

Matthew P. Hoxsie
Tel (602) 445-8471
hoxsiem@gtlaw.com

February 1, 2021

VIA ELECTRONIC MAIL

Office of the Secretary
U.S. Securities and Exchange Commission
Room 10915
100 F Street NW
Washington, DC 20549
apfilings@sec.gov

Colleen Durbin
Office of General Counsel
FINRA
1735 K Street, N.W.
Washington, DC 20006
colleen.durbin@finra.org

Re: Robbi J. Jones and Kipling Jones Company, Ltd.
Administrative Proceeding No. 3-20209

Dear Sir or Madam:

Enclosed please find Appellants' Reply in Support of Motion for Stay in the above-captioned matter. Pursuant to Exchange Act Release No. 88415, Appellants' previously filed Notice of Appeal, and FINRA's Unopposed Motion to Extend Time for Filing the Certified Record, the parties have agreed to accept electronic service of filings in this matter.

Sincerely,

By: /s/ Matthew P. Hoxsie
Steven M. Felsenstein
William B. Mack
Matthew P. Hoxsie

Greenberg Traurig, LLP | Attorneys at Law

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U.S. SECURITIES & EXCHANGE COMMISSION

In the Matter of the Appeal of

DEPARTMENT OF ENFORCEMENT,

Complainant,

vs.

ROBBI J. JONES

Houston, TX,

and

KIPLING JONES & COMPANY, LTD.

Houston, TX

Respondents.

**REPLY IN SUPPORT OF MOTION
FOR STAY**

**OF NAC Decision in
Complaint No. 2015044782401
Robbi J. Jones &
Kipling Jones & Company, Ltd.**

Administrative Proceeding No. 3-20209

**DATE OF SERVICE
February 1, 2021**

ORAL ARGUMENT REQUESTED

The Brief in Opposition to Motion to Stay only continues FINRA's persecution of Ms. Jones and its skewing of the actual evidence in this case. Contrary to FINRA's claims, Ms. Jones demonstrates a strong likelihood of success on the merits, raises serious legal questions, and will suffer irreparable injury should the stay be denied. Furthermore, there is no harm to investors or prejudice to either FINRA or the public interest should the stay be granted. All factors weigh in favor of granting the Motion for Stay.

I. Ms. Jones Demonstrates a Likelihood of Success on the Merits and Raises Serious Legal Questions.¹

The first factor is framed in the alternative. An appellant must either demonstrate a likelihood of success on the merits or raise a serious legal question. *See Bruce Zipper*, Exchange

¹ To the extent the Certified Record has not yet been transmitted to the Commission, Appellants cite the NAC Decision, attached as Appendix A to FINRA's Brief in Opposition, the Hearing Panel's Decision, attached as Appendix B to FINRA's Brief in Opposition, and relevant transcript portions, attached herein as Appendix 1 to the Reply.

Act Release No. 82158, 2017 SEC LEXIS 3706, at *19–21 (Nov. 27, 2017). At the motion to stay stage, the analysis of this factor is necessarily preliminary. That being said, Ms. Jones has done both.

First, Ms. Jones demonstrates a strong likelihood of success on the merits because the sanctions imposed against Ms. Jones are “at a minimum excessive and therefore punitive” and “warrant[] reversal.” *See* Motion for Stay at 1–2; *Siegel v. SEC*, 592 F.3d 147, 157 (D.C. Cir. 2010) (stating punitive sanctions do not comply with the statutory requirements); *PAZ Securities, Inc. v. SEC*, 494 F.3d 1059, 1065–66 (D.C. Cir. 2007) (stating that “as the circumstances in a case suggesting that a sanction is excessive and inappropriately punitive become more evident, the Commission must provide a more detailed explanation” justifying the bar). As FINRA has done throughout the proceedings below, here too FINRA skews the record in a continued attempt to force the securities industry equivalent of the death penalty on Ms. Jones and KJC for what it acknowledges were partial but incomplete answers, *see Dep’t of Enforcement v. Craig Scott Hartman*, No. 2016052604602 (OHO Nov. 11, 2018) (respondent fined \$5,000 and suspended four months for failing to provide documents and information requested pursuant to FINRA Rule 8210), and inaccurate FOCUS Reports, *see Dep’t of Enforcement v. Rani T. Jarkus & William H. Carson*, No. 2009017899801 (OHO Feb. 7, 2014) (respondent suspended two months, fined \$5,000 for filing inaccurate FOCUS Reports); *Dep’t of Enforcement v. Richard Novack*, No. 2009016159103 (OHO Aug. 12, 2013) (respondent suspended for one year and fined \$25,000 for approving inaccurate FOCUS Reports). FINRA’s lifetime bars here inflict punishment far beyond any remedial purpose. *See* Notice of Appeal #s 7 and 8.

Specifically, while FINRA claims Ms. Jones lied regarding the CD in question and suggests improper motive, Ms. Jones consistently testified that she did not borrow against or pledge the CD

to her knowledge and that it was used as security for the personal loan without her knowledge. [Tr. 1235] In a similar vein, CNB’s President himself acknowledged that CNB would not have ensured that notice of the CD’s closure was conveyed, [Tr. 537–38] – to which the Hearing Panel concluded that there was “no evidence that Jones or KJC received contemporary notice of the cancellation of the CD.” Hearing Panel Decision II.B.5. It is unsurprising, therefore, that Ms. Jones honestly believed that the CD was an allowable asset which rolled over on December 30, 2014. [Tr. 1039, 1044]² Nevertheless, the Hearing Panel erroneously concluded that Ms. Jones knew that she had pledged the CD and therefore that her “omi[ssions]” were intended to be “misleading,” Hearing Panel Decision II.D.1.a, and that any violations were “willful.”³ And the NAC panel’s adoption of that finding – “Knowing that the bank had canceled the CD, Jones nonetheless testified that she had never pledged or assigned the CD as collateral” – was equally erroneous. NAC Decision at 2; *see also id.* at 11 (concluding KJC’s violation of Section 17(a) of the Exchange Act was “willful” as a result); *id.* at 14 (stating Ms. Jones “knew that CD-0331 was not an allowable asset”). Again, her uncontroverted testimony was that she did not know.⁴

² In keeping with Ms. Jones’ testimony and with the actual evidence presented, the Hearing Panel concluded FINRA had failed to prove underlying allegations: that Ms. Jones falsely represented that she first learned in March 2015 that the 2011 CD was not in place on September 30, 2014; that Ms. Jones falsely represented she first learned in March 2015 that the 2011 CD had been pledged as collateral for the loan; and that Ms. Jones falsely represented when she learned that the 2011 CD had been used to satisfy the loan. Hearing Panel Decision III.C.8, 9, 10. Relatedly, the NAC restated that, while Enforcement alleged 10 misstatements under cause three, the Hearing Panel determined it had proven just 2. NAC Decision at 9 n.4. The NAC’s imposition of such severe sanctions is, accordingly, in error.

³ Most importantly, FINRA never actually charged Ms. Jones with a net capital violation. [Tr. 602, 624]

⁴ It is highly questionable why the NAC utilized the Sanction Guidelines for forgery given there were no allegations in this case. *See* FINRA Sanction Guidelines 37 (Oct. 2020), https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf (discussing forgery and

As to the City of Houston investigation, Ms. Jones' uncontroverted testimony evidenced that Houston asked for records of all flights, which Ms. Jones provided. [Tr. 1126, 1231–32] While FINRA led the Panel and the NAC to believe there was a City of Houston credit card in her name, FINRA examiner Hartman testified he learned only that she purportedly had “access” to it, [Tr. 937–40] which Hartman speculated might have meant she took it from a Houston office or copied the card's numbers. The point is, FINRA didn't actually know or prove anything. Rather, their testimony was based on recollected conversations from years earlier and relied on hearsay (or double hearsay). [Tr. 149–53, 187–88, 270–72] More importantly, the City of Houston did not charge Ms. Jones and has continued to work with Ms. Jones in numerous capacities.

As to the production of documents and responses to FINRA's requests, Ms. Jones was plagued by health problems and severe life events, [Tr. 769] CNB's own failure to provide documents, [Tr. 468–88] and other difficulties. Despite these difficulties, Ms. Jones acknowledged she could have been better. [Tr. 1282] In fact it should be noted that FINRA examiner Duhon actually thanked Ms. Jones for her help. [Tr. 271] To that latter point, FINRA ignores the many steps Ms. Jones actively took to assist with FINRA's investigation, for example: she signed authorizations for CNB to provide documents in response to FINRA's requests, [Tr. 808] and she provided FINRA with the City of Houston's contact information in the first place. [Tr. 279] As to the OTR, the NAC acknowledged, albeit in a footnote, that Ms. Jones “answered many questions posed at her OTR and ultimately provided . . . the information that she refused to provide at her OTR” regarding her mother's health. NAC Decision at 38 n.236. This is not a case in which the respondent failed to comply with the requests. And as to her mother's health, the NAC found that

falsification in terms of affixing a customers' or others' signature to records). Ms. Jones agrees however that Guidelines 29 (for a FINRA 4511 violation) would be applicable.

“Enforcement has not . . . established that [Ms.] Jones’ refusal to testify” on that subject “impeded the staff’s investigation.” NAC Decision at 40.

In light of these facts, the absence of investor harm, Ms. Jones’ prior record, safeguards Ms. Jones put in place to prevent future errors, [Tr. 1331–32] and her acceptance of her mistakes, [Tr. 1282] the sanctions imposed can only be described as punitive.

Further, as Ms. Jones provided in her Notice of Appeal, FINRA and the NAC overlaid Rule 2010 violations on Rule 4511 and 8210 charges and overcharged the response requests under charges two, three, and four. Notice of Appeal #s 1 and 5; [Tr. 1084–85]. This is despite (1) the fact that FINRA Rule 2010 is a catchall best utilized when a specific FINRA Rule doesn’t cover the conduct at issue, and (2) that the only difference in charges two and three was that the requests in charge three cited Rule 8210 specifically while the request in charge two did not. [See Tr. 26] Regardless, FINRA continued to pursue the most extreme punishments, and upon concluding that the same conduct justified both a Rule 4511 or Rule 8210 violation and a Rule 2010 violation, FINRA and the NAC then used the same exact conduct a third time as aggravation – that Ms. Jones attempted to conceal the misconduct by failing to provide complete responses. *See Saad v. SEC*, 873 F.3d 297, 299 (D.C. Cir. 2017).⁵

These latter errors are but some of the overarching examples of the manner in which FINRA deprived Ms. Jones due process. FINRA also infringed upon Ms. Jones’ Fifth Amendment rights by threatening and punishing Ms. Jones when she declined to answer personal questions.

⁵ The NAC also erroneously conflated the provision of incomplete responses with false responses. NAC Decision at 17–18 (citing *Michael A. Rooms*, 58 S.E.C. 220, 229 (2005)). *Rooms* included actual false responses, not incomplete ones as is the worst case here.

Notice of Appeal #s 3 and 4; [Tr. 788–89].⁶ Indeed, throughout the proceedings FINRA acted in a manner which it could not have if it were a state actor.

Accordingly, Ms. Jones raises, as stated in her Motion for Stay, “meaningful and substance challenges to the proceedings and to the appropriateness of the sanctions imposed,” specifically that “FINRA is a state actor” and that “FINRA and the NAC’s panel’s members’ appointment violate the appointment clause.” Notice of Appeal #s 9 and 11. The latter structural flaw is compounded by the fact one of the NAC hearing panel’s members failed to disclose he “was an owner and associated person of a competitor broker-dealer.” Notice of Appeal #1; *see* FINRA Rule 9233 (requiring the recusal of conflicted hearing officers); FINRA: Office of Hearing Officers, *available at* <https://www.finra.org/rules-guidance/adjudication-decisions/office-hearing-officers-oho/about> (“Following appointment, if a Hearing Officer or an industry panelist learns of a conflict of interest or other circumstance in which his or her fairness might reasonably be questioned, he or she must inform the Chief Hearing Officer and withdraw from the matter.”). And the prejudice is apparent given the sanctions were increased by the NAC panel despite FINRA not having cross-appealed.

As to these “serious legal questions,” Ms. Jones equally demonstrates a strong likelihood of success on the merits. As current Commissioner Hester Peirce has noted, “on the strength of a government mandate and carrying out a regulatory mission using government-like tools, FINRA is difficult to distinguish from its patron agency” – the SEC. *The Financial Industry Regulatory Authority: Not Self-Regulation After All, in* Building Responsive and Responsible Financial

⁶ Still further, FINRA appears to have held against Ms. Jones her utilization of counsel during the Houston investigation. *See* Brief in Opposition at 2 (stating Ms. “Jones had paid an attorney to represent her in an investigation conducted by the city of Houston . . .”). Under no circumstance should an individual be punished for seeking counsel.

