear that correctly?

21 A You did not hear that correctly.

22 Q Okay. What did you say?

23 A I said to the degree it could have an adverse
24 effect, it of course would adversely affect the people
25 that were very close to me. And I said that as an

1 indication that I most assuredly did not believe there
2 was any chance of it negatively affecting the fund.

3 Q Okay. So you did not believe that the fund's
4 purchase of Mr. Hull's shares would adversely affect the
5 fund; correct?

6 A Correct.

7 Q And to the extent it might ever possibly hurt
8 the fund, it would most affect your mother, your father
9 and the Marzillos?

10 A Precisely.

11 Q Okay. So does that mean it's okay if it
12 affects, but to a lesser extent, the McKnights --

13 A No.

14 Q -- TR Reddy, the Strelitz's?

15 A No. It absolutely does not mean that. But you
16 can intuit how -- my beliefs based on the fact that I
17 would be substantially the negatively impacted party, to
18 the degree it did negatively impact the fund.

19 Q But you have another option, don't you? The
20 option of not purchasing the shares from Mr. Hull at all?

21 A True.

22 Q Correct?

23 A Correct.

24 Q Okay. And -- and you concede that your
25 distinguishing degrees of harm between the McKnights, Tim

1 Strelitz, TR Reddy on one side, and your mother, father,
2 and the Marzullos on another side; correct?
3 A Absolutely not.
4 Q Well, that's -- that's not what I'm hearing you
5 say. You said to the extent it might theoretically
6 conceivably in any parallel universe hurt anybody, it
7 would hurt your mother, father and the Marzullos more
8 than the other limited partners; correct? You said that.
9 A No, I did not say that.
10 BY MR. BOCKIN:
11 Q Let's talk about your beliefs. You just said
12 we can intuit your beliefs from your actions; correct?
13 A Yes, sir.
14 Q So on September 26th you sold all of your
15 personal TRX shares; isn't that right?
16 A Yes.
17 Q And on that same date you sold all of
18 Francesca's TRX shares; correct?
19 A Yes.
20 Q And you sold all of the Geier Group TRX shares;
21 correct?
22 A Yes, sir.
23 Q Right before you bought 680,000 shares for
24 GISF; correct?
25 MR. FERRIGNO: I think you're off on the date.

1 THE WITNESS: Four weeks.
2 MR. BOCKIN: No.
3 BY MR. BOCKIN:
4 Q ~~September 26th you sold all of your shares;~~
5 ~~correct?~~
6 A ~~Yes;~~
7 Q ~~And all of Francesca's shares; correct?~~
8 A ~~Yes;~~
9 Q ~~And all of Geier Group's shares; correct?~~
10 A ~~Yes;~~
11 Q ~~Now we're talking about October. You're out of~~
12 ~~this, right? You have no further personal TRX shares.~~
13 ~~We saw your -- we can look at your --~~
14 A ~~You're right. I just -- I just have \$1 million~~
15 ~~myself and my mother just has \$1 million and my father~~
16 ~~just has \$1 million and the Marzullos just have \$2~~
17 ~~million; you're right. I'm totally out, but continue.~~
18 Q ~~I'm just asking. Did you sell your shares?~~
19 A ~~I sold a tiny, tiny percentage of my position.~~
20 Q ~~All your personal shares are gone, through;~~
21 ~~correct?~~
22 A ~~Which constitutes a tiny percentage of my~~
23 ~~exposure.~~
24 MR. FERRIGNO: Yeah, and this transaction with
25 Mr. Hull was 10/18, so it wasn't just --

1 MR. BOCKIN: But --
2 MR. FERRIGNO: It wasn't close in time.
3 MR. BAGNALL: It was about three weeks later.
4 MR. FERRIGNO: Yeah, well, that's --
5 MR. BOCKIN: Let's -- that's a couple of weeks.
6 MR. FERRIGNO: Yeah, well that's not close in
7 time in the markets.
8 MR. BAGNALL: Let's --
9 THE WITNESS: That is a massive amount of time.
10 MR. BOCKIN: Let's let Mr. Gibson testify.
11 BY MR. BOCKIN:
12 Q Do you have anything else to say on Mr.
13 Bockin's question?
14 A No.
15 BY MR. BOHR:
16 Q My point is, you're out of all of your personal
17 shares on -- when this trade takes place on October 18th.
18 You're out of all your personal shares; correct?
19 A I've reduced my aggregate position by 1, 2
20 percent, correct.
21 Q And Francesca's personal shares are gone?
22 A Correct.
23 Q And Geier Group's shares?
24 A So -- and so the Marzullos have reduced their
25 personal position by 2 to 3 percent.

1 Q And you said that the reason you got out of it
2 was because -- there was two reasons: one that it had
3 gone down 20 percent; correct?
4 A Correct.
5 Q And that the second was that Mr. Hull said, "I
6 don't want any additional losses for the fund."
7 A That's totally not why I sold. That is not a
8 reason.
9 Q Well, that -- you -- that's why you said -- we
10 just talked about this earlier. You said on the 25th Mr.
11 Hull, on a Sunday, Mr. Hull told you, "I don't want any
12 additional losses."
13 A Right.
14 Q And you took that to mean time to unload TRX
15 shares; correct?
16 A No. I took that to me that's a directive for
17 the fund. I was merely -- that --
18 Q And the directive for the fund was then you
19 sold over 3 million shares on the 27th; correct?
20 A Correct.
21 Q And then three weeks later you're buying
22 680,000 shares from Mr. Hull for the fund?
23 A Correct.
24 Q Okay. And you can't see how that increases the
25 fund's risk when you've been previously unloading the

1 shares, and now you're increasing the fund's risk by
 2 buying 680,000 shares?

3 A I believe that the quantum of shares we assumed
 4 was not significant enough to have a material impact on
 5 the future performance of the fund. And that the risk of
 6 a less orderly sale through Mr. Hull's personal account
 7 or through Fidelity created a greater risk.

8 Q But --

9 MR. BOCKIN: Go ahead.

10 MR. BAGNALL: Sorry. Sorry.

11 BY MR. BAGNALL:

12 Q But you managed his personal funds, right? So
 13 you controlled them whether they were in the fund or out?

14 A Correct. But then I would have --

15 Q And why did they need to be in the fund?

16 A Well, it -- but they were substantial enough
 17 that I did not feel comfortable selling his shares in the
 18 market.

19 Q But why not just have an orderly exit of Mr.
 20 Hull's shares --

21 A Because then --

22 Q -- that you control outside the fund?

23 A Because I would have to pick when to sell them.
 24 And they were -- that was -- that was more substantial
 25 than the other -- any other shares' outside accounts.

1 Q Did the --

2 A The fund -- the fund would not -- the fund,
 3 when I go and I buy shares in the market, I'm not
 4 entitled to a commission from the seller.

5 Q What about when the fund sold these shares, did
 6 the -- does the fund still hold these shares?

7 A No.

8 Q Did the fund sell them?

9 A Yes.

10 Q Did the fund pay a commission when it sold
 11 them?

12 A Yes.

13 Q Okay.

14 BY MR. BOCKIN:

15 Q So again, the investors paid the commissions
 16 for the shares that Mr. Hull had held?

17 A That's correct.

18 BY MR. BOHR:

19 Q Was that ever trued up to the investors? An
 20 amount for the share of commissions of Mr. Hull's 680,000
 21 shares that the fund paid?