Regulators in the Aftermath of the Global Financial Crisis 246 (Pablo Iglesias-Rodriguez ed., 2015). FINRA enforces both its own rules and the SEC's, and the SEC oversees FINRA's rulemaking processes, with the ability to modify or deny rules if it so chooses. There is substantial and significant overlap, particularly given prosecution is a traditionally government function. To this point, "the government's intentions with FINRA are highly analogous to the regulatory dynamics" in other cases in which the courts have concluded state action exists – such as *Terry v. Adams*. See Michael Deshmukh, *Is FINRA a State Actor*, 67 Vand. L. Rev. 1173, 1194 (2014). FINRA is, at least in its enforcement and disciplinary role, a state actor.

If FINRA is not a state actor, that presents a potentially more troublesome structural argument because it is impermissible for Congress to delegate regulatory authority to private entities. See *Dep't of Transp. v. Ass'n of Am. R.R.*, 575 U.S. 43, 51 (2015); *Carter v. Carter Coal Co.*, 298 U.S. 238, 311 (1936).

Finally, as to the appointment's clause challenge, the Commission only needs to look to *Free Enterprise Fund v. Public Co. Accounting Oversight Board* for the answer. 561 U.S. 477, 484 (2010) (concluding the Public Company Accounting Oversight Board ("PCAOB") was constitutionally defective). FINRA is constructed in the same constitutionally infirm manner as the PCAOB.

II. Denial of the Motion for Stay Will Cause Irreparable Harm.

To establish irreparable harm, Ms. Jones must show an injury that is "both certain and great" and "actual and not theoretical." *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985). As Ms. Jones stated in her Motion for Stay, she will suffer tremendous and irreparable harm in the form of lost business (both current and future) should the stay be denied. Motion for Stay at 1–2.

The Commission has stated that “the destruction of a business could provide a sufficient basis to support” a finding of irreparable harm. *See Atlantis Internet Grp. Corp.*, Exchange Act Release No. 70620, 2013 WL 5519826 (Oct. 17, 2013); *see also Wash. Metro Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977) (stating that the destruction of a business constituted “irreparable injury” for purposes of stay of permanent injunction); *Scattered Corp.*, 52 S.E.C. 1314, 1320 n.15, 1997 SEC LEXIS 2748, at *15 n.15 (Apr. 28, 1997) (stating “the destruction of a business, absent a stay, is more than just ‘mere’ economic injury, and rises to the level of irreparable injury”); *Wisconsin Gas*, 758 F.2d at 674 (holding that “monetary loss may constitute irreparable harm only where the loss threatens the very existence of the movant’s business”).

III. There is No Potential Harm to Investors or the Public Interest.

Importantly, this is not a case in which investor protections are not in place. *Cf. Richard Allen Riemer, Jr.*, Exchange Act Release No. 82014, 2017 WL 5067462, at *3 (Nov. 3, 2017). Following FINRA’s enforcement, Ms. Jones installed additional security measures to guard against future errors. And as stated in her Motion for Stay, there is no evidence of harm or risk to investors if the stay is granted, Ms. Jones and KJC have no prior disciplinary record, and to the contrary Ms. Jones testified she would maintain the required net capital.

IV. The Balance of Hardships Weighs in Favor of Granting the Stay.

For all the reasons stated above, the balance of hardships tips decidedly in favor of granting the stay. *Citigroup Glob. Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d Cir. 2010); *see also Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986) (explaining that even where the movant does not demonstrate a likelihood of success on the merits on appeal, a motion for a stay may also be “granted upon a lesser showing of a ‘substantial case

on the merits’ when the balance of the equities [identified in factors 2, 3, and 4] weighs heavily in favor of granting the stay” (quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981)); *Scattered Corp.*, 1997 SEC LEXIS 2748, at *11–12 (granting a stay even though it was “unclear . . . due to the complexity” of the case “whether applicants [had] met their burden of showing there is a strong likelihood” of success, because “the applicants have shown this to be a substantial case on the merits and . . . the other three factors” favor granting a stay).

V. Conclusion

The interests of justice weigh in favor of a stay. For these reasons, Appellants respectfully requests the Commission grant its motion to stay enforcement of the bars pending review.

Dated: February 1, 2021

Respectfully submitted,

/s/ Steven M. Felsenstein
Steven M. Felsenstein, Esq.
Greenberg Traurig, LLP
1717 Arch Street
Philadelphia, Pennsylvania 19103
(215) 988-7837
felsensteins@gtlaw.com

/s/ William B. Mack
William B. Mack
Greenberg Traurig, LLP
200 Park Avenue
New York, NY 10166
(212) 801-2230
mackw@gtlaw.com

/s/ Matthew P. Hoxsie
Matthew P. Hoxsie
Greenberg Traurig, LLP
2375 East Camelback Road, Suite 700
Phoenix, AZ 85016
(602) 445-8471
hoxsiem@gtlaw.com

U.S. SECURITIES & EXCHANGE COMMISSION

In the Matter of the Appeal of

CERTIFICATE OF SERVICE

DEPARTMENT OF ENFORCEMENT,

Complainant,

vs.

ROBBI J. JONES
Houston, TX,

and

KIPLING JONES & COMPANY, LTD.
Houston, TX

Respondents.

I, Matthew P. Hoxsie, being of full age, hereby certify:

1. I am an Associate in the firm of Greenberg Traurig, LLP.
2. On February 1, 2021, I caused electronic copies of APPELLANTS' REPLY IN SUPPORT OF MOTION FOR STAY to be serve via email to the following:

The Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Room 10915
Washington, D.C. 20549
apfilings@sec.gov

and

Colleen Durbin
Office of General Counsel
FINRA
1735 K Street, N.W.
Washington, D.C. 20006

colleen.durbin@finra.org

3. I certify under penalty of perjury that the foregoing is true and correct.

/s/ Matthew P. Hoxsie

Matthew P. Hoxsie

Greenberg Traurig, LLP

2375 East Camelback Road, Suite 700

Phoenix, AZ 85016

hoxsiem@gtlaw.com

Appendix 1

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1 Act.
 2 The second cause of action also
 3 charges Rule 2010. This is based on the
 4 provision of inaccurate and misleading
 5 information to FINRA staff in response
 6 to verbal requests and written requests
 7 for information that were -- that did
 8 not specifically cite Rule 8210.
 9 Cause of action number three is
 10 similar. It's also based on the
 11 provision of inaccurate information to
 12 FINRA staff in response to questions,
 13 but those requests, the requests that
 14 are the subject of the third cause of
 15 action were those that specifically
 16 cited Rule 8210.
 17 So that is why we have cause of
 18 action number two and three. The only
 19 difference between the two is that the
 20 requests that are the subject of the
 21 third cause of action specifically cited
 22 Rule 8210. Those in the second did not.
 23 And then we get to the fourth cause
 24 of action. This is also -- This is a
 25 Rule 2010, 8210 charge like the third,

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1 but it is based on Mrs. Jones' refusal
 2 to answer questions at her OTR.
 3 The evidence we will present we think
 4 clearly shows that Ms. Jones' misconduct
 5 was not the result of negligence,
 6 sloppiness, or lack of knowledge of
 7 financial reporting requirements.
 8 The evidence shows a deliberate
 9 extended effort by Ms. Jones to mislead
 10 FINRA staff and to thwart their
 11 investigation. This is extremely
 12 serious misconduct.
 13 For reasons we will more fully
 14 address in our closing arguments,
 15 Enforcement is seeking a bar for Ms.
 16 Jones' misconduct as well as a censure
 17 and a fine against Kipling Jones.
 18 Thank you.
 19 MR. WINER:
 20 Did you indicate that one of the 2010
 21 causes of action was against the firm as
 22 well as against Ms. Jones?
 23 MR. FERNANDEZ:
 24 I'm sorry, sir?
 25 MR. WINER:

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1 Is one of the -- I may have
 2 misunderstood.
 3 Is one of the misrepresentation
 4 causes of action against the firm?
 5 MR. FERNANDEZ:
 6 No.
 7 MR. WINER:
 8 Okay. I misunderstood.
 9 Respondents, what's your decision?
 10 MR. BRODSKY:
 11 We defer.
 12 MR. WINER:
 13 We will move into the evidentiary
 14 phase. Before we do I want to state
 15 that what witnesses testify to, what
 16 they are asked, and what they say and
 17 the exhibits is all confidential.
 18 I would ask -- Sorry. I know Ms.
 19 Gwendolyn Jones' name. I don't know the
 20 name of the other individual.
 21 MR. BRODSKY:
 22 Courtney Miller.
 23 MR. WINER:
 24 Can you each commit to keeping
 25 confidential what happens here in

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1 discussing with no one other than Ms.
 2 Robbi Jones and her counsel?
 3 COURTNEY MILLER:
 4 Yes. Yes.
 5 MR. WINER:
 6 Ms. Gwendolyn Jones?
 7 GWENDOLYN JONES:
 8 Yes.
 9 MR. WINER:
 10 Thank you. Unless there's anything
 11 else we should address, Enforcement, you
 12 want to call your first witness?
 13 MR. FERNANDEZ:
 14 We will.
 15 I would like to just make one
 16 correction. I think I misspoke.
 17 In the opening statement where I
 18 meant the cashing of the CD I think I
 19 said March, 2013. I meant to say March,
 20 2014. So I hope that didn't cause any
 21 confusion.
 22 If you will allow me, our first
 23 witness, Ms. Phyllis Duhon, is here. I
 24 can go get her and bring her in.
 25 MR. WINER:

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1 Bank certificate of deposit.
 2 Q. I offer CX-62.
 3 MR. WINER:
 4 Was there any objection to CX-62?
 5 MR. BRODSKY:
 6 None.
 7 MR. WINER:
 8 CX-62 is admitted.
 9 MR. BRODSKY:
 10 Can I take a three-minute break?
 11 MR. WINER:
 12 Sure.
 13 MR. BRODSKY:
 14 Thank you.
 15 (Off the record.)
 16 MR. WINER:
 17 You may resume, Enforcement.
 18 MR. FERNANDEZ:
 19 Thank you.
 20 EXAMINATION BY MR. FERNANDEZ:
 21 Q. Ms. Duhon, would you turn to CX-63?
 22 A. Okay.
 23 Q. Do you recognize this document?
 24 A. I do.
 25 Q. What is it?

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1 A. It's communication from Ms. Jones to myself on
 2 Friday, March 13, 2015.
 3 Q. I offer CX-63.
 4 MR. WINER:
 5 Was there any objection to CX-63?
 6 MR. BRODSKY:
 7 No.
 8 MR. WINER:
 9 CX-63 is admitted.
 10 EXAMINATION BY MR. FERNANDEZ:
 11 Q. Would you turn, please, to CX-64?
 12 Do you recognize CX-64?
 13 A. I do.
 14 Q. What is it?
 15 A. It's a communication between -- e-mail
 16 communication between Sherise Mosley and
 17 myself on Friday, March 13th, and previous to
 18 that March 4, 2015.
 19 Q. Who is Sherise Mosley?
 20 A. Sherise Mosley is with the controller's office
 21 with the City of Houston.
 22 Q. Did you ever speak with Ms. Mosley?
 23 A. I did.
 24 Q. I offer CX-64.
 25 MR. WINER:

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1 Was there any objection to CX-64?
 2 MR. BRODSKY:
 3 No.
 4 MR. WINER:
 5 CX-64 is admitted.
 6 EXAMINATION BY MR. FERNANDEZ:
 7 Q. Tell us about your discussion with Ms. Mosley.
 8 A. We were still reviewing the City of Houston
 9 inquiry at this point in time when on March
 10 4th I reached out to Ms. Mosley to gather any
 11 additional information that I could get
 12 directly from the City of Houston regarding
 13 the airfare expenses on the city's credit card
 14 for the airfare, tickets that were purchased
 15 in Ms. Jones' name.
 16 I called the controller's office and asked
 17 for Ms. Mosley and she took my call on that
 18 day, and I told her who I was and that we were
 19 conducting a cycle examination and that I had
 20 questions regarding the City of Houston
 21 inquiry into the airfare tickets purchased
 22 by -- purchased by the city that showed --
 23 that were in Ms. Jones' name.
 24 Ms. Mosley stated that, yes, there was an
 25 inquiry, that an employee in the controller's

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1 office had come to Ms. Mosley when reconciling
 2 an account, and had noted that there was an
 3 airfare ticket that was purchased in Ms.
 4 Jones' name that could not be reconciled, and
 5 then --
 6 MR. BRODSKY:
 7 I object to this testimony of what
 8 someone told her as rank hearsay.
 9 MR. WINER:
 10 Enforcement?
 11 MR. FERNANDEZ:
 12 We agree it's hearsay. Of course,
 13 hearsay is permitted in FINRA
 14 proceedings and it is entitled to get
 15 whatever weight it deserves.
 16 In this particular case, FINRA is
 17 powerless to compel the testimony of the
 18 other side of the conversation here.
 19 So it's relevant to the issues, and
 20 the panel, if they admit it, can just
 21 give it the weight they believe it
 22 deserves.
 23 MR. WINER:
 24 Yes. Well, as you know, it's
 25 admissible under some circumstances, but

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1 it's not -- there are a number of
 2 factors to be considered as to whether
 3 it is relevant.
 4 MR. FERNANDEZ:
 5 The relevance -- Well --
 6 MR. WINER:
 7 I understand the relevance issue.
 8 MR. FERNANDEZ:
 9 Okay. And moving along to the
 10 relevance issue, as far as whether its
 11 value would be -- you know, whether it
 12 be unduly prejudicial or unfair, Ms.
 13 Jones certainly will have the
 14 opportunity to address this issue and
 15 testify as to her recollection of what
 16 she knows about the City of Houston
 17 inquiry, and whether she was in contact
 18 with the City of Houston and
 19 controller's office, and if so, what she
 20 discussed with them and her dealings
 21 with them.
 22 Any prejudice at all certainly would
 23 be overcome by the opportunity that she
 24 has to address the issue herself, and
 25 certainly counsel will have his

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1 opportunity to cross-examine Ms. Duhon
 2 on this particular issue.
 3 MR. WINER:
 4 Did Enforcement seek to obtain a
 5 statement from Ms. Mosley in connection
 6 with this proceeding?
 7 MR. FERNANDEZ:
 8 Enforcement did not.
 9 I'm not -- But I am not speaking for
 10 whether member regulation did or did
 11 not. Just Enforcement.
 12 So my answer is no, Enforcement did
 13 not.
 14 MR. WINER:
 15 Obviously I don't know what the
 16 witness is about to say, but you
 17 probably have some sense.
 18 Are there materials that will
 19 corroborate what she is about to say?
 20 MR. FERNANDEZ:
 21 Yes.
 22 Well, I believe so.
 23 MR. WINER:
 24 Respondents, anything else you want
 25 to say?