22 A No.

23 BY MR. BAGNALL:

24 Q Did -- now --

25 BY MR. BOCKIN:

1 Q That's exactly the risk you took on by agreeing
 2 to be the investment manager for GISF and for Mr. Hull;
 3 is it not? That is precisely the problem, right?

4 A That is a -- that is the challenge, yes.

5 Q Okay.

6 BY MR. BOCKIN:

7 Q And you saw it as a conflict and that's why you
 8 sought the advice of counsel for this transaction;
 9 correct?

10 A A potential conflict, yes.

11 Q Did Mr. Hull pay commissions for this sale to
 12 the fund?

13 A No.

14 Q So the -- the investors in GISF paid Mr. Hull's
 15 commissions; correct?

16 A Well, why -- Mr. Hull wouldn't pay commissions
 17 to the buyer. We had no broker.

18 Q So -- if he was going to sell the shares on his
 19 own, he would have had to pay a broker to sell them and
 20 then he would have had to pay commissions; correct?

21 A That's correct.

22 Q He sold them to you for nothing, right?

23 A But that did not -- the fund didn't get hurt by
 24 that.

25 BY MR. BAGNALL:

1 Q Did Mr. Hull ever -- prior to the sale of
 2 680,000 shares, did Mr. Hull ever sell TRX shares out of
 3 her personal account on a previous occasion?

4 MR. FERRIGNO: Say that again?

5 BY MR. BOHR:

6 Q So Mr. Hull obviously sold the 680,000 shares
 7 to the fund on October 18, 2011; correct?

8 A Yes, sir.

9 Q Prior to that date -- out of his personal
 10 account; correct?

11 A Yes, sir.

12 Q Prior to that date did he have any personal
 13 sales out of his personal account of TRX shares?

14 A Not to my knowledge. No, sir.

15 Q But you're his fund manager who is navigating
 16 between managing his money and managing GISF's money, and
 17 you don't know if there was any previous occasion on
 18 which Hull sold TRX shares?

19 A I don't recall any. No, sir.

20 BY MR. BAGNALL:

21 Q When --

22 MR. BAGNALL: So are you guys done on --

23 MR. BOCKIN: We're done. Yeah. Go.

24 MR. BAGNALL: Okay. Mr. Ferrigno, would you
 25 like to ask your question about Exhibit --

1 MR. FERRIGNO: Well, I just want to see them,
2 if I could?
3 MR. BAGNALL: Sure. Let me just take out
4 the --
5 MR. FERRIGNO: But you can go ahead and --
6 MR. BAGNALL: You want me to keep going? You
7 don't --
8 MR. FERRIGNO: Yeah. Yeah. Yeah.
9 MR. BAGNALL: Okay.
10 MR. FERRIGNO: I just want to check something.
11 MR. BAGNALL: Sure.
12 (Pause.)
13 MR. BAGNALL: Could we mark this --
14 BY MR. BOHR:
15 Q While he's pulling these out, Mr. Gibson, did
16 Geier Capital, Geier Group, Geier International
17 Strategies Fund, Geier Capital Delaware, Geier Capital
18 Georgia, did any of these entities ever enter into a
19 completed code of ethics, code of conduct, conflict
20 procedure, conflicts review board, conflicts review
21 process; anything like that?
22 A In addition to the conflicts clauses in the
23 offering memorandum and the operating agreement, no.
24 BY MR. BAGNALL:
25 Q So earlier today, Mr. Gibson, Mr. Bohr was

1 asking if you were ever aware of a conflict or a
2 potential conflict for which you had to seek counsel in
3 your dealings as an investment manager for GISF. Do you
4 remember that?
5 A I do. And I misrecalled.
6 Q And you said you -- and you said no, right?
7 A Correct.
8 Q Okay. But -- but you more recently testified
9 that, at least you've asserted privilege about
10 communications with counsel related to the transaction
11 between the fund and Mr. Hull on October 18th; is that
12 right?
13 A Correct.
14 Q Would you like to now change your earlier
15 testimony?
16 A Yes.
17 Q And how would you like to change it?
18 A Well, I'm not sure if it was a conflict, but I
19 sought counsel relating to that transaction, just to
20 ensure it was consistent with the operating agreement as
21 I understood it.
22 Q Okay.
23 (SEC Exhibit No. 105 was marked
24 for identification.)
25 BY MR. BAGNALL:

1 Q All right, I'm going to hand you what's been
2 marked as Exhibit 105. If you could let me -- look at
3 that and let me know when you're done, please?
4 A I'm ready.
5 Q Okay. Do you recognize Exhibit 105, Mr.
6 Gibson?
7 A Yes. This is actual transfer of shares and
8 then the wire to Mr. Hull.
9 Q Okay. So if you look at the last page of
10 Exhibit 105, the page ending 854, there's a signature
11 there and about two-thirds of the way down for Geier
12 International Strategies Fund; is that your signature?
13 A Yes.
14 Q Okay. So did you sign this wire transfer
15 request authorizing the approximately \$2.5 million to be
16 wired out to Mr. Hull?
17 A Yes.
18 Q Okay. And Ms. Underwood notarized it. Is that
19 her signature?
20 A Yes.
21 Q Is that -- so she did serve as a notary then?
22 A Yes.
23 Q Okay. And if you look at the page ending 852,
24 there's a series of emails between you and Ms. Underwood,
25 in which you're directing her about the amount to wire;

1 is that right?
2 A Yes.
3 Q Okay. And she -- and she asks you, "Which
4 Geier account? You still have two at Peson, correct?"
5 And you respond, "Garwood." Right?
6 A Yes.
7 Q And so at this time, October 19, 2011 were all
8 of GISF's assets in the Garwood account?
9 A My understanding is that no, that they would be
10 split between the Garwood and the Casimir/Penson
11 accounts.
12 Q Okay. What would have been left at Casimir?
13 A A block of TRX shares.
14 Q Okay. How many?
15 A I think that -- somewhere around that 5,900,000
16 share.
17 Q So they hadn't been yet sent back to Garwood?
18 Journaled back to Garwood?
19 A No.
20 Q Okay. So there was just cash at the Garwood
21 account?
22 A Yes.
23 Q Okay. On the first page of this Exhibit 105,
24 the page ending 851, there's an email to you (sic) to Ms.
25 Underwood at the very bottom of the page that says, "CNU

1 update the account number FR Luis. It is incomplete."
 2 Do you see that?
 3 A Yes.
 4 Q What did -- what did you write there? What
 5 does that mean? Do you mean can you update the account
 6 number for Luis?
 7 A I have no idea.
 8 Q Was Luis Sequeira involved at all in the trade
 9 between GISF and Jim Hull on October 18th?
 10 A No.
 11 Q Okay. All right, I'll take back Exhibit 105.
 12 Is there something you want to add, Mr. Gibson?
 13 A I'm just very confused by that -- that email.
 14 I'm just trying to get you an answer.
 15 Q The one regarding Luis? Okay.
 16 Were you engaged in a transaction on behalf of
 17 GISF with Luis close in time to the transaction between
 18 GISF and Mr. Hull?
 19 A Possibly, yes.
 20 Q And what would that transaction be?
 21 A The sale of TRX shares to The Sheikh brokered
 22 by Luis.
 23 Q The sale of TRX shares -- GISF's TRX shares to
 24 The Sheikh brokered by Luis; is that right?
 25 A Yes, sir.