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1 MR. BRODSKY:
 2 There's nothing in the record of
 3 which I'm aware that can corroborate
 4 what this witness says that she
 5 remembered over three years ago in a
 6 telephone conversation with somebody
 7 that she had never met, in which this
 8 witness purports to remember details
 9 that this other person provided to her.
 10 There is no document. There is
 11 nothing in the record that we have been
 12 provided, including discovery of which
 13 I'm aware.
 14 If counsel -- I have only been in the
 15 case for a little while, not as long as
 16 counsel, and if counsel has anything to
 17 provide that actually does corroborate
 18 what Ms. Mosley said to Ms. Duhon
 19 allegedly, then I suppose he will come
 20 up with it, but I can tell you from my
 21 knowledge and careful review of the
 22 documents that there is no
 23 corroboration.
 24 Are there documents in the record
 25 that deal with the City of Houston

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1 issue, yes, but notice how carefully
 2 counsel answered your question. I
 3 believe there's a corroboration. There
 4 isn't anything as far as I know.
 5 So we are back to they didn't try to
 6 get her statement, they fought the idea
 7 of having this hearing held in Houston,
 8 where most of the witnesses are other
 9 than the FINRA people, including this
 10 lady, who doesn't even work at FINRA
 11 anymore.
 12 So one of the consequences of that is
 13 we can't get anybody from Houston, even
 14 if we requested and got on our hands and
 15 knees and said please come over and
 16 testify.
 17 So I think it is nothing but hearsay,
 18 and that whatever factors could mitigate
 19 the fact that under the general rules of
 20 evidence, not those of FINRA, it's not
 21 permitted, it doesn't seem to jump
 22 through the hoops necessary to get it
 23 in, particularly on such a relevant
 24 issue.
 25 Thank you.

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1 inquiry came out of.

2 Q. Was there any testimony from Ms. Jones about

3 how the charges for the two airline tickets

4 that had been purchased with the mother's

5 credit card appeared on a statement for the

6 City of Houston?

7 A. Yes.

8 Q. Can you summarize that testimony?

9 A. The two airfares that they were talking about

10 that were charged to Ms. Jones' mother's

11 credit card were Chicago. So part of the

12 questioning was to get down to the fact of

13 which two out of the five.

14 So one was part of a trip to Chicago, and

15 the other one was a trip to Birmingham.

16 Q. Did Ms. Jones offer any explanation during the

17 OTR as far as how the charges for the two

18 airline tickets at issue, if she had purchased

19 them with her mother's credit card, came to

20 appear on a City of Houston credit card

21 statement?

22 A. No. She did not know why airfare tickets that

23 she had purchased with her mother's credit

24 card had shown up on a City of Houston

25 statement.

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1 She did tell us that she met with I

2 believe the controller's office and the Office

3 of Inspector General, and I believe it was the

4 Office of Inspector General that maybe tried

5 to go online and show some information

6 regarding that.

7 But, no, she did not have an explanation

8 of why a charge charged to her mother's credit

9 card could have shown up on the City of

10 Houston's purchase card account.

11 Q. During the OTR was there any -- did Ms. Jones

12 testify -- Well, let me ask you this.

13 CX-66 and CX-67, was there any testimony

14 at the OTR in regards to CX-66 and/or CX-67?

15 A. Yes.

16 Q. And did staff ask questions about those two

17 exhibits?

18 A. Staff asked questions regarding the credit

19 card 2907 for Gwendolyn Jones, and the staff

20 was asking had there been attempts made to get

21 those particular statements related to when

22 those charges would have been on those

23 statements.

24 Ms. Jones indicated that there had been

25 efforts to do that that were unsuccessful.

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1 She had -- I believe she and her sister had

2 worked together maybe with her mother to reach

3 out to get those statements and had been

4 unsuccessful. They couldn't find them in the

5 records otherwise.

6 From there the testimony went on to ask

7 Ms. Jones about her mother with the idea being

8 could those statements still be gotten at this

9 point in time to verify the payments for those

10 airfare tickets on Ms. Gwendolyn Jones'

11 account statements, and the staff asked

12 whether or not Ms. Jones' mother was still

13 alive, and Ms. Jones said that she was not

14 going to respond to any personal questions

15 during the testimony.

16 The question was asked a couple of times

17 to which Ms. Jones responded that she was not

18 going to answer any questions of a personal

19 nature.

20 Q. Why did staff ask the question whether Ms.

21 Jones' mother was alive?

22 MR. BRODSKY:

23 Objection to the form of the

24 question. Lack of foundation.

25 We don't know -- There's no such

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1 thing as the staff. Somebody asked a

2 question. We don't know whether it was

3 she or any of the other three or four

4 people who were there.

5 So I think the question by definition

6 lacks foundation, because we don't even

7 know who asked the question.

8 MR. WINER:

9 Sustained.

10 EXAMINATION BY MR. FERNANDEZ:

11 Q. Who asked the question at the OTR is your

12 mother still alive?

13 A. Tony Cognevich and Mark Fernandez.

14 Q. Do you know why they asked the question?

15 A. Yes.

16 Q. What's your understanding as far as why those

17 two individuals asked that question?

18 A. The question was asked because Ms. Jones had

19 communicated to Odette Woitschek that her

20 mother had passed.

21 Q. Would you tell us about that, please?

22 A. They had a telephone conversation, and in the

23 conversation Ms. Jones had communicated some

24 information to which --

25 MR. BRODSKY:

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1 interest which I haven't -- which I have not
 2 received yet.
 3 Do you see that?
 4 A. Yes.
 5 Q. That's in the third full paragraph of her
 6 e-mail.
 7 And I think Counsel asked you whether or
 8 not she ever sent you that check. Correct?
 9 A. Yes.
 10 Q. She being Robbi Jones. Correct?
 11 A. Yes.
 12 Q. And you said no, she hadn't.
 13 Do you know if she ever received the
 14 check?
 15 A. I don't know.
 16 Q. Look at Exhibit CX-29, please.
 17 And I will ask you -- and do ask you if
 18 you have an actual recollection of sending the
 19 e-mails, starting with the one on December
 20 26th at page 7 of 9?
 21 Do you have an actual recollection of
 22 composing or sending or seeing that e-mail?
 23 A. I'm sorry.
 24 Which one?
 25 Q. The last one, which is the first dated one.

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1 It is on page 7 of 9 of CX-29 at the bottom.
 2 It's really contained mostly on page 8, but
 3 starts at the bottom of page 7.
 4 A. I do recollect that e-mail.
 5 Q. You remember the response.
 6 Do you have an actual recollection of the
 7 e-mail above that --
 8 A. Yes.
 9 Q. -- from Robbi to you?
 10 A. I do.
 11 Q. And do you have an actual recollection of the
 12 December 30th e-mail, just checking in on the
 13 status?
 14 A. I do not have an actual recollection of that.
 15 Q. And you said thanks for your assistance,
 16 Robbi.
 17 And that's because you felt she had been
 18 helpful in trying to get you the information
 19 that you were seeking. Correct?
 20 A. Correct.
 21 Q. Do you remember -- Do you have an actual
 22 recollection of the January 5, 2015, e-mail
 23 continuing with the numbered list?
 24 A. I do not.
 25 Q. Do you have an actual recollection of the

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1 e-mail dated January 7th at the bottom of page
 2 5, the top of page 6, dated January 7, 2015,
 3 saying, Robbi, I received your voicemail
 4 message?
 5 A. What I do recollect about that was the point
 6 that was made, that we were trying to
 7 establish the exit. So I do remember that
 8 e-mail specifically. That was new
 9 information.
 10 Q. Okay. So you do remember this one?
 11 A. I do.
 12 Q. Okay. Take a look at the January 13th e-mail,
 13 3 of 9 at the bottom. January 13, 3:46 p.m.
 14 Do you have an actual recollection of
 15 sending that e-mail?
 16 A. I do not.
 17 Q. Do you remember the message you left her on
 18 her voicemail?
 19 A. I do not.
 20 Q. And do you remember the voicemail message that
 21 she sent you that you referred to in your
 22 January 7th e-mail that you say you remember
 23 back on page 5?
 24 A. I do not.
 25 Q. Take a look at Exhibit CX-30 that was admitted

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1 into evidence. February 3, 2015.
 2 Do you have an actual recollection of
 3 sending that e-mail?
 4 A. I do not.
 5 Q. Were you aware of the fact that at or about
 6 the time that one portion of the City of
 7 Houston was investigating or inquiring about
 8 the possible misuse of the credit card Ms.
 9 Jones or her firm was acting as a financial
 10 advisor to the City of Houston?
 11 A. In retrospect, or at the time I was doing the
 12 examination?
 13 Q. Let's start with at the time.
 14 A. What I was aware of later on in the
 15 examination after receiving documentation from
 16 Ms. Jones was that she had some specific
 17 City -- I mean I knew from having the list of
 18 deals that she had worked on that she had
 19 worked on deals with the City of Houston. I
 20 was aware of that as I was conducting my
 21 reviews as part of the cycle examination.
 22 I was not aware that there was a
 23 corresponding time period between the airfare
 24 expenses that were in question and Ms. Jones'
 25 City of Houston expense, except from Ms.

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1 My delay is to cut down the number of
 2 ones I'm going to ask about.
 3 MR. WINER:
 4 A worthy goal.
 5 MR. BRODSKY:
 6 I assure you I understand, but I'm
 7 trying to narrow those.
 8 EXAMINATION BY MR. BRODSKY:
 9 Q. Turn to Exhibit CX-42 admitted in evidence.
 10 This is an e-mail chain starting at the top in
 11 reverse chronological order March 3, 2015.
 12 Let's speed this one up.
 13 There are several e-mails in this document
 14 that you sent -- or excuse me -- that make it
 15 appear as if you sent an e-mail. Some of them
 16 are from Robbi. Some of them are from you to
 17 Robbi.
 18 Look at the ones that are from you in this
 19 e-mail in this exhibit, and tell us which
 20 ones, if any, you have an actual recollection
 21 of.
 22 A. On page 3 of 4, the e-mail there on March 2,
 23 2015, at 2:52 p.m., I have an actual
 24 recollection of that e-mail.
 25 Q. Any others?

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1 A. No.
 2 Q. And which of the ones that appear to have gone
 3 to you do you remember receiving -- actually
 4 remember seeing?
 5 A. The e-mail from Ms. Jones on page 3 of 4 at
 6 the bottom directed to Odette and myself.
 7 Q. Okay.
 8 A. That's the only two I have a recollection of.
 9 Q. Okay. Thank you.
 10 Sherise Mosley. Did you know the name
 11 Sherise Mosley before the cycle exam?
 12 A. No.
 13 Q. And you testified that you called her and you
 14 were actually surprised that you got through
 15 to somebody who actually talked to you?
 16 A. Correct.
 17 Q. Who did you get the name from?
 18 A. In one of these exhibits where Ms. Jones
 19 submitted documentation, there was an e-mail
 20 in response to our request for documentation
 21 from the City of Houston, and there was an
 22 e-mail in there from Ms. Mosley.
 23 Q. So you got it indirectly from Ms. Jones?
 24 A. Yes.
 25 Q. Okay. Exhibit CX-65. Do you have an actual

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1 recollection of the e-mail that you -- that it
 2 appears you or says you wrote on March 16,
 3 2015?
 4 A. No.
 5 Q. Okay. Now, you said in answer to a question
 6 that counsel asked you that you did not
 7 receive a response from Robbi Jones. Correct?
 8 A. Correct.
 9 Q. Do you remember that?
 10 A. Yes.
 11 Q. Did you mean you didn't receive a response to
 12 this specific e-mail?
 13 A. Correct.
 14 Q. And does that mean that -- Well, did she ever
 15 call you rather than e-mail you in response to
 16 any of your questions?
 17 A. Yes.
 18 Q. So are you saying that you have an absolute or
 19 at least a firm recollection that she never
 20 called you, or are you simply saying you don't
 21 see an e-mail?
 22 A. I have a firm recollection that we did not
 23 receive a response, because we were having
 24 that status meeting -- and, again, this was an
 25 important point in the examination.