1 Q And how many shares was -- were involved in
 2 that transaction?
 3 A I do not recall. I think it totaled somewhere
 4 around a million and a half shares.
 5 Q Okay. I'm going to hand you what's been
 6 previously marked as Exhibit 13. Let me know when you've
 7 had a moment to look at it.
 8 A I'm ready.
 9 Q Okay. Do you recognize Exhibit 13?
 10 A Yes, it's the Garwood/Penson account from
 11 October 2011.
 12 Q Okay. And if we could just turn to the page
 13 ending 096, please? Okay, and do you see in the "Cash
 14 Account" it shows -- the activity for the cash account,
 15 it shows a receipt of 680,636 shares on October 20, 2011?
 16 Do you see that?
 17 A Yeah. Yes, I do.
 18 Q And then they're journaled out that same day.
 19 A Okay.
 20 Q Do you see that? And turn the page, please, to
 21 the page ending 097.
 22 A Yes.
 23 Q Okay. And then do you see a journal entry
 24 coming into the margin account on October 20, 2011,
 25 680,636 shares. Do you see that?

1 A Yes.
 2 Q That's one-, two-, three-, four-, five rows
 3 down. Are those the shares that GISF purchased from Mr.
 4 Hull?
 5 A Yes.
 6 Q Okay. And then do you use two rows -- three
 7 rows below that, there's a entry 10/20/11, a journal, a
 8 wire transfer of \$2,450,589.60. Do you see that?
 9 A Yes.
 10 Q Is that the money that GISF paid in order to
 11 secure those 680,000 TRX shares?
 12 A Yes, sir.
 13 Q Okay. Do you see the entry just above the wire
 14 for 2.4 million?
 15 A Yes.
 16 Q There's a wire for 12,000.
 17 A Yes.
 18 Q Do you know if that's a wire that was paid to
 19 Luis Sequeira?
 20 A It could be. I don't know.
 21 Q Okay.
 22 A Maybe -- that would --
 23 Q Why would you have -- if it was, why would you
 24 be paying Mr. Sequeria \$12,000?
 25 A Perhaps on the sale of, like, these 364,000

1 shares.
 2 Q The first entry there, the sale --
 3 A Yeah.
 4 Q -- on 10/17?
 5 A Yes.
 6 Q Okay. And was that part of the transaction
 7 between GISF and The Sheikh you mentioned earlier?
 8 A Yes.
 9 Q Okay. I'll take back Exhibit 13.
 10 MR. BOHR: I would like to ask a clarifying
 11 question while Mr. Bagnall is handling the exhibits.
 12 BY MR. BOHR:
 13 Q Just to be clear, there was a September 27th
 14 sale of TRX shares by the fund, that obviously netted
 15 cash proceeds. And it was those cash proceeds in GISF
 16 then that went to pay for Mr. Hull's 680,000 shares on
 17 October 18th; correct?
 18 A Cash is fungible and we had enough cash to fund
 19 the purchase of Mr. Hull's shares before that trade.
 20 (SEC Exhibit No. 106 was marked
 21 for identification.)
 22 BY MR. BAGNALL:
 23 Q Okay, I'm going to hand you what's been marked
 24 as Exhibit 106. If you could take a look at it and let
 25 me know when you're done, please?

1 (Witness examined the document.)
 2 THE WITNESS: Yes. Okay.
 3 BY MR. BAGNALL:
 4 Q Do you recognize Exhibit 106, Mr. Gibson?
 5 A I do.
 6 Q What is Exhibit 106?
 7 A This is a wire to Luis and paying a brokerage
 8 commission for arranging the purchase of TRX shares from
 9 GISF.
 10 Q Okay. And is -- does that confirm what you --
 11 you surmised a moment ago with respect to Exhibit 105?
 12 A Yes, sir.
 13 Q The \$12,000 wire. The \$12,000 wire out of
 14 GISF's account was, indeed, to Mr. Sequeria; is that
 15 right?
 16 A Yes, sir.
 17 Q Okay. And it was for the transaction that you
 18 thought?
 19 A Yes, sir.
 20 Q Unrelated to the transaction between Mr. Hull
 21 and GISF?
 22 A That's correct.
 23 Q Okay. I'll take back 106.
 24 MR. BAGNALL: Could you mark this next, please?
 25 (SEC Exhibit No. 107 was marked

1 for identification.)
 2 BY MR. BAGNALL:
 3 Q I'm going to hand you what's been marked as
 4 Exhibit 107. Could you look at 107, please, and let me
 5 know when you're done?
 6 A Yes.
 7 Q Do you recognize Exhibit 107?
 8 A I do.
 9 Q What is Exhibit 107?
 10 A It's a discussion on tax treatment from March
 11 of 2011 with Kaufman Rossin Fund Services.
 12 Q Does reading Exhibit 107 refresh your
 13 recollection as to whether or not GISF used LIFO or FIFO
 14 accounting in 2011?
 15 A I know that my objective was for us to use
 16 FIFO. But I have to --
 17 (Witness examined the document.)
 18 THE WITNESS: Yes, exactly. Yeah, you had to
 19 do it at the beginning of the year.
 20 BY MR. BAGNALL:
 21 Q So your objective though was to use LIFO, not
 22 FIFO; is that --
 23 A Was to use -- was to use FIFO.
 24 Q So you wrote, "Hi, Chris." Sorry, Steve Matz
 25 wrote at the bottom of the first page, 806, "Hi, Chris.

1 Please call me when you have a moment. Craig Gantar at
 2 Garwood has informed me that Geier International has
 3 elected to retroactively change their lot relief
 4 methodology to LIFO from FIFO. Can you confirm this?
 5 Also, what is the purpose behind this change?"
 6 Did I read that right?
 7 A Yes.
 8 Q Okay. And then you wrote back to him, "Hi" --
 9 sorry, did this to you again. You forward that to Steve
 10 Matz. "Just missed you. Let me know when I can call."
 11 And Mr. Matz responds, "Hi, Chris. Our tax man
 12 has informed me that the IRS mandates that the
 13 methodology for lot relief remain the same throughout the
 14 course of the tax year. If you want to change the lot
 15 relief methodology, you must do so at the beginning of a
 16 tax year, and attain -- and maintain that same
 17 methodology through the course of the year. In sum, we
 18 cannot retroactively change from FIFO to LIFO for 2010."
 19 Do you see that?
 20 A I do.
 21 Q "Furthermore, there are new" -- did I read it
 22 correctly?
 23 A Yes.
 24 Q Okay. "Furthermore, there are new regulations
 25 in place that require us, as your administrator, to be in

1 alignment with your broker with regards to the lot relief
 2 methodology. If you would like to change the lot relief
 3 methodology for 2011, let us know. But your broker must
 4 also make the same changes and reflect FIFO in 2010 and
 5 LIFO in 2011."
 6 Do you see that?
 7 A Yes.
 8 Q Did you want to change to LIFO accounting in
 9 2011?
 10 A Evidently.
 11 Q Did you actually do that?
 12 A Not to my knowledge.
 13 Q And when I say "you," I mean, did GISF actually
 14 change to LIFO accounting?
 15 A Not to my knowledge.
 16 Q Okay. I'll take back 107.
 17 MR. BAGNALL: Can we mark this next, please?
 18 (SEC Exhibit No. 108 was marked
 19 for identification.)
 20 BY MR. BAGNALL:
 21 Q Okay, I'm going to hand you what's been marked
 22 as Exhibit 108. Can you look at 108 and let me know when
 23 you're done, please?
 24 (Witness examined the document.)
 25 THE WITNESS: Yes. I got it.

1 BY MR. BAGNALL:
 2 Q Okay, do you recognize Exhibit 108?
 3 A Yes, I do.
 4 Q What is Exhibit 108?
 5 A This is all surrounds -- it's a discussion on
 6 the lot treatment of -- the tax treatment of our shares.
 7 And this was all under the assumption in July of 2011 TRX
 8 was doing very, very well, as I recall. I think we were
 9 in the \$7 area. And my -- I'm trying to figure out when
 10 I can start selling. Like, if TRX goes up to \$8, I know
 11 I have a constraint from Jim not to sell until we have
 12 long-term capital gains, and I want to make sure that it
 13 if I sell for a gain that I'm achieving long-term capital
 14 gains, and therefore having FIFOs is important because
 15 then the first shares I'll sell are the longest held.
 16 And then I want to look back and see when -- how long
 17 those have been held and when I am thereby able to sell,
 18 should the share price be sufficiently high.
 19 Q Okay. So looking at 108, does that refresh
 20 your recollection that GISF used FIFO accounting in 2011?
 21 A Yes.
 22 Q And what does "FIFO" mean?
 23 A First in, first out.
 24 Q Okay. And you testified a moment ago that that
 25 means that if you sell, what you're selling are the first

1 shares that came in to the fund; is that right?
 2 A That's correct.
 3 Q Does that also mean conversely that the last
 4 shares you sold are the last shares that came in?
 5 A The last shares you sold are the last shares
 6 that came in? Yes.
 7 Q Okay. So you testified earlier that the
 8 680,000 shares that GISF bought from Mr. Hull at \$3.50 a
 9 share were the last approximately 680,000 of TRX that
 10 GISF purchased; correct?
 11 A Yes.
 12 Q And it used FIFO accounting; correct?
 13 A Correct.
 14 Q So that means when it sold the remaining
 15 portion of its TRX holdings, the last of which was sold
 16 out on November 10, 2011; correct? That the last 680,000
 17 shares, approximately, that went out the door were the
 18 680,000 shares that GISF bought from Mr. Hull; correct?
 19 A From a tax treatment perspective that's
 20 correct.
 21 Q Okay. And cost basis, too?
 22 A From a -- for a tax -- for tax treatment, yes.
 23 Q Part of which is cost basis, right?
 24 A That's true.
 25 Q Okay. So you purchased those shares for \$3.50.

1 What did you get when you sold the last 680,000 shares of
 2 GISF's TRX position on November 10th, 2011?
 3 A Call it 2.50.
 4 Q So you lost \$1 per share?
 5 A Correct.
 6 Q Okay. And how many shares was it?
 7 A 680,000.
 8 Q Okay. So you lost \$680,000 for the fund?
 9 A That's a totally inaccurate characterization.
 10 Q Tell me why?
 11 A Because you're -- that's correct for the
 12 accounting treatment in terms of determining short-term
 13 versus long-term losses. That's the only purpose of FIFO
 14 versus LIFO. And all of these were short-term in nature
 15 and they were not gains, they were losses, so it's
 16 totally immaterial.
 17 In terms of what we lost on the additional
 18 shares or made on the additional shares that we
 19 purchased, that would have to be looked at in the
 20 aggregate of all the shares we had.
 21 BY MR. BOCKIN:
 22 Q How is it totally immaterial? You purchased
 23 these shares on October 18th, you sell them a couple
 24 weeks later, you sell them for almost a \$700,000 loss.
 25 The investors in GISF realized a \$700,000 loss because of

1 that --
 2 A That's --
 3 Q -- that transaction.
 4 A That's not accurate.
 5 Q How is that not accurate? You bought them for
 6 3.60 from Jim Hull and you sold them for either 2.50 or 2
 7 bucks a share.
 8 A Not -- it's not those shares. The shares are
 9 fungible once they're inside the account. I don't agree
 10 with the characterization that the last shares we sold
 11 were the same shares that came in.
 12 BY MR. BAGNALL:
 13 Q You just got done testifying that that's
 14 exactly what happened.
 15 A For tax treatment purposes, I agree with that.
 16 That's not --
 17 BY MR. BOCKIN:
 18 Q And cost basis purposes. How else are you
 19 going to figure it out? You guys are the ones who picked
 20 FIFO. We're using the analysis from the -- from the --
 21 A So --
 22 Q -- the structure that you set up.
 23 A So then your assertion would be if we had
 24 arbitrarily used a different accounting treatment then
 25 the -- and if we had sold these shares these next day for

1 10 cents more than we would have made money?
 2 Q No, I'm saying is –
 3 A That would have been – that would have been
 4 utter – that would have been inaccurate, as well.
 5 Q I'm saying if you used LIFO it would be a
 6 different analysis. But you were the ones who chose
 7 FIFO, so we're following –
 8 A So you're –
 9 Q – the analysis –
 10 A So you're saying based on the tax treatment –
 11 Q No, I'm saying –
 12 A – you're going to draw – you're going to draw
 13 an economic conclusion and I think that's –
 14 Q No, we're saying –
 15 A – totally inaccurate.
 16 MR. BAGNALL: Let him finish his question.
 17 BY MR. BOCKIN:
 18 Q Based on the cost basis, which you selected,
 19 which is FIFO, the Jim Hull shares were the last shares
 20 out the door.
 21 A For an – for tax treatment purposes. Not for
 22 determining economic gains and losses.
 23 Q And for cost basis purposes?
 24 A Which is tax treatment, yes.
 25 Q Yes.

1 BY MR. BAGNALL:
 2 Q So you were also required as part of running
 3 this fund, right, to provide net asset values to the
 4 investors, right?
 5 A Yes, sir.
 6 Q Okay. So after you sold the shares – all of
 7 the shares on the 10th, how did you and KRFS, I'm
 8 assuming KRFS is the one who helped you with the net
 9 asset values; is that right?
 10 A Yes, sir.
 11 Q So how did they determine what the value of the
 12 fund's holdings were after November 10th?
 13 A The amount of cash in the account.
 14 Q Okay. But did they also have to – they –
 15 usually included in there is a change in value, right,
 16 from the beginning of some time period to the end, right?
 17 A Yes.
 18 Q Okay. So how then did KRFS calculate the
 19 change in the assets – the value of the assets in the
 20 fund in the month of November if they didn't use FIFO?
 21 A They looked at the market value of all of the
 22 assets at the beginning and the market value of all the
 23 assets at the end.
 24 Q But when they – what – they also have to take
 25 into account the sale of the shares; correct?