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1 So my recollection is I didn't have any
 2 type of response written or verbal.
 3 Q. Okay. Now, but if she called you and you
 4 forgot about it, there wouldn't be any record
 5 of it, because you don't keep phone logs.
 6 Correct?
 7 A. Correct.
 8 Q. Okay. Now, you were asked about the fact that
 9 at some point additional flights were
 10 mentioned that hadn't been mentioned before.
 11 Is that accurate?
 12 A. Yes.
 13 Q. Meaning additional possible flights that
 14 she -- that Ms. Jones took possibly related to
 15 the Houston inquiry?
 16 A. Correct.
 17 Q. Okay. Now, how many flights in all were
 18 discussed with you at one point or another by
 19 Ms. Jones?
 20 A. Four.
 21 Q. Four flights?
 22 A. Two flights were discussed directly with me,
 23 in that Ms. Jones mentioned two flights were
 24 in question when I was on site, and when she
 25 responded to my record request she sent

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1 my firm, and you said, how about a loan, and
 2 you say you discussed the terms of a deal with
 3 her in that one conversation, you don't
 4 remember when it was, but towards the end of
 5 some year. Correct?
 6 A. That's correct.
 7 Q. Okay. But after that, as president of this
 8 bank, you didn't remained involved in that
 9 potential transaction or that actual
 10 transaction in terms of papering it,
 11 documenting it, administrating it. Correct?
 12 A. That's correct.
 13 Q. You had people who did that?
 14 A. I referred the transaction in this case to
 15 Robin. Robin Anderson.
 16 Q. Okay. What was the range of deposits that the
 17 bank had, just so we have an idea roughly?
 18 Under a billion?
 19 A. I beg your pardon?
 20 Q. Under a billion?
 21 A. Yes.
 22 Q. Under 100 million?
 23 A. 100 million?
 24 Q. Yes, sir.
 25 A. Yes.

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1 Q. About 50 million?
 2 A. Yes.
 3 Q. Plus or minus?
 4 A. Yes.
 5 Q. Okay. So when you got the request from FINRA
 6 for information, somebody had to -- if
 7 somebody was going to actually -- and I am
 8 referring to the September 24 letter that you
 9 say you remember, somebody had to gather this
 10 documentation and give it to -- put it in
 11 shape to send it to FINRA by October 8.
 12 Correct?
 13 That's what it says. Correct, sir?
 14 Somebody else other than you was going to
 15 do it?
 16 A. Yes.
 17 Q. And your job as president was to hand it over
 18 to the right person, perhaps create a tickler
 19 file for yourself to see whether or not it had
 20 been done, and if it came to your attention
 21 that it hadn't been done to make sure it was
 22 done. Correct?
 23 A. Yes. Generally.
 24 Q. And that's, in fact, what your involvement --
 25 the extent of your involvement with this was.

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1 Correct?
 2 A. This as in?
 3 Q. Exhibit #94, page 2 and 3, compliance with the
 4 request, that's what the this refers to.
 5 A. This is confirming receipt of the request and
 6 requesting additional time?
 7 Q. No. I'm talking about page 2 and 3.
 8 In September of 2015, it says you were
 9 e-mailed this letter, it was also sent by
 10 First Class U.S. mail and was also sent by
 11 certified return request receipt, and you say
 12 you got it and you remember it. Correct?
 13 The letter from FINRA?
 14 A. Are you at CX-93 or CX-94?
 15 Q. I'm in 94.
 16 A. Okay. Okay. All right.
 17 Yes. I would have received this letter
 18 and engaged someone to start collecting the
 19 data. Probably Mr. Weaver.
 20 Q. Okay. So when you said that your travel
 21 prevented you from responding to it earlier,
 22 that's a little bit of a white lie, isn't it?
 23 In fact, your travel had nothing to do
 24 with it.
 25 You turned it over to someone else.

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1 Correct?
 2 A. If I wasn't in the office to receive it, it
 3 would have been delayed in being handled.
 4 Q. But it was e-mailed to you, sir, according to
 5 the document.
 6 A. This says certified receipt.
 7 Q. Yeah. But keep reading.
 8 On page 2 of 5 on CX-94 it says certified
 9 receipt.
 10 And then it says what? First Class U.S.
 11 mail?
 12 A. Yeah.
 13 And e-mailed.
 14 Q. And then it says via e-mail to
 15 tfenderson@commonwealthbank.com?
 16 A. Right.
 17 Q. So you are not claiming now that you didn't
 18 get this on or about February 24, are you?
 19 MR. GREENE:
 20 Did you say February or September?
 21 MR. BRODSKY:
 22 Excuse me. I don't know why I am
 23 stuck on February. I apologize.
 24 EXAMINATION BY MR. BRODSKY:
 25 Q. You're not now claiming that you didn't get

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1 this on or about -- the letter from FINRA on
2 or about September 24, 2015, are you?
3 A. I never stated that.
4 Q. Well, you said there might be some delay if I
5 didn't receive it.
6 So since -- And you were basing that
7 answer, I take it, on the fact that you
8 recalled it was certified return receipt
9 requested and you didn't remember that it was
10 e-mailed, but now that you see it was e-mailed
11 you're pretty sure you got it on or about that
12 date. Correct, sir?
13 A. No.
14 Q. Okay. You could have been traveling somewhere
15 on that date?
16 A. That's what the document says at the time.
17 Q. It says you were traveling?
18 Where does it say you were traveling on
19 CX-94?
20 I'm confused.
21 A. Join me at CX-93, page 2 of 4, the e-mail on
22 October 14th to Ms. Trosclair and Ms. Campiso.
23 It says that we had responded and
24 requested more time because I was not
25 available and traveling.

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1 Q. Okay. Now, I know you said that, but that
2 isn't the question.
3 A. Okay.
4 Q. The question is did you receive that document
5 on or about September 24, 2015?
6 A. I don't recall.
7 Q. Do you have any reason to believe that you
8 didn't receive it on or about September 24,
9 2015?
10 A. Yes, I do.
11 Q. And that's because you might have been
12 traveling?
13 A. That is because based on this document and my
14 response, that apparently I was traveling and
15 unable to respond and requested additional
16 time.
17 Q. Sir, do you remember if you were traveling
18 that day?
19 A. I traveled some with my role, yes.
20 Q. I'm sure you did.
21 Now, answer my question.
22 Do you remember if you were traveling on
23 or about the 24th or even the 25th of
24 September, 2015?
25 Yes or no?

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1 A. Yes.
2 Q. Where were you?
3 A. Washington, D.C., I believe.
4 Q. Okay. Now, do you have a portable computer?
5 Did you have a portable computer like mine
6 or something like mine at that time?
7 MR. FERNANDEZ:
8 Objection. Relevance.
9 MR. WINER:
10 What's the relevance of this?
11 MR. BRODSKY:
12 Because most if us in 2015 who got an
13 e-mail had some kind of device with them
14 to see it.
15 MR. GREENE:
16 I did not.
17 MR. BRODSKY:
18 I said most of us.
19 MR. WINER:
20 What's the relevance of how promptly
21 the bank responded?
22 MR. BRODSKY:
23 What's the relevance?
24 MR. WINER:
25 Yes.

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1 MR. BRODSKY:
2 It goes to his veracity, because he
3 claims that the reason it took a month
4 was because he was traveling. If that's
5 a misstatement of fact, then in most
6 contexts that is an impeachment of his
7 credibility.
8 So I am trying to impeach him by
9 showing that he probably did get it on
10 time. Maybe. We will find out.
11 Maybe he is one of those like the
12 panel member, who at the time didn't
13 carry around a cell phone or the like to
14 get e-mails.
15 MR. WINER:
16 Overruled.
17 THE WITNESS:
18 At the time, as I recall, I was the
19 sitting chairman of the Consumer
20 Financial Protection Bureau's Community
21 Bank Advisory Council, and I recall
22 being wrapped up in time and preparing
23 for a public hearing in D.C. with
24 Director Richard Cordray.
25 So it is very possible that my time

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1 was wrapped up into that, and that I
 2 would not have had a chance to respond
 3 as noted in my e-mail to Ms. Trosclair.
 4 EXAMINATION BY MR. BRODSKY:
 5 Q. Very possible.
 6 But do you remember exactly when your
 7 meeting in Washington was?
 8 A. It should be of record.
 9 I mean I don't know the specific date
 10 but --
 11 Q. That's fine.
 12 Okay. So it's possible it was after
 13 September 24, and it's possible it was before
 14 September 24. Correct?
 15 A. It's possible that I was traveling and I could
 16 not respond based on this response to Ms.
 17 Trosclair.
 18 Q. Okay. Well, we don't deal here with possible
 19 We deal with --
 20 A. You are asking me if it's possible.
 21 Q. Well, but it's equally possible that your
 22 meeting in Washington was after or before?
 23 A. No. It was in September.
 24 Q. Well, September is 30 days.
 25 So the answer is you don't know whether it

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1 was on the 24th, correct, that you were in
 2 D.C.?
 3 A. This says I was traveling.
 4 Q. Sir, I'm not asking you what it says. I see
 5 what it says.
 6 A. Okay.
 7 Q. We are testing whether or not that
 8 statement -- what veracity it had, what basis
 9 you had to make that statement.
 10 So by referring to the statement, it's not
 11 responsive to my question.
 12 You don't remember when you were in
 13 Washington, D.C. for Mr. Cordray's
 14 organization. Correct?
 15 A. It was in September.
 16 Q. Okay. It was in September, but you don't know
 17 which days in September. Correct?
 18 A. I believe it was at the end of September.
 19 I can't remember the exact date. No.
 20 Q. Okay. Now, did you at the time have a
 21 portable computer similar to mine?
 22 Not necessarily a Macbook but --
 23 A. Yes.
 24 Q. Okay. Did you tend to carry it with you when
 25 you traveled?

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1 A. It depends.
 2 Q. Sometimes you did and sometimes you didn't?
 3 A. Oftentimes I did not.
 4 Q. Okay. Did you have a smart phone?
 5 A. I did.
 6 Q. Did you tend to carry the smart phone with
 7 you?
 8 A. Yes.
 9 Q. Did you tend to read e-mails -- Did you tend
 10 to catch up with your e-mails during the
 11 business day?
 12 A. Yes.
 13 Q. Would you consider an e-mail from FINRA to be
 14 something important had you received it then?
 15 Strike that.
 16 Would you have considered that to be an
 17 important e-mail so as to read it if, in fact,
 18 you received such an e-mail back then?
 19 A. Sure.
 20 Q. And your smart phone enabled you on or about
 21 September 24, 2015, to receive e-mails to
 22 tfenderson@commonwealthbank.com. Correct?
 23 A. Yes.
 24 Q. Is it more likely than not that if you
 25 saw -- if you were out of town on September 24

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1 you nevertheless received and read the letter
 2 that was sent to you dated September 24?
 3 You testified you remember receiving it?
 4 A. What's your question again?
 5 Q. Is it more likely than not that you saw and
 6 read this e-mail from Ms. Campiso and the
 7 accompanying letter on or about -- at or about
 8 the time of its receipt by either seeing it on
 9 your computer at the office or on your smart
 10 phone if you were traveling?
 11 A. It is likely that I would not have seen it
 12 that day.
 13 Q. Is it likely that you would have seen it the
 14 next day?
 15 A. It is likely I would have seen it.
 16 Q. Okay. So why is it -- Just out of curiosity I
 17 am going to walk right into this one.
 18 Why it is more likely than not that you
 19 didn't see it on Thursday, September 24?
 20 A. Possibly because it was at 4:52.
 21 Q. You stopped working at 4:52?
 22 A. No. I mean it's likely that I could have been
 23 involved in something, and I may not have had
 24 a chance to.
 25 I could have read it 12:01 a.m. I don't