1 A Not in order to make the assessment
 2 determination you just described.
 3 Q Why not?
 4 A That's not a part of it. In terms of what the
 5 gain or loss is for that period, you just look at the
 6 beginning and the end in the balance sheet format, as a
 7 screenshot, of where the fund was and what its profile
 8 was at those two points in time.
 9 Q Let's just take a look, since it's out, look at
 10 your – look at the account statement there for –
 11 Exhibit 98, could you?
 12 MR. BAGNALL: And here's Exhibit 98 for this
 13 side, okay? Actually, sorry, let's use – let's use your
 14 personal account, okay?
 15 BY MR. BAGNALL:
 16 Q So this is Exhibit 95. How do you know –
 17 actually, it doesn't matter, it's not here, either. So
 18 look – just look at 98. On the – on the trade that's
 19 reflected on the page ending 150.
 20 A Okay.
 21 Q The last entry, the trade date September 23,
 22 2011, sold 78,000 shares of Tanzanian Royalty Exploration
 23 Company at \$4.0424 per share. Do you see that?
 24 A Yes.
 25 Q Okay. And the proceeds of that sale were

1 approximately \$314,000, right?
 2 A Right.
 3 Q How do you know if that sale for a cost basis
 4 determining whether you made or lost money, GISF made or
 5 lost money on the sale of those 78,000 shares? What do
 6 you need to know? What's missing?
 7 A The cost basis.
 8 Q Yeah, right. What you paid for those shares,
 9 right?
 10 A Right.
 11 Q So need to know what you paid for those shares
 12 in order to determine whether when you sold them on
 13 September 23, 2011 you made or lost money when you got
 14 \$4.0424 per share, right?
 15 A Yes.
 16 Q Okay. And you have to figure to some way to
 17 determine –
 18 A But –
 19 Q Hold on, let me finish my question, all right.
 20 You have to figure out some way to determine what you
 21 paid for the shares, right? Is that right?
 22 A Shares are fungible. There's no way to make a
 23 determination what shares – it's a totally arbitrary
 24 distinction.
 25 Q And – granted. And it's – one of the ways

1 you can do that is FIFO, right?
 2 A Or LIFO. If –
 3 Q Right. But did you pick? What did GISF pick?
 4 A We had – we were using FIFO.
 5 Q Okay.
 6 A And the crux –
 7 Q You've answered the question, Mr. Gibson.
 8 That's all we need to know.
 9 MR. BAGNALL: Anybody have anything else?
 10 MR. BOCKIN: No.
 11 MR. BAGNALL: All right, we'll take back all
 12 the exhibits.
 13 Did you have a question that you wanted to ask,
 14 Mr. Ferrigno, about Exhibit 98?
 15 MR. FERRIGNO: Are you – are you done we
 16 have –
 17 MR. BAGNALL: I have –
 18 MR. FERRIGNO: – we'll take a break and I'll
 19 go over things with Mr. Gibson.
 20 MR. BAGNALL: Okay. I have a couple follow-up
 21 questions and then we'll want to take a break for the
 22 same reasons.
 23 BY MR. BAGNALL:
 24 Q Since March of 2015 when you last testified,
 25 Mr. Gibson, what have you been doing to earn a living?

1 A I am an independent consultant to companies in
 2 Africa and Latin America.
 3 Q Is this in connection with the – the entity
 4 that you testified last time, WeiJi?
 5 A Yes.
 6 Q Am I pronouncing that right?
 7 A Yes.
 8 Q WeiJi. Do you still earn all your income
 9 through WeiJi? Is that right?
 10 A Yes.
 11 Q And about how much do you earn per year in
 12 connection with your efforts working for WeiJi?
 13 A I'll probably earn 90 or 100,000 dollars this
 14 year.
 15 Q Okay. And we – what is your current value of
 16 your net assets?
 17 A Negative 800,900,000 dollars.
 18 Q Okay. And what – what are the factors that go
 19 in to arriving at that number? What are all the entries
 20 on your balance sheet?
 21 A It's very simple.
 22 Q Okay.
 23 A I have essentially \$10,000 in personal
 24 liquidity in cash in my, sort of, personal bank account
 25 at any given point in time. And I've got approximately

1 90, 100,000 dollars position – long position in what is
 2 in Geier International Strategies Fund. And I have a
 3 note to my father in the amount of 900,000. 1 million
 4 dollars right network.
 5 Q That you owe him now?
 6 A Yes.
 7 Q Okay. So you have income of 90 to 100,000 a
 8 year from working with WeiJi. Do you have any other
 9 sources of income?
 10 A No, sir.
 11 Q Okay. And you have – I – let me get this
 12 right: you have a bank account of some kind in which you
 13 have about \$10,000; is that right?
 14 A Yes, sir.
 15 Q In cash? Holding cash?
 16 A Yes.
 17 Q Okay. And then you have – your interest that
 18 remain in the – whatever's left of GISF; is that right?
 19 A Yes, sir.
 20 Q That has an approximate value of 90 to 100,000?
 21 A Yes, sir.
 22 Q Okay. I thought you testified before that
 23 you've given that – your interest in that account to
 24 your father; is that not right?
 25 A For all intents and purposes, yes.

1 Q Have you formally assigned that money to your
 2 father?
 3 A That has not occurred, no.
 4 Q Okay. So it's still in your name?
 5 A Yes.
 6 Q Okay. And then you have a note on which you
 7 owe to your father somewhere between 700,000 and 1
 8 million dollars?
 9 A Yes.
 10 Q Okay. And that note, is it active and still
 11 accruing interest?
 12 A Yes.
 13 Q At 8 percent per year?
 14 A I think he's been kinder to me than that. I'm
 15 not sure. Somewhere – some interest rate.
 16 Q And is the – so is the – did he just take
 17 over the note that you owed to Hull? Or did he write a
 18 new note to you?
 19 A He wrote a new note to me.
 20 Q Okay. And it has a new interest rate? And I
 21 ask that, let me just be clear, I thought you testified
 22 before, and correct me if I'm wrong, that the note you
 23 had with Mr. Hull was an 8 – earning 8 percent?
 24 A Yes, sir.
 25 Q Okay. So that's what I was asking, if the note

1 to your father was 8 percent?
 2 A It may be. It may be a few percentage points
 3 less. I'm not quite sure.
 4 Q Do you make payments to your father? Regular
 5 payments to pay down the note?
 6 A No, I don't have the capacity.
 7 Q Okay. Do you have a plan for paying off that
 8 note?
 9 A Working very hard.
 10 Q Okay.
 11 BY MR. BOHR:
 12 Q Is there any -- is there any other assets on
 13 your balance sheet?
 14 A No.
 15 Q Any home equity?
 16 A No, I rent.
 17 Q Any 401(k) or IRA from Deutsche Bank days?
 18 A I already liquidated that.
 19 BY MR. BAGNALL:
 20 Q Any personal assets like a car?
 21 A I don't have a car. I've got a little -- I've
 22 got \$800 in foreign currency. I mean, that's -- that's
 23 about it.
 24 Q Okay. Anything else you can think of? Any
 25 other assets?

1 A I mean, I suppose I've got furniture in my
 2 house that's worth a couple thousand dollars maybe.
 3 Q Okay. And where are you living now?
 4 A In Brooklyn.
 5 Q Brooklyn, New York?
 6 A Yes.
 7 Q And is that where you operate WeiJi from?
 8 A In large part, yes.
 9 Q And what part that's not the large part, where
 10 do you operate it?
 11 A I rent office space in Manhattan. Very, you
 12 know, use it as you need it basis.
 13 Q Is it like a Regus office space type thing?
 14 A Something like that, yes, sir.
 15 Q Okay. And so that's all in New York. Do you
 16 operate WeiJi from anywhere outside of New York?
 17 A No, sir.
 18 Q Okay. Does -- do you have any U.S. based
 19 clients of WeiJi?
 20 A No, sir.
 21 Q They're all foreign clients?
 22 A Yes, sir.
 23 Q Predominantly in Africa; is that what you said?
 24 A Yes, sir.
 25 Q Okay.

1 MR. BAGNALL: Anybody have anything else?
 2 BY MR. BOHR:
 3 Q Did GISF ever have any side letters with any of
 4 the members of GISF?
 5 A Not to my recollection.
 6 Q Were -- I said GISF, but presumably Geier Group
 7 or Geier Capital? I'm curious, did any of the investors
 8 in GISF have a side letter?
 9 A Can you describe a side letter in some --
 10 refresh my memory.
 11 Q So sometimes in the private equity context, a
 12 fund will go out and solicit investors and they'll get,
 13 let's say, dozens of investors. And one of them, for
 14 whatever reason, will say, "I'm a -- heavily invested in
 15 telecom, and if you invest in a radio station or
 16 something and that puts me over a certain limit of" --
 17 A I see.
 18 Q -- "telecom holdings, I can't be a part of that
 19 investment, so I want a side letter where I'm not owning
 20 this investment, I get something else." Or maybe someone
 21 else gets most favored nations status where they get --
 22 A I got you.
 23 Q -- an opportunity to co-invest that's
 24 favorable.
 25 A Right.

1 Q Any sort of arraignment. Or maybe a foreign
 2 investor needs a special tax treatment. That sort of
 3 thing.
 4 A No. We did not have any side letters to my
 5 recollection.
 6 Q And that's not an exhaustive list of the
 7 scenarios under which a side letter could happen, but a
 8 special side agreement that supplements the fund
 9 agreement?
 10 A Right. No, I understand. No, we did not.
 11 Q How about any confidentiality agreements? Did
 12 any investor have a special confidentiality agreement?
 13 A Not to my knowledge. No, sir.
 14 MR. BAGNALL: We'll take a -- we'll take a
 15 quick break. We'll go off the record at 7:00 p.m.,
 16 December 21, 2015.
 17 (A brief recess was taken.)
 18 MR. BAGNALL: Okay, we're going to go back on
 19 the record at 7:07 p.m., December 21, 2015.
 20 BY MR. BAGNALL:
 21 Q Mr. Gibson, you recall you're under oath?
 22 A Yes, sir.
 23 Q And to confirm, there were no conversations of
 24 substance between you the staff during the break;
 25 correct?

1 A Correct.
 2 MR. BAGNALL: And you agree, Mr. Ferrigno?
 3 MR. FERRIGNO: Yes.
 4 MR. BAGNALL: All right.
 5 BY MR. BAGNALL:
 6 Q All right, going back for a minute, Mr. Gibson,
 7 to the beginning of 2012, okay, what – and really
 8 focusing on the year 2012 generally, what investors
 9 remained in the funder after January 2012?
 10 A Giovanni Marzullo, Martha Gibson, John Gibson,
 11 Jim Hull, and myself.
 12 Q Were – anybody else?
 13 A Not to my knowledge.
 14 Q Were the McKnights still in the fund?
 15 A I don't believe so.
 16 Q When did Jim Hull get out of the fund?
 17 A In I believe January of 2013.
 18 Q Okay. Did the McKnights – is it possible the
 19 McKnights stayed in the fund until January of 2013, too?
 20 A It's possible.
 21 Q Okay. Is it possible that John Engler stayed
 22 in the fund until January 2013?
 23 A Those are both very surprising to me, but it's
 24 possible.
 25 Q I'm not saying they are or they aren't.

1 A Oh.
 2 Q I'm asking you what your knowledge is.
 3 A That's not my – my knowledge – my
 4 understanding with some strong degree of certainty is
 5 that all external partners outside of the ones that I had
 6 a close relationship with left in January of 2012.
 7 Q And what about the – Tim Strelitz?
 8 A He would be included in there.
 9 Q Okay. So for the investors that remained after
 10 January 2012, whoever they are, how – how were
 11 investments made on their behalf? On the fund's behalf?
 12 A We essentially just held the assets.
 13 Q Who's "we"?
 14 A All of us by consensus.
 15 Q "All of us" being all of the investors or just
 16 you, your father and Jim Hull?
 17 A All of the investors.
 18 Q Okay. And were any trades made in 2012?
 19 A I think trades were made, yes.
 20 Q And who – who effectuated those trades?
 21 A I did.
 22 Q Okay. And how did you do it?
 23 A Through – I think we still had a Garwood
 24 account at this time.
 25 Q Okay. And did you do it through an automated

1 electronic order system?
 2 A Yes.
 3 Q And how did you access it?
 4 A The Internet. I mean, computer.
 5 Q It's a web based –
 6 A Yes.
 7 Q Okay. So you could log into an account at
 8 Garwood and make trades – enter trade orders?
 9 A I believe so.
 10 Q Okay. Did anybody else?
 11 A I might have – I might have done them all over
 12 email, as well.
 13 Q Okay.
 14 A I don't recall.
 15 Q Did anyone other than you order trade on behalf
 16 of GISF in 2012?
 17 A No, sir.
 18 Q Okay.
 19 MR. BAGNALL: Anything else?
 20 MR. BOHR: I have one. I would like to put in
 21 final document.
 22 MR. BAGNALL: Well, anything else in 2012
 23 before we turn to –
 24 MR. BOHR: No.
 25 MR. BAGNALL: Okay.

1 MR. BOHR: Okay, so I'm handing the court
 2 reporter, Mr. Gibson, an exhibit that will be marked as
 3 Exhibit 109.
 4 (SEC Exhibit No. 109 was marked
 5 for identification.)
 6 BY MR. BOHR:
 7 Q And for the record, Exhibit 109 is Bates
 8 numbered GISF000103037 –
 9 A Okay.
 10 Q – through 040, and it's an email chain that
 11 starts on November 7, 2012, and it concludes on November
 12 13, 2012, with an email from J. Gibson, email address
 13 jgibson@hullstoreygibson.com, to you, Chris Gibson, email
 14 address cg@geterfund.com.
 15 Do you recognize Exhibit 109, sir?
 16 A Yes.
 17 Q Do you recall receiving Exhibit 109?
 18 A Yes.
 19 Q And I would just like to read what your father
 20 writes at the top in the final installment of this email
 21 chain. "Agree. This is the best. Make yourself proud
 22 with every communication. He will be extreme and WANTS,"
 23 "wants" is in all caps, "to provoke you. He will make
 24 false statements. Be calm."
 25 Did I read that correctly?

1 A Yes.

2 Q Who is that referring to?

3 A As I understand it, Jim Hull.

4 Q And what do you recall about that

5 communication?

6 A I recall a general environment of just

7 extraordinary disappointment by Jim Hull and me. And a

8 frustrating sentiment for myself in that I was not able

9 to deliver outcomes that were desirable for him.

10 Q And did your father write these words and email

11 these to you?

12 A Yes.

13 Q Okay. I have nothing further on Exhibit 109.

14 BY MR. BAGNALL:

15 Q So just, if you could, on Exhibit 109, if you

16 look at the bottom of page ending 03 –

17 A Okay.

18 Q – there's an email on Wednesday, November 7,

19 2012 from Mason McKnight, IV.