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1 remember.
2 Q. So when you say likely, you really mean
3 possible. Correct?
4 When you say likely, you really mean
5 possible?
6 That is to say it's possible since it came
7 in that late you didn't look at it that day?
8 A. It's possible.
9 Q. But you're not prepared to say it is more --
10 that the probabilities of you're not seeing it
11 on the 24th are greater than 50 percent, are
12 you?
13 A. I am not willing to quantify.
14 Q. Because you don't know?
15 A. Because it was 2015.
16 Q. Got it.
17 It's a long time ago?
18 A. Well, I'm just -- You're asking for specifics.
19 I certainly don't want to offer false
20 testimony.
21 Q. I understand that.
22 So by the next day you saw it, as you just
23 testified?
24 A. Possibly.
25 Q. Well, you just testified that by the next day

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1 you believe you saw it. Correct?
2 A. I am going to say what I recall.
3 You said likely that you really mean
4 possible, and I said yes.
5 Q. That was about whether you didn't see it on
6 the 24th.
7 You saw it the next day?
8 You saw it either the 24th or the 25th?
9 A. I said it was likely.
10 MR. FERNANDEZ:
11 Objection. Relevance.
12 EXAMINATION BY MR. BRODSKY:
13 Q. Okay. Now, isn't it likely that if you
14 received it, whenever you actually looked at
15 it, you actually read it?
16 MR. FERNANDEZ:
17 Objection. Relevance.
18 MR. WINER:
19 And the relevance again you're saying
20 is credibility?
21 MR. BRODSKY:
22 I'm back to the same point. I'm
23 having to crawl through this, but I'm
24 trying to do it. Yes. Absolutely.
25 MR. WINER:

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1 I mean I find the credibility point
2 tenuous, but why don't you -- you can
3 proceed briefly more.
4 MR. BRODSKY:
5 I appreciate your candor. I would
6 ask that you wait to see and hear the
7 entire testimony before you conclude its
8 weight.
9 I think it is inappropriate, frankly,
10 to express an opinion at this stage,
11 with all due respect, on whether you
12 believe I'm making a good point or a bad
13 point.
14 EXAMINATION BY MR. BRODSKY:
15 Q. When you read it -- When you received it, you
16 read it. Correct?
17 A. Not necessarily.
18 Q. I see.
19 So an important letter from FINRA that was
20 sent to you, you didn't necessarily read it
21 when you saw it?
22 A. Not necessarily.
23 Q. How long do you think you let it lay fallow?
24 Well, you don't remember whether you read
25 it or not, do you?

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1 A. I would have recognized it as a document from
2 FINRA, you know, and would certainly want to
3 give it my undivided attention, but if I was
4 traveling it may not have been possible.
5 Q. Okay. September 24th, according to this, was
6 a Thursday, and so now it's Friday, if you
7 didn't see it until the next day.
8 How long did you wait before you -- Do you
9 actually know how long it took you before you
10 read it?
11 A. I don't have a determination. I don't know.
12 Q. But your best recollection is that you didn't
13 let it sit for four or five days, did you?
14 A. Yeah. It says receipt by August -- or October
15 8, 2015.
16 Q. Yeah.
17 A. And I think what I intended to do when we
18 requested it was to apologize and state that
19 we did not meet your expectations on time, and
20 then even when I separated from the company I
21 was being diligent to make sure that the
22 information was still being provided to FINRA.
23 Q. Okay. So you were separated by October 23rd?
24 A. Yes. Based on the e-mails.
25 Q. But when you read it -- My question was you

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1 didn't let it sit for more than three or four
2 days before you read it. Correct?
3 A. Probably not.
4 Q. So when you read it, you followed your
5 practice of sending it on to someone to take
6 care of it. Correct?
7 A. Yes.
8 Q. Okay. So let's say you got it when you first
9 saw it on September 28, three or four days
10 after it was -- according to this it was sent
11 to you.
12 Therefore your travel, it really didn't
13 have much to do with -- The fact that you were
14 traveling, wherever you were, didn't really
15 have anything to do with the people in the
16 bank following through on the request.
17 Correct?
18 A. Assuming I sent it to them then.
19 Q. I see.
20 So you're saying you may have been so
21 slack and lax about it that you didn't get it
22 to them --
23 MR. FERNANDEZ:
24 Objection.
25 EXAMINATION BY MR. BRODSKY:

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1 Q. -- until much later?
2 MR. FERNANDEZ:
3 Form of the question.
4 EXAMINATION BY MR. BRODSKY:
5 Q. Is that what you're saying?
6 MR. FERNANDEZ:
7 Objection.
8 MR. WINER:
9 Overruled.
10 THE WITNESS:
11 I am saying that --
12 MR. FERNANDEZ:
13 Objection.
14 MR. WINER:
15 Overruled.
16 THE WITNESS:
17 I'm sorry.
18 My undivided attention would have
19 been required, and when I reviewed it I
20 would have passed it along.
21 EXAMINATION BY MR. BRODSKY:
22 Q. Okay. So what you're saying is -- How long do
23 you think it would have taken you to read this
24 letter?
25 A. A couple of minutes.

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1 Q. A minute or two?
2 A. Yes.
3 Q. So you're saying that you didn't have time,
4 that it's possible that on the 24th, 25th,
5 26th, 27th, 28th, 29th, 30th, 1st, it's
6 possible that in all that time you didn't have
7 a minute or two to read a letter from FINRA?
8 A. I didn't say that.
9 Q. I know you didn't say it, but is that what you
10 mean?
11 A. No.
12 Q. Okay. You just said it needed your undivided
13 attention.
14 A. There's a date in there that says October 8th.
15 Q. Yeah.
16 But you needed to read that date to
17 actually see it. Correct?
18 Right?
19 A. Yes.
20 Q. So I'm asking you when you read it and you saw
21 a date of October 8th, what would have needed
22 your undivided attention to be able to
23 immediately forward it to the right people at
24 the bank so that they could get started
25 complying with this request?

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1 MR. FERNANDEZ:
2 Objection.
3 THE WITNESS:
4 I apologize.
5 MR. WINER:
6 What's the objection?
7 MR. FERNANDEZ:
8 The suggestion it was the bank's
9 compliance request. That
10 mischaracterizes what this is.
11 MR. BRODSKY:
12 I meant the bank's compliance with
13 the request.
14 MR. WINER:
15 I'm not sure I understand the
16 objection.
17 MR. FERNANDEZ:
18 It mischaracterizes the recipient and
19 the person who was obligated to respond.
20 It went to the bank. This is an 8210.
21 Commonwealth National Bank was not a
22 member firm.
23 Counsel is characterizing this as the
24 bank being the recipient and under the
25 obligation to comply.

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1 So that's why I'm objecting to the
 2 question.
 3 MR. WINER:
 4 So in your understanding the use of
 5 the word compliance?
 6 MR. FERNANDEZ:
 7 The bank's obligation to comply.
 8 That mischaracterizes what this is.
 9 MR. WINER:
 10 Okay. Can you replay the question?
 11 (The requested testimony was read back as
 12 follows:
 13 Q. So I'm asking you when you
 14 read it and you saw a date of October
 15 8th, what would have needed your
 16 undivided attention to be able to
 17 immediately forward it to the right
 18 people at the bank so that they could
 19 get started complying with this
 20 request?)
 21 MR. FERNANDEZ:
 22 Okay. I withdraw.
 23 MR. WINER:
 24 Thank you.
 25 THE WITNESS:

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1 If I was traveling, I don't know when
 2 I would have read the letter.
 3 What I do know is that what I did was
 4 I sent a letter or e-mail to Ms.
 5 Troclair apologizing for not having
 6 sent it by the October 8 timeline.
 7 EXAMINATION BY MR. BRODSKY:
 8 Q. Okay. Now answer my question.
 9 I guess what I'm asking is what was the
 10 big deal about reading it and forwarding it?
 11 You said it needed your undivided
 12 attention.
 13 You didn't have a minute or two minutes or
 14 three minutes during all that time to send it
 15 on?
 16 Is that what you're testifying?
 17 I just want to understand what you're
 18 saying.
 19 A. I would have wanted to interpret it to better
 20 study and understand the request to know where
 21 to dictate it. I was the only licensed person
 22 in the bank.
 23 When we get information requests from the
 24 OCC, then that's an easier, you know, read and
 25 share, because those are individuals that are

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1 involved in the day-to-day operation of the
 2 bank.
 3 I was the only licensed person at the bank
 4 that was covered under FINRA.
 5 Q. So you're saying that your bank people would
 6 need a FINRA license to understand and obtain
 7 account opening documents?
 8 Is that what you're testifying?
 9 A. No.
 10 Q. Excuse me?
 11 A. No.
 12 Q. Are you saying that they would need a license
 13 with FINRA to get -- to seek and obtain
 14 account statements, loan statements, and
 15 statements related to CD's?
 16 A. I'm saying that a --
 17 Q. Just answer my question.
 18 A. -- document request from FINRA would have
 19 required my attention first.
 20 MR. WINER:
 21 I want you to move on to the next
 22 topic.
 23 MR. BRODSKY:
 24 May I take a two-minute break?
 25 MR. WINER:

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1 Certainly.
 2 MR. GREENE:
 3 What time does the witness have to
 4 leave?
 5 THE WITNESS:
 6 I may have another hour.
 7 MR. BRODSKY:
 8 I may have longer than an hour.
 9 MR. WINER:
 10 All the more reason to move on.
 11 MR. BRODSKY:
 12 Okay. Well, I need a couple of
 13 minutes break.
 14 MR. WINER:
 15 Let's go off the record.
 16 (Off the record.)
 17 MR. WINER:
 18 Okay. On the record.
 19 Mr. Brodsky, you may resume.
 20 MR. BRODSKY:
 21 Thank you.
 22 EXAMINATION BY MR. BRODSKY:
 23 Q. Would you take a look at Exhibit #95, please,
 24 CX-95?
 25 A. Okay.

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1 Okay. That's it.
2 EXAMINATION BY MR. WINER:
3 Q. At or about 2015 did you have one or more
4 conversations with Ms. Jones about the
5 certificate of deposit?
6 A. Based on the date reference here, a
7 conversation in the March time frame about the
8 fact that the CD had been cashed in to repay
9 the debt.
10 Q. Okay. How did you learn in advance of that
11 conversation or during that conversation that
12 the CD had been cashed as collateral for the
13 debt?
14 A. I learned maybe through the course of
15 business. You know, we had a weekly past due
16 meeting where we would talk about loans that
17 were due for payment and loans that were post
18 maturity that were on a past due report.
19 Through that meeting process with
20 Mr. Weaver, it would come up that this loan
21 has not been paid, and it may have been
22 reported to me at some point during my weekly
23 meeting that they said we cashed it in, or
24 that this is what we are going to do, and I
25 would have just listened and moved on.

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1 Q. Is it your recollection that at about the time
2 of the cancellation of the certificate of
3 deposit, you learned of that cancellation
4 through the course of meetings and your
5 responsibilities?
6 A. Yes. And it may have been retro. You know,
7 it may have happened before that meeting
8 during that week.
9 Q. Okay. You testified about a conversation you
10 had with Ms. Jones when she called you up
11 about a net capital situation --
12 A. Yes.
13 Q. -- and you raised the possibility of a line of
14 credit to her.
15 Did you give any instructions or guidance
16 to anyone at the bank as to how to proceed in
17 light of that conversation?
18 A. I would have had a general conversation
19 perhaps with Robin Anderson about the
20 conversation. Meaning, you know, we are going
21 to do a line of credit, and it is going to be
22 cash secured.
23 Q. It sounds to me like you think that's what you
24 would have done in the normal course, but you
25 don't remember what you did?

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1 A. I am sure that's what I would have done in
2 that situation.
3 Q. Okay.
4 A. Yes.
5 Q. What computerized notices, if any, would
6 ordinarily be sent by the bank to a customer
7 in advance of or following a cancellation of a
8 CD in the 2015 time frame?
9 A. Possibly -- Not necessarily anything in direct
10 conjunction with the CD itself.
11 Q. I am sorry. I misspoke.
12 The 2014 time frame is what I meant to
13 say.
14 A. Well, just in general with respect to a -- You
15 know, what happens when a CD is cashed in, you
16 know, normally -- in the normal course it is
17 being redeemed by the customer. If it is
18 collapsed to pay down a debt, then the note
19 that is paid off may be sent, but it's not
20 necessarily required to be sent.
21 But there is nothing that really happens
22 with the CD per se.
23 Q. So there's no computerized notice in
24 connection with the cancellation of a CD?
25 A. Not to my knowledge.