20 A Yeah.

21 Q "Perhaps now that the election is over what is

22 going on with the fund? We have not heard from you in a

23 while."

24 Was – is he referring to GISF?

25 A Yes.

1 Q Is he still an investor in GISF –

2 A He –

3 Q – in November 2012?

4 A He must be.

5 Q Okay. So after having seen this, are you – do

6 you have a better understanding of when and who remained

7 in the fund, GISF, throughout 2012?

8 A Yes, sir, there must have been a few of the

9 McKnights and perhaps John Engler, and must – the final

10 wind down must have been in January of 2013.

11 Q Okay. And so does that fact cause you to want

12 to change of the testimony that you've given previously

13 today about what effort you gave or what services you

14 provided to the fund throughout 2012?

15 A Yes. I – I guess this all went on for another

16 year longer than I had – had previously recollected. So

17 I don't think we did a lot of trading. I think we – we

18 basically were just holding for all intents and purposes,

19 and you know, and under the view that, you know, in the

20 next month or two or three, you know, things had to turn

21 around and things did not turn around, and it continued

22 to be a poor performance.

23 Q Okay. How about your testimony in connection

24 with the dissolution of Geier Capital Delaware in

25 December of 2011?

1 A Right.

2 Q You testified then that, paraphrasing, it was

3 sort of not that big of a deal because most people were

4 out within the next 30 days. Do you recall – testifying

5 to something to that effect?

6 A I would say that –

7 Q Do you recall testifying to something to that

8 effect?

9 A I –

10 MR. FERRIGNO: It's not very precise, so –

11 THE WITNESS: Yeah.

12 MR. FERRIGNO: It's a little hard to –

13 THE WITNESS: I recall saying that the time

14 between the dissolution of Geier Capital Delaware, LLC

15 and the first redemption period was 38 days, yes.

16 MR. BAGNALL: Okay.

17 BY MR. BAGNALL:

18 Q And does having read Exhibit 109 cause you to

19 want to change any testimony in relate – in regard to

20 that topic?

21 A No. I've remained consistent that a new legal

22 entity, an LLC, assumed responsibility. And that I don't

23 recall and wasn't, you know, a part of the discussions

24 that made that determination. But I understood it to be

25 and understand it to be today to be, you know, consistent

1 in terms of ownership and management as Geier Capital.

2 Q Okay.

3 MR. BOHR: One clean up question. I want to

4 make this clear. We may have danced around this topic,

5 Mr. Gibson previously, so I apologize.

6 BY MR. BOHR:

7 Q But did you ever have any, sort of, advisory

8 services agreement, management services agreement,

9 consulting agreement, any sort of agreement memorializing

10 the services that you would provide in your personal

11 capacity to Geier Group – to either Geier Group or Geier

12 Capital?

13 A No, sir.

14 Q Did Geier Group or Geier Capital, as entities,

15 did either or both of them ever have any sort of

16 agreement, management services agreement, advisory

17 agreement, consulting agreement, any other sort of

18 agreement documenting the services that they would

19 provide to – that any of them would provide to GISF?

20 Other than the LLC operating agreement, the subscription

21 agreement, and the confidential private offering

22 memorandum?

23 A No, sir.

24 Q Thank you.

25 MR. BAGNALL: Anybody have anything else?

1 (No response.)
 2 BY MR. BAGNALL:
 3 Q Okay, we have no further questions at this
 4 time. We may, however, call you again to testify in this
 5 investigation. Should this be necessary, we will contact
 6 Mr. Ferrigno.
 7 Mr. Gibson, do you wish to clarify any of the
 8 statements you have made today?
 9 MR. FERRIGNO: I have a couple questions for
 10 him.
 11 MR. BAGNALL: Well, we'll get to that in just a
 12 second.
 13 BY MR. BAGNALL:
 14 Q Do you have, you personally?
 15 A Should -- can I do mine after he asks his
 16 questions? Or?
 17 Q Did -- well, do --
 18 A Oh, to clarify anything that I've said?
 19 MR. FERRIGNO: Well, we do want to clarify
 20 something that he said.
 21 MR. BAGNALL: Okay. Well, you want to ask him
 22 some questions, right?
 23 MR. FERRIGNO: I'll ask, yeah. I'll just --
 24 yes.
 25 BY MR. BAGNALL:

1 Q All right, so do you want to personally clarify
 2 anything you said today?
 3 A In answering his questions, yes.
 4 Q Okay. Do you wish to add anything to the
 5 record?
 6 A Yes.
 7 Q Okay. And do you want to do that the same way?
 8 A Yes.
 9 Q Okay.
 10 MR. BAGNALL: Mr. Ferrigno, do you wish to ask
 11 some clarifying questions at this time?
 12 MR. FERRIGNO: Yes.
 13 MR. BAGNALL: Okay.
 14 MR. FERRIGNO: Just a small number.
 15 MR. BAGNALL: Please go ahead.
 16 MR. FERRIGNO: Mr. Gibson, during your
 17 testimony today, the staff asked you certain questions
 18 regarding FIFO and LIFO, and also asked questions related
 19 to the fund's acquisition of securities from Jim Hull and
 20 losses incurred on the sale of shares acquired from Mr.
 21 Hull.
 22 When you were involved in the management of
 23 Geier, how did you view gains or losses on securities
 24 positions?
 25 THE WITNESS: That the average price over the

1 relevant periods of time would be the appropriate way to
 2 determine the economic gains or losses.
 3 BY MR. BAGNALL:
 4 Q And where was that experience gained?
 5 MR. FERRIGNO: My question was during -- when
 6 he was involved in the fund.
 7 MR. BAGNALL: Okay.
 8 THE WITNESS: And that --
 9 BY MR. BAGNALL:
 10 Q You said "you experience." What, a trade?
 11 A Yes. And my experience is based upon, you
 12 know, mathematics and what is not arbitrary, which I
 13 would characterize as the tax treatment.
 14 MR. FERRIGNO: Okay. Mr. Gibson, on or about
 15 November 9, 2010, did you have a discussion with your
 16 father regarding the securities in TRX and securities
 17 related to TRX that he held outside of the fund?
 18 THE WITNESS: Yes.
 19 MR. BAGNALL: Do you mean 2011? You said 2010.
 20 MR. FERRIGNO: I'm sorry, 2011. Thank you.
 21 THE WITNESS: Thank you.
 22 MR. FERRIGNO: Do you recall that discussion?
 23 THE WITNESS: Yes.
 24 MR. FERRIGNO: Do you recall the directions
 25 that you gave him?