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1 Q. How about with respect to the termination of a
2 line of credit?
3 A. Then a cancelled note could be sent to the
4 borrower saying that it is. That's not
5 required. We normally would file those away
6 as a paid note.
7 Q. So were there any computerized notices that
8 ordinarily would have been sent in 2014 in
9 connection with the termination of a line of
10 credit?
11 A. No. No.
12 At maturity there would have been notices
13 that went out, but there would not have been a
14 computerized notice saying your note has been
15 paid off per se.
16 Q. I might have missed -- Well, what records, if
17 any, did the bank keep in 2015 of records it
18 made to contact a borrower in advance of
19 terminating a loan or foreclosing on the
20 collateral?
21 MR. FERNANDEZ:
22 What year did you say?
23 MR. WINER:
24 2014 I meant to say.
25 MR. FERNANDEZ:

<p style="text-align: right;">Page 599</p> <p>1 A. That information on the CD?</p> <p>2 Q. Yes.</p> <p>3 A. Yes.</p> <p>4 Q. And what information specifically was</p> <p>5 requested for the CD?</p> <p>6 A. Proof of its existence and any encumbrances.</p> <p>7 Q. Was proof of value requested?</p> <p>8 A dollar amount?</p> <p>9 A. I do not recall.</p> <p>10 Q. So if you could turn to CX-102, please?</p> <p>11 A. Okay.</p> <p>12 Q. Do you recognize this?</p> <p>13 A. Yes, I do.</p> <p>14 Q. What is it?</p> <p>15 A. So this is another request that I submitted to</p> <p>16 the firm in conjunction with its 2014 cycle</p> <p>17 exam, and here I'm asking for financial</p> <p>18 related -- firm documentation as it relates to</p> <p>19 August, 2014, financials.</p> <p>20 Q. And what is item number 5 on that list?</p> <p>21 A. Item number 5, here I am asking for a haircut</p> <p>22 calculation for the \$70,313 exempted security</p> <p>23 listed on the balance sheet.</p> <p>24 Q. What balance sheet are you referring to?</p> <p>25 A. I'm referring to the firm's focus filing, and</p>	<p style="text-align: right;">Page 601</p> <p>1 surveillance, from the department I work for,</p> <p>2 as it relates to the firm's account balance</p> <p>3 held at Wedbush and as well as the firm's</p> <p>4 Commonwealth National Bank CD.</p> <p>5 Q. And where is -- Does the letter reference</p> <p>6 anything about the CD?</p> <p>7 A. Yes. So in the indented part on page 2 of</p> <p>8 this, there's two paragraphs in the indented</p> <p>9 part, and the second paragraph discusses where</p> <p>10 we have not been provided by the firm</p> <p>11 sufficient documentation verifying the \$70,000</p> <p>12 CD as an allowable asset.</p> <p>13 Q. Is the CD that you are referring to here at</p> <p>14 Commonwealth, is that the one that was</p> <p>15 reflected on the focus report, CX-123?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Did this letter, your sending of the</p> <p>18 letter have any impact on the firm's</p> <p>19 operations?</p> <p>20 A. Yes, it did. The letter is a net capital</p> <p>21 deficiency letter. So we identified a</p> <p>22 reduction in value of the firm's Wedbush</p> <p>23 clearing deposit, which the firm -- under net</p> <p>24 capital or what we call net capital deficient,</p> <p>25 and we are required to send this form letter.</p>
<p style="text-align: right;">Page 600</p> <p>1 that exhibit we just looked at, this is that</p> <p>2 value, and this is the firm's certificate of</p> <p>3 deposit held at Commonwealth National Bank.</p> <p>4 Q. How does one do a haircut calculation on a</p> <p>5 certificate of deposit?</p> <p>6 A. Per the rule. But basically -- So you have a</p> <p>7 certificate of deposit, and we have to take</p> <p>8 away value or haircut it or discount it by any</p> <p>9 early withdrawal penalty as well as a</p> <p>10 percentage.</p> <p>11 Q. Okay. So what information do you need in</p> <p>12 order for say a FINRA examiner to verify a</p> <p>13 haircut on a CD?</p> <p>14 A. We would want to see the firm's -- the CD's</p> <p>15 early withdrawal penalty.</p> <p>16 Q. Okay. Would you turn, please, to CX-69?</p> <p>17 A. I'm sorry?</p> <p>18 Q. CX-69.</p> <p>19 A. Thank you.</p> <p>20 Q. Are you there?</p> <p>21 A. I am.</p> <p>22 Q. Okay. Tell me, do you recognize CX-69?</p> <p>23 A. Yes, I do.</p> <p>24 Q. What is it?</p> <p>25 A. This is a letter sent to the firm from</p>	<p style="text-align: right;">Page 602</p> <p>1 When firms receive a net capital</p> <p>2 deficiency letter, they are also advised that</p> <p>3 they are not allowed to conduct a securities</p> <p>4 business.</p> <p>5 Q. This letter is signed by whom?</p> <p>6 A. Allister Johnson. She is my manager, and</p> <p>7 she's also the firm's surveillance director.</p> <p>8 Q. And that's your name.</p> <p>9 Were you cc'd on this?</p> <p>10 A. That is my name.</p> <p>11 Q. I offer CX-69 into evidence.</p> <p>12 MR. BRODSKY:</p> <p>13 Objection. Irrelevant. At least as</p> <p>14 to the net -- excuse me -- the alleged</p> <p>15 capital deficiency is not charged in the</p> <p>16 complaint, and its probative value is</p> <p>17 exceeded, if any, which there's none</p> <p>18 that I'm aware of, is exceeded by its</p> <p>19 prejudicial value.</p> <p>20 I have no objection to the second</p> <p>21 indented paragraph, but as presently I</p> <p>22 object.</p> <p>23 I wouldn't object if it were redacted</p> <p>24 appropriately.</p> <p>25 MR. WINER:</p>

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1 MR. WINER:
 2 Enforcement?
 3 MR. FERNANDEZ:
 4 Well, we were offering that
 5 information for several reasons.
 6 One, even starting at the
 7 authenticity issue, that Ms. Woitschek's
 8 testimony as to her recognition of
 9 receipt of these documents and
 10 explanation of why they were sent to
 11 her, and what, if anything, surveillance
 12 did with it, and the testimony regarding
 13 the provision of particular documents
 14 from CX-95 to Ms. Jones within months of
 15 FINRA's receipt, well before the filing
 16 of the complaint in this case is
 17 relevant for several reasons, including
 18 that it seems to be a very contested
 19 document in this case.
 20 MR. BRODSKY:
 21 May I respond?
 22 MR. WINER:
 23 You may.
 24 MR. BRODSKY:
 25 I don't want to interrupt my brother

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1 counsel if he had more to argue. He
 2 said he had several reasons and he gave
 3 one.
 4 MR. FERNANDEZ:
 5 I'm finished.
 6 MR. BRODSKY:
 7 Okay. Simply saying it's relevant
 8 because it's relevant doesn't establish
 9 its relevance.
 10 The objection as to authenticity does
 11 not go to what happened as a result of
 12 somebody reading this document.
 13 Somebody could have read this
 14 document and done any number of things,
 15 but that's not charged in the complaint.
 16 They have had two years to allege net
 17 capital violations if they wanted to.
 18 They didn't.
 19 We had should not be burdened with
 20 testimony concerning net capital
 21 deficiencies that's not been alleged.
 22 We have not been warned of it, we
 23 haven't been noticed it, and I recognize
 24 there are no -- there are no strict
 25 rules of evidence in a proceeding like

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1 this, but there is underlying in any
 2 legal proceedings in the United States
 3 an element of fairness and notice, and
 4 this violates that element of fairness
 5 and notice.
 6 MR. WINER:
 7 What I am looking for, and maybe one
 8 of the parties can actually help me find
 9 it.
 10 I recall reading in an exhibit a
 11 statement by or on behalf of Ms. Jones
 12 that she could not have known that the
 13 line of credit was secured by the
 14 CD 0331 because she would have known
 15 that that was not an allowable asset.
 16 Does any party recall?
 17 MR. BRODSKY:
 18 It's in the letter I believe from the
 19 firm Anderson Kurth.
 20 MR. WINER:
 21 Andrews & Kurth?
 22 Yes, that is what I was reading.
 23 MR. BRODSKY:
 24 Andrews & Kurth. Yes. I think it's
 25 in that letter.

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1 But my recollection is -- and I will
 2 look at the exhibit -- that that letter
 3 has nothing to do with the second CD.
 4 This is the second CD. It has
 5 nothing to do with the first CD.
 6 MR. WINER:
 7 Yes. But if you claim the alleged CD
 8 as an allowable asset in 2015, that
 9 undercuts the argument that she would
 10 not have known that the CD was pledged
 11 in 2011, because she would have known it
 12 could not be used as an allowable asset.
 13 MR. BRODSKY:
 14 I missed that.
 15 MR. WINER:
 16 Okay. Well, you don't need to -- I
 17 overrule the objection.
 18 MR. BRODSKY:
 19 Well, with all due respect, I would
 20 like to know what your rationale is.
 21 I didn't understand what you said. I
 22 am not trying to be difficult, but I
 23 didn't hear what you said.
 24 MR. WINER:
 25 Okay. I will give it one more try,

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1 to appear in FINRA's New Orleans District
2 Office for an OTR.
3 Q. And what's the date of the request?
4 A. The letter request is dated March 30, 2015.
5 Q. And when were you seeking to have Ms. Jones
6 show up for the OTR?
7 A. On April 10, 2015.
8 Q. Is there anything in this letter that talks
9 about the OTR -- that talks about what the
10 scope of the OTR will be?
11 A. No, there isn't.
12 MR. BRODSKY:
13 Can you repeat the question and
14 answer?
15 (The requested testimony was read back as
16 follows:
17 Q. Is there anything in this
18 letter that talks about the OTR -- that
19 talks about what the scope of the OTR
20 will be?
21 A. No, there isn't.)
22 MR. BRODSKY:
23 Thank you.
24 MR. BARANIAK:
25 I offer CX-71.

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1 MR. WINER:
2 Was there any objection to that?
3 MR. BRODSKY:
4 No, sir.
5 MR. WINER:
6 CX-71 is admitted.
7 EXAMINATION BY MR. BARANIAK:
8 Q. Ms. Trosclair, what happened on April 10,
9 2015?
10 A. Ms. Jones did not appear for the OTR on April
11 10, 2015.
12 Q. What advance notice, if any, did you have that
13 she would not appear?
14 A. None.
15 Q. So when she did not appear for the OTR, were
16 you present?
17 A. Yes. What happens is the court reporter shows
18 up in advance of the OTR. You know, the
19 Respondent was scheduled to appear at 9:00.
20 So we waited until a little after 9:00. I
21 attempted to contact Ms. Jones via telephone
22 and e-mail. I did not receive a response from
23 her.
24 So we went ahead and went on the record,
25 had the court reporter document that Ms. Jones

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1 failed to appear, and that concluded the OTR.
2 Q. Did you ever hear from Ms. Jones again?
3 A. Yes.
4 Q. Okay. First, let's turn to Exhibit CX-72,
5 please.
6 A. Okay.
7 Q. Do you recognize this document?
8 A. Yes.
9 Q. What is it?
10 A. This is an e-mail that I sent to Ms. Jones on
11 the date of the OTR, April 10th at 9:08 a.m.,
12 in an attempt to reach her to determine if she
13 was going to appear for the OTR.
14 Q. I offer Exhibit CX-72.
15 MR. WINER:
16 Was there any objection to CX-72?
17 MR. BRODSKY:
18 No.
19 MR. WINER:
20 CX-72 is admitted.
21 EXAMINATION BY MR. BARANIAK:
22 Q. Ms. Trosclair, do you know if you received a
23 response to this e-mail?
24 A. I did.
25 Q. Okay. Let's turn to Exhibit CX-73, please.

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1 Do you recognize this document?
2 A. Yes, I do.
3 Q. What is it?
4 A. The top portion of Exhibit CX-73 is the e-mail
5 that I received in response to the e-mail that
6 I sent to Ms. Jones on April 10th.
7 Q. Okay. And who is the response from?
8 A. The name identified as Audrey.
9 Q. Do you know would Audrey is?
10 A. I don't. I may have found out at the time,
11 but I don't remember today who Audrey is.
12 Q. Okay. And what does this Audrey person say to
13 you?
14 A. She stated that Ms. Jones was released from
15 the hospital yesterday for complications
16 related to high blood pressure. She stated
17 that she doubted that Ms. Jones had seen the
18 referenced letter, and she stated that she
19 would contact Ms. Jones' sister and ask that
20 Ms. Jones contact me.
21 Q. Okay. I would offer CX-73, please.
22 MR. WINER:
23 Any objection to CX-73?
24 MR. BRODSKY:
25 No objection.

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1 Ms. Trosclair, have you had a chance to
2 review that?
3 MR. BRODSKY:
4 Before you start, can we have a break
5 to permit my client to take her required
6 medicine?
7 MR. BARANIAK:
8 Sure.
9 MR. WINER:
10 Yes. Let's take a ten-minute break.
11 MR. BRODSKY:
12 Thank you, sir.
13 MR. WINER:
14 We will be back at 10:45.
15 (Off the record.)
16 MR. WINER:
17 Back on the record.
18 Enforcement, you may resume.
19 EXAMINATION BY MR. BARANIAK:
20 Q. Ms. Trosclair, right before the break, I had
21 asked you to look at CX-84.
22 Have you had the opportunity to do that?
23 A. Yes.
24 Q. Do you recognize this document?
25 A. Yes.

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1 Q. What is it?
2 A. This is a series of e-mails between me and Ms.
3 Jones.
4 Q. We are going to take some time on this, but
5 let's start on page 3 of the exhibit.
6 So you can see at the bottom three
7 quarters of the page there's an e-mail from
8 Ms. Jones to yourself and Odette Woitschek.
9 Do you see that?
10 A. Yes.
11 Q. The date is May 7, 2015, at 7:14 a.m.
12 Do you see that?
13 A. Yes.
14 Q. Notwithstanding the fact that it's addressed
15 to both of you, Ms. Jones starts out Odette.
16 Do you see that?
17 A. Yes.
18 Q. Is this an e-mail you received at or around
19 that time?
20 A. Yes.
21 Q. Okay. Drawing your attention to the second
22 full paragraph beginning I am also very
23 respectfully asking that I not be asked
24 anything whatsoever about my health tomorrow.
25 Do you see that?

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1 A. Yes.
2 Q. So you understood that Ms. Jones was asking
3 FINRA at the OTR the next day, or the
4 scheduled OTR the next day, not to ask
5 questions relating to her health and the
6 health records she had previously sent to you?
7 MR. BRODSKY:
8 Objection to the form. Leading.
9 MR. WINER:
10 Sustained.
11 EXAMINATION BY MR. BARANIAK:
12 Q. What did you understand Ms. Jones was asking
13 you?
14 A. I understood that she was asking that FINRA
15 not ask her anything whatsoever about her
16 health during the OTR.
17 Q. Okay. Did you respond to Ms. Jones?
18 A. Yes, I did.
19 Q. Where is that response reflected, if at all,
20 in this exhibit?
21 A. On the top of page 3 of Exhibit CX-84.
22 Q. And what is the date and time of your
23 response?
24 A. Thursday, May 7, 2015, at 8:58 a m.
25 Q. So less than two hours after you got the

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1 e-mail from Ms. Jones. Correct?
2 A. Correct.
3 Q. Okay. And what did you respond?
4 A. I stated Ms. Jones, your request is noted. We
5 will only be discussing business related items
6 tomorrow.
7 Q. Before you made that response, did you discuss
8 it with anyone?
9 A. I did consult with internal parties, yes.
10 Q. Do you recall who it was?
11 A. I know Tony Cognevich was one.
12 Q. Was he your boss?
13 A. He was my boss at the time. Yes.
14 Q. Okay.
15 A. I don't recall if there was anyone else
16 present.
17 Q. And you used the words we will only be
18 discussing business related items tomorrow.
19 Do you see those words?
20 A. Yes.
21 Q. Are those words in response to anything in the
22 e-mail that preceded it?
23 MR. BRODSKY:
24 Objection to the form. Leading.
25 MR. WINER:

<p style="text-align: right;">Page 806</p> <p>1 basically throughout the duration from when I 2 was assigned to the cause exam. We had been 3 having meetings fairly regularly. So I had a 4 pretty good knowledge of what was going on in 5 the cycle exam. 6 Q. And the issues that were involved in the cycle 7 exam? 8 A. Yes. 9 Q. Okay. And looking at CX-94, is this a 10 document you recognize? 11 A. Yes. 12 Q. Can you tell us what it is, please. 13 A. Yes. The top part of page 1 of CX-49 is an 14 e-mail that I sent to Jerry Weaver. He was 15 employed with Commonwealth National Bank. He 16 had requested that I provide to him a copy of 17 the request letter that I had sent to Tyrone 18 Fenderson of Commonwealth National Bank. So I 19 e-mailed him and provided the letter. 20 The letter is contained on pages 2 and 3 21 of Exhibit #94. Then some addendums to the 22 letter are contained on pages 4 and 5 of 23 CX-94. 24 Q. Okay. Let's turn to page 2 of CX-94, please. 25 This is the only letter that you sent to</p>	<p style="text-align: right;">Page 808</p> <p>1 personnel and Ms. Jones or personnel at 2 Kipling Jones. 3 Q. Okay. You said you sent this on September 24, 4 2015. 5 Could you go to the fourth page of CX-94? 6 A. Yes. 7 Q. Tell me what this is. 8 A. This is a letter signed by Ms. Jones which 9 authorized FINRA to make the request to the 10 bank. 11 Q. Okay. Going back to the first page of CX-94. 12 Approximately a month after you sent the 13 original request letter -- I'm sorry. Yeah. 14 About a month after you sent the letter 15 you hear from Mr. Weaver. Is that correct? 16 A. Yes. 17 Q. Okay. And he asked you to send the letter 18 again? 19 A. Yes. 20 Q. Okay. Did you hear from Mr. Weaver after 21 that? 22 A. No. 23 Q. Did you hear from anyone at the bank? 24 A. I'm sorry. 25 I did hear from Mr. Weaver after this. He</p>
<p style="text-align: right;">Page 807</p> <p>1 Mr. Fenderson at the bank? 2 A. Correct. 3 Q. And you signed it on page 3? 4 A. Yes. 5 Q. What's the date of the letter? 6 A. September 24, 2015. 7 Q. Is this an 8210 letter? 8 A. Yes. Paragraph 2 of the letter indicates that 9 it is sent pursuant to FINRA Rule 8210. 10 Q. What documents were you seeking from the bank? 11 A. We were seeking various documents related to a 12 CD that Ms. Jones had represented was owned by 13 Kipling Jones. 14 Q. You say various documents. 15 Can you enumerate what documents? 16 A. Sure. Indicated in the letter -- I'm looking 17 at page 2 of CX-94 -- we requested account 18 opening documents and the updates. We 19 requested account statements, loan statements, 20 and statements related to the CD or CD's. Any 21 documents related to the CD's that were 22 purchased, sold, or held by Kipling Jones or 23 Ms. Jones, all documents related to any loans 24 that were made to Kipling Jones or Ms. Jones, 25 and all written communication between bank</p>	<p style="text-align: right;">Page 809</p> <p>1 provided a response to me. 2 Q. Okay. Do you recall when that was? 3 A. I believe it was on October 23, 2015. 4 Q. Okay. I ask you to turn to CX-95, please. 5 I'm sorry. 6 Let's go to CX-93, just to make sure. 7 Do you recognize this document CX-93? 8 A. Yes. 9 Q. What is it? 10 A. Oh, I'm sorry. 11 I was on CX-94. 12 Q. That's okay. 13 A. CX-93, yes. 14 Q. What is this? 15 A. Okay. So in the middle of page 1 of CX-93 is 16 an e-mail that Tyrone Fenderson sent to 17 Mr. Weaver, and then Mr. Weaver forwarded that 18 e-mail to me and indicated that he was going 19 to follow up on the information I requested 20 relating to Kipling Jones, and he requested 21 that I provide him with the original letter 22 that I sent to the bank. 23 Q. And that's what you did in Exhibit #94? 24 A. Yes. 25 Q. Okay. Now could you turn to Exhibit #95,</p>

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1 related to securities, but then I explained,
2 you know, the situation, that we just -- you
3 know, we are doing an examination -- a routine
4 examination of a member firm, wanted to make a
5 determination ourselves, and there had been
6 situations where even though it is not
7 securities related activity it could affect
8 the member firm and/or associated person, and
9 the fact that historically getting information
10 from Ms. Jones -- getting accurate information
11 from Ms. Jones has been an issue with us, we
12 just wanted to go to someone independent and
13 try to get to the bottom of what was going on.
14 Q. Right.
15 So what, if anything, did the Inspector
16 General say to you orally regarding the
17 outcome of the investigation into the possible
18 misuse of the P card by Ms. Jones?
19 A. That on two occasions the P card was used, Ms.
20 Jones was a beneficiary of the use, and, you
21 know, the dollar amounts were small that were
22 involved, and they were not going to make a
23 referral to a criminal agency.
24 Because I know we do it here, even though
25 the dollar amounts are small sometimes, we

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1 will make a referral to a local DA or whoever
2 about conversion.
3 But for whatever reason the City decided
4 not to do that.
5 Q. So she represented those findings to you in
6 addition to whatever was in the letter that
7 she sent?
8 A. Correct.
9 Q. What, if anything, did the Inspector General
10 communicate to you regarding any finding as to
11 what Ms. Jones' role was in the use of the
12 credit card for her benefit?
13 A. At the time she was involved working with the
14 city as a financial advisor.
15 They questioned her --
16 MR. BRODSKY:
17 Excuse me. I'm sorry, sir.
18 Can you please repeat the question?
19 I'm sorry.
20 (The requested testimony was read back as
21 follows:
22 Q. What, if anything, did the
23 Inspector General communicate to you
24 regarding any finding as to what Ms.
25 Jones' role was in the use of the credit

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1 card for her benefit?)
2 THE WITNESS:
3 She worked, you know, with the City
4 as a financial advisor, she had access
5 to the purchase card, P card.
6 Initially when they confronted Ms.
7 Jones, she denied, you know, being the
8 beneficiary I believe, that she paid for
9 the card herself. Then I believe she
10 indicated to the city that she used some
11 of her points to pay for or to purchase
12 the trips.
13 Then I think it came out -- After my
14 conversation with the Inspector General,
15 I think during the testimony Ms. Jones
16 said she used her --
17 EXAMINATION BY MR. WINER:
18 Q. Okay. Right now I'm just asking what you
19 learned from the Inspector General.
20 A. Okay.
21 Q. Is there anything else you learned from the
22 Inspector General regarding the Office of
23 Inspector General into the use of the P card
24 for Ms. Jones' benefit?
25 A. No. Not that I haven't said before.

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1 MR. WINER:
2 Okay.
3 MS. HUPPERT:
4 I have nothing.
5 MR. WINER:
6 Enforcement?
7 MR. BARANIAK:
8 Nothing further.
9 MR. WINER:
10 Respondents?
11 EXAMINATION BY MR. BRODSKY:
12 Q. Do you know whether or not it's true or false
13 that -- Well, first of all, do you know what
14 the Inspector General meant when she said to
15 you according to your testimony that Ms.
16 Jones, quote, had access, unquote, to the P
17 card, focusing on had access?
18 A. That Ms. Jones was working with individuals in
19 that department, and the P card could have --
20 you know, would have been like in an
21 individual's desk. So it would be possible
22 perhaps to take the P card and use it.
23 She implied that, you know, either she
24 could get access to the card or could get the
25 account number.

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1 Q. In other words, she was guessing, but it's
2 possible that this 56-year-old, or then
3 53-year-old owner of a broker dealer, would
4 walk in the controller's office of the City of
5 Houston when she was making dozens of
6 thousands of dollars as a financial advisor to
7 this major metropolitan area, the City of
8 Houston, and would have grabbed or written
9 down the 16-digit number of a P card?
10 Was that what this Inspector General
11 person told you?
12 A. That she had access to the card, yes.
13 Q. Well, you've told me already -- Sorry, sir.
14 But you've already testified that she told
15 you that Ms. Jones had access.
16 The fact of the matter is she didn't say
17 that Ms. Jones copied -- actually pilfered or
18 copied the 16-digit number off the card, plus
19 presumably the 3-digit security code, plus the
20 expiration date, or reached down in the
21 controller's office of the city she was
22 advising and actually took the card, did she?
23 The City Inspector General, she didn't say
24 that Ms. Jones had, in fact, done that, all
25 she said was she could have done that.

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1 Correct?
2 A. Yes.
3 Q. Right?
4 A. Correct.
5 Q. Okay. So she was speculating on that
6 possibility.
7 Did you subject that speculation to any
8 scrutiny based on your 30 years of experience
9 as an experienced FINRA executive to any level
10 of test of credulity, likelihood, probability,
11 or similar concepts?
12 In other words, did you evaluate what you
13 understood her guess or speculation was worth?
14 A. I mean I took it at face value that the city
15 concluded that Ms. Jones used the card on two
16 occasions unauthorized, that she was the
17 beneficiary of those charges, and she took
18 those flights.
19 The city made a determination via its
20 closeout letter that that's what occurred.
21 Q. Well, that's not my question.
22 A. Okay.
23 Q. I mean we have already gone over that. You
24 have indicated what you didn't know about what
25 had happened or hadn't happened. That is not

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1 the question.
2 The question is when she told you -- Let
3 me make this clear. Let me make sure I
4 understand it and the panel understands it and
5 everybody understands it.
6 Did she actually say that Ms. Jones could
7 have lifted the card off a desk or presumably
8 copied all of that information down, or is
9 that your guesstimate of -- or guess as to
10 what she meant by she had access?
11 A. I was told she had access.
12 I guess you could say that's my
13 guesstimate of what could have occurred. She
14 could have taken the card, copied the numbers
15 down, taken a picture of the card.
16 Q. Both sides presumably?
17 A. Possibly.
18 Q. Okay. In a working office in the City of
19 which you are the financial advisor. Correct?
20 A. Yes.
21 Q. Okay. So this is not what the Inspector
22 General said she might have done.
23 This is what you thought this inspector
24 could give credence -- what could possibly
25 have occurred by the two words had access to

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1 the card. Correct?
2 A. Correct.
3 MR. BRODSKY:
4 Thank you.
5 MR. WINER:
6 Any further questions for this
7 witness?
8 MR. BARANIAK:
9 No.
10 MR. WINER:
11 Your testimony is concluded. Thank
12 you.
13 I believe Ms. Jones is next?
14 MR. BARANIAK:
15 Correct.
16 MR. GREENE:
17 Can we break for 15 minutes?
18 MR. FERNANDEZ:
19 Yes. I need 15 minutes.
20 MR. WINER:
21 Okay. Let's resume at 3:00.
22 Let's go off the record.
23 (Off the record.)
24 MR. WINER:
25 On the record.