1 THE WITNESS: Yes.
 2 MR. FERRIGNO: What were they?
 3 THE WITNESS: They were to effectively sell
 4 that position. And the methodology by which he would
 5 sell the position was to buy a put, sell the stock, and
 6 then sell the put. And in that manner, essentially
 7 hedged the position before he actually sold the shares.
 8 It was a very, very minor distinction, but to be very
 9 clear, he never even in the context of that outside
 10 account had a short position against TRX. The put that
 11 he purchased only hedged the shares he had in that
 12 account. And it effectively was the sale of the stock.
 13 MR. FERRIGNO: Okay. And --
 14 MR. BAGNALL: Sorry.
 15 BY MR. BAGNALL:
 16 Q Why did you want him to buy a put? Let me --
 17 let me ask you this: did you want him to buy a put on the
 18 9th of November, 2011, sell his shares and then sell the
 19 puts that he bought on the 9th? All on the same day?
 20 A Yes.
 21 Q Why -- what would be the point of buying a put
 22 and selling it the same day?
 23 A Well, buying the put would hedge the position.
 24 And then selling the shares and selling the put
 25 essentially simultaneously would liquidate the -- the

1 remaining position

2 Q So what are you hedging against by buying the
3 put?

4 A The long position of shares

5 Q In what eventuality?

6 A The stock going down

7 Q Okay. And over what period of time would you
8 expect him to have sold out his holdings?

9 A I was expecting it to be effectively -- you
10 know, certainly the same day. But you know, almost
11 contemporaneously

12 Q So you were worried about an almost
13 contemporaneous drop in the share price of TRX, such that
14 it needed to be hedge in a put that was purchased just
15 before the sale and closed out just after he sold it?

16 A In retrospect, it really made no sense because
17 the limited volume of what he was doing. But that was in
18 the moment and -- of being constrained by time that I --
19 the guidance I gave

20 Q Okay. So -- so how would he be protected by
21 executing the order in the way you told him if things had
22 gone in the absolute worst case scenario?

23 A What do you mean by the worst case scenario?

24 Q What's the worst case scenario? What were you
25 trying to hedge against?

1 A He -- there's really -- he could have just sold
2 the stock

3 Q Right

4 A There's really -- the only difference is that
5 he ended up paying a premium for -- for the hedge, as
6 well. I don't think it really did protect him at all

7 Q But he actually did much better, right, because
8 he ended up selling the puts the following day when they
9 vastly more profitable, right?

10 A Because the broker failed to actually carry out
11 the order and ended -- on a very delayed basis

12 Q But is it possible the broker looked at the
13 order and thought this must be a mistake, he must want me
14 to sell this later?

15 A I -- that would be very surprising to me. I'm
16 not sure why -- how you couldn't do it then.

17 Q Well, at the end of the day when you look back
18 on what happened, the broker -- the way it was executed
19 turned out to be much better for your father than the
20 way -- then if it had been executed the way you directed
21 him to do it. Was it not?

22 A That's absolutely correct.

23 Q Okay.

24 A But I have -- I would not say that any broker
25 would reasonably draw the conclusion that you did.

1 Q Did your father complain to PNC to your
2 knowledge?

3 A That's not custom -- that's not how he
4 approaches those types of things.

5 Q Okay. Did you -- did you tell him that he
6 should complain that his order was executed poorly?

7 A I told him it was done very badly.

8 Q Did you tell him to complain to PNC?

9 A No.

10 Q Okay. And do you know whether he did complain
11 to PNC or not? You said he wouldn't do it, that's not
12 the way he normally does it. But in this situation do
13 you know specifically whether he complained?

14 A I don't.

15 Q Okay.

16 BY MR. BOHR:

17 Q Can I understand what you said? You said your
18 strategy is you encouraged your father to execute it, was
19 to buy a put, sell the shares, and sell the put all in
20 the same day; correct?

21 A Yes, sir.

22 Q And did I understand that the purchase of the
23 put was to give him some hedge; is that correct?

24 A Yes.

25 Q Okay. So the --

1 A That -- I'm sorry.

2 Q Go ahead.

3 A That would effectively effect the sale of the
4 share. That he would lock his -- it would lock the sale
5 price. Buy -- once he bought the put, the price at which
6 he sold the stock would be done.

7 In some ways I had very little confidence in
8 PNC and the relationship. The way that that account was
9 managed was that, in my experience previously with trades
10 my mom had done through PNC, was that they would get an
11 order and they would sit on it for a day. I mean, could
12 have -- who knows how long it could be. And so I thought
13 that the best way of, sort of, managing that would be as
14 long as they bought the hedge first, then things would be
15 okay.

16 Q So the \$4 put was a useful hedge for him while
17 he was getting ready to sell the TRX shares?

18 A Well, assuming that they mess something up,
19 which they ended up doing.

20 MR. BAGNALL: Okay, Mr. Ferrigno, do you have
21 anything else?

22 MR. FERRIGNO: Yes. Last question. Mr.
23 Gibson, during your testimony in, I believe, it was March
24 2015, there were some questions and responses --
25 questions by the staff and responses by you in which the

1 term, I believe the term "short position" was used in the
 2 context of your holdings in TRX. And did you have
 3 short -- at any time have a short position in TRX?
 4 THE WITNESS: Never. At no time did I have a
 5 short position in TRX. And that was inaccurate to the
 6 degree I said that.
 7 BY MR. BAGNALL:
 8 Q Did -- do you mean in the aggregate?
 9 A Yes.
 10 Q Did you have individual assets that were
 11 related to TRX that would be considered a short trade?
 12 A No. I think I was long puts that hedged my
 13 long inventory in TRX to a modest degree.
 14 Q So when bought a put that was not a short
 15 position?
 16 A It had a -- a characteristic whereby the value
 17 of the put was inversely related to the share price of
 18 the underlying security, namely TRX.
 19 Q Okay. So in other words, you bought a put at
 20 \$4 and that would be profitable and more profitable the
 21 further down TRX's share price dropped, right?
 22 A It would never be profitable. But it would
 23 rise in value as the share price went down.
 24 Q That one trade --
 25 A In order --

1 Q -- focusing --
 2 A -- in order to offset the long position, yes.
 3 Q Okay. Focusing on just buying the puts,
 4 though, right, they would be -- that trade, buying a
 5 put --
 6 A Right.
 7 Q -- excluding all -- any other holdings you may
 8 have in your personal account or in the fund account, is
 9 profitable when the price of TRX drops; correct?
 10 A If you limit it to that incomplete picture,
 11 correct.
 12 Q Okay.
 13 MR. FERRIGNO: Okay. Anything else on that?
 14 Okay. We're done.
 15 MR. BAGNALL: All right, anybody have anything
 16 else?
 17 (No response.)
 18 MR. BAGNALL: Okay, we'll go off the record at
 19 7:26 p.m., December 31, 2015.
 20 (Whereupon, at 7:26 p.m., the examination was
 21 concluded.)
 22 *****
 23
 24
 25

PROOFREADER'S CERTIFICATE

1
 2
 3 In The Matter of: GEIER INTERNATIONAL STRATEGIES
 4 Witness: Christopher Gibson
 5 File Number: HO-12361-A
 6 Date: Monday, December 21, 2015
 7 Location: Washington, D.C.
 8 This is to certify that I, Maria E. Paulsen,
 9 (the undersigned), do hereby swear and affirm that the
 10 attached proceedings before the U.S. Securities and
 11 Exchange Commission were held according to the record and
 12 that this is the original, complete, true and accurate
 13 transcript that has been compared to the reporting or
 14 recording accomplished at the hearing.
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 16 _____
 17 (Proofreader's Name) (Date)
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 25

REPORTER'S CERTIFICATE

1
 2 I, Kevin Carr reporter, hereby certify that the foregoing
 3 transcript of 507 pages is a complete, true and accurate
 4 transcript of the testimony indicated, held on December
 5 21, 2015, at Washington, D.C. in the matter of:
 6 Geier International Strategies.
 7
 8 I further certify that this proceeding was recorded by
 9 me, and that the foregoing transcript has been prepared
 10 under my direction.
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