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1 Q. Okay. Which is what we looked at in CX-17.
2 Correct?
3 A. Correct.
4 Q. Okay. And you reply later that same day.
5 Do you see where I am on page 4?
6 A. I do.
7 Q. If you go under item 6, which appears at the
8 top of page 5, I reached out to Commonwealth
9 and was only able to reach the supervisor of
10 the tellers who wasn't able to answer. I will
11 call back on Monday.
12 You are describing contacting Commonwealth
13 to get the early withdrawal penalty
14 information for CD 0331. Correct?
15 A. Yes.
16 Q. And this is on December 26, 2014?
17 A. They were very short staffed because of the
18 holiday.
19 Q. Okay. How many days after December 26th did
20 you take out the two-year loan to buy the
21 two-year CD?
22 A. That's two questions.
23 Sometime between Christmas and New Year's.
24 Q. So just a few days after this e-mail is when
25 you took out the loan to purchase CD 0577.

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1 Correct?
2 A. I took out the loan to do what I thought was
3 rolling over a one-year CD into -- and
4 changing it to a two-year CD, and I don't -- I
5 wouldn't characterize it as taking out a loan.
6 It was all in my mind rolled over.
7 Except we were told since the terms
8 changed, the CD itself had to be different.
9 Q. Of course, CD 0331 didn't exist on December
10 26, 2014. Correct?
11 A. I know that now.
12 Q. You knew that then. Correct?
13 A. No.
14 Well, wait.
15 In December, '14?
16 Q. Let's be specific.
17 On December 26, 2014, you knew that CD --
18 A. I didn't know that.
19 Q. At the top of page 4 of CX-25 Ms. Duhon writes
20 you back on the 30th of December just checking
21 in on the status of the items you updated me
22 on.
23 She's referring to the updates you had
24 just provided, which include the update on
25 your efforts to get the early withdrawal

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1 penalty info for CD 0331. Correct?
2 A. Yes.
3 Q. Then on January 5, 2014, Ms. Duhon again sends
4 you an e-mail asking you for an update for the
5 various information, including your efforts to
6 get the early withdrawal penalty information
7 for CD 0331. Correct?
8 A. Yes.
9 Q. And two days later she e-mails you again
10 asking you to send over the information that
11 had been requested that she mentioned -- that
12 she listed specifically in her December 26th
13 e-mail. Correct?
14 A. I'm sorry.
15 Yes.
16 Q. And she is telling you in her e-mail -- we're
17 looking at the top one on page 3 -- that she
18 wants to get this information so that she can
19 keep the exam moving forward and so we can
20 exit in the next couple of weeks. Correct?
21 A. Yes.
22 Q. So Ms. Duhon was trying to get the exam done.
23 Correct?
24 A. That's what the e-mail says.
25 Q. You have no reason to believe she --

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1 A. My frame of reference for that time period was
2 totally related to something else.
3 I am reading it, I see it, I have no
4 reason to doubt that's the case.
5 But if you're asking me to remember that
6 that's what I knew in early January, that was
7 so not my frame of reference at that time.
8 Q. So what you're saying then is -- and correct
9 me if I'm wrong -- just because you don't
10 remember an e-mail doesn't mean you didn't
11 actually send it. Correct?
12 A. You asked me about one she sent to me I
13 thought.
14 Q. So when you don't remember it, you're saying
15 that the e-mail doesn't exist?
16 A. No.
17 Q. Right.
18 MR. BRODSKY:
19 I didn't hear.
20 Did my client answer that question?
21 (The requested testimony was read back as
22 follows:
23 Q. So when you don't remember it,
24 you're saying that the e-mail doesn't
25 exist?

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1 A. No.)
2 THE WITNESS:
3 I thought I laughed.
4 EXAMINATION BY MR. FERNANDEZ:
5 Q. I'm sorry.
6 I think we were just -- Well, continuing
7 on page 1 of CX-25, please.
8 This is two days later after Ms. Duhon had
9 e-mailed you trying to get the information so
10 that she could wrap up the 2014 cycle exam.
11 She writes you again on January 9th.
12 Do you see where I am at the bottom of
13 page 1?
14 A. I do.
15 Q. Again, she lists for you every single thing
16 that is outstanding.
17 She spent a bit of time on drafting her
18 e-mail, didn't she?
19 A. I would have no way of knowing how much time
20 it took her to draft an e-mail.
21 Q. She was trying to assist you by writing out
22 specifically everything that still remains
23 outstanding. Correct?
24 MR. BRODSKY:
25 Objection. Lack of foundation.

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1 EXAMINATION BY MR. FERNANDEZ:
2 Q. Do you think she was trying to assist you --
3 MR. WINER:
4 Overruled.
5 EXAMINATION BY MR. FERNANDEZ:
6 Q. -- by giving you the specific breakdown of
7 what is still outstanding?
8 A. I wouldn't -- I would think she was trying to
9 get the information. I've never thought that
10 anyone was trying to assist me. I thought she
11 was trying to end the process, move forward.
12 I wouldn't call it assist me.
13 Q. Then she sends you another e-mail on January
14 13 writing please contact me so we can discuss
15 the status of the outstanding items below.
16 Correct?
17 A. Yes.
18 Q. So she is still trying to get the information
19 that she had begun requesting in November,
20 2014. Correct?
21 A. That is correct.
22 Q. Okay. Let's turn, please, to CX-26.
23 Now, you recall this e-mail, don't you?
24 A. Basically, yes.
25 Q. So you recall this e-mail. Correct?

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1 A. Are you asking me if I recall writing it?
2 Q. Do you recall sending an e-mail that had these
3 contents that we are reading here?
4 A. Yes.
5 Q. Okay. And you were sending this e-mail to Ms.
6 Duhon on January 16, 2015, and you tell her --
7 and I'm on the third paragraph -- that the
8 Commonwealth National Bank CD rolled over at
9 the end of December.
10 You were referring to CD 0331 here,
11 weren't you?
12 A. I thought I was. Yes.
13 Q. You also say this year rather than rolling it
14 over for another year I requested a two-year
15 maturity. As a result of my request the bank
16 was not able to automatically roll the CD
17 since the maturity was different. Since the
18 original CD was technically cancelled, the
19 bank is sending a check for the accumulated
20 interest which I have not received yet.
21 Attached is the paperwork for the new CD.
22 I think this is one where you might have
23 just omitted attaching the paperwork for the
24 CD?
25 A. I don't know.

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1 Q. Okay. Now, you didn't mention anywhere in
2 this paragraph that you had taken out a loan
3 to buy the new CD. Correct?
4 A. Again, I differentiate between buying and
5 rolling.
6 Q. I'm sorry. I wasn't asking for your
7 rationalization.
8 I just wanted an acknowledgment that you
9 didn't mention that you took out a loan to buy
10 the second CD.
11 MR. BRODSKY:
12 Objection. Mischaracterizes her
13 testimony, and asked and answered.
14 MR. WINER:
15 Overruled.
16 EXAMINATION BY MR. FERNANDEZ:
17 Q. You didn't mention that you took out -- I'm
18 sorry.
19 Can you read the pending question again?
20 Sorry.
21 (The requested testimony was read back as
22 follows:
23 Q. I wasn't asking for your
24 rationalization.
25 I just wanted an

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1 in the complaint Enforcement believes
 2 there's evidence for, and which
 3 allegations, if any, Enforcement does
 4 not believe there's still evidence for.
 5 It might be that you think there's
 6 evidence for everything. So I want to
 7 go over that. I want to be able to go
 8 through that allegation by allegation,
 9 if that's possible with the timing.
 10 MR. FERNANDEZ:
 11 In closing?
 12 MR. WINER:
 13 Unless you are willing -- My fear
 14 with putting that to briefs is that
 15 sometimes that's been requested and then
 16 it doesn't happen.
 17 But if you all are agreeable to doing
 18 it in the briefing, and you all have
 19 time to do it by the time of closing.
 20 I understand that there's a lot to
 21 get done. I am just flagging that as
 22 something I would like to accomplish.
 23 MR. FERNANDEZ:
 24 Oh, absolutely.
 25 Is there a -- Is that it?

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1 MR. WINER:
 2 No. No.
 3 Some of the other stuff you already
 4 know. I'm still interested in the
 5 elements.
 6 MR. FERNANDEZ:
 7 Right.
 8 The elements and what -- Are you
 9 asking for like identification of
 10 specific misrepresentations,
 11 inaccuracies, and omissions, and to
 12 identify each one specifically and then
 13 fit it in a particular cause of action?
 14 MR. WINER:
 15 Yeah.
 16 So maybe I'm wrong with my
 17 recollection. I will get out the
 18 complaint.
 19 I think there's an allegation under
 20 the second cause of action relating to
 21 the provision of the general ledger.
 22 MR. FERNANDEZ:
 23 Maybe -- Yes. It probably would be
 24 because -- Okay.
 25 Do you want to do this on the record?

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1 MR. WINER:
 2 Yes.
 3 MR. FERNANDEZ:
 4 So cause of action number one was
 5 essentially what we would have called a
 6 books and records charge.
 7 MR. WINER:
 8 Right.
 9 MR. FERNANDEZ:
 10 All right. Cause of action two --
 11 two and three relate to the provision of
 12 inaccurate and misleading information.
 13 We break it down between cause of
 14 action two and three, because -- and
 15 this is a matter of practice, of
 16 course -- whenever we are charging
 17 inaccurate, misleading, or nonresponse
 18 when it relates to a request that
 19 specifically cites FINRA Rule 8210, like
 20 a Rule 8210 letter, we charge both, 2010
 21 and 8210.
 22 When there's a request that's not --
 23 that doesn't specifically identify 8210,
 24 we don't charge 8210. We charge 2010.
 25 The reason there's still a charge

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1 though is the cases, of course, have
 2 held that there's no need to
 3 specifically cite 8210 to obligate an
 4 associate person to respond truthfully
 5 and fully to a FINRA request, or at
 6 least to not provide inaccurate or false
 7 information. But as a matter of
 8 charging, we break those down.
 9 And cause of action four is those
 10 instances where a response was not
 11 provided to an 8210. That relates to
 12 the OTR.
 13 MR. WINER:
 14 All right. So let me give you an
 15 example of what I have.
 16 Paragraph 114-A -- And this is just
 17 --
 18 MR. BRODSKY:
 19 Can you slow down, sir, because I'm
 20 having trouble -- You are not speaking
 21 to me.
 22 I know you are speaking to him but --
 23 MR. WINER:
 24 I mean to be speaking to both of you.
 25 MR. BRODSKY:

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1 flights that you identified in your written
2 statement of February 13, 2015. Correct?
3 A. No. But that was a different -- In my mind,
4 the way I looked at it, we answered the
5 question that was asked of us. This is the
6 answer to a different question.
7 Q. Okay.
8 MR. WINER:
9 I am confused by the answer.
10 MR. FERNANDEZ:
11 Yeah. I am, too.
12 MR. WINER:
13 Okay.
14 EXAMINATION BY MR. FERNANDEZ:
15 Q. Ms. Jones, the flight that we see here in
16 CX-66 page 2, that is a flight from Chicago
17 Midway to Houston. Correct?
18 A. That is correct.
19 Q. Okay. And that flight is not the same flight
20 that was shown in the receipt on CX-107 page
21 1. Correct?
22 A. That is correct.
23 Q. Nor is it the flight that is identified in the
24 receipt that is CX-108?
25 A. That is correct.

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1 Q. Okay. And in CX-109 there's no mention of a
2 second Southwest Airlines flight, is there?
3 It is just one Southwest Airlines flight.
4 Correct?
5 A. That is correct.
6 Q. And in CX-34, the particular municipal deals
7 referenced there, those correspond to flights
8 to Newark and to Memphis. Correct?
9 A. That is correct.
10 Q. Not a flight from Chicago to Houston?
11 A. That is correct.
12 Do I have a right to be confused?
13 MR. GREENE:
14 Yes.
15 EXAMINATION BY MR. FERNANDEZ:
16 Q. Now, at your OTR -- and part of this you might
17 have just explained -- the issue with the
18 flights that concerned the City of Houston,
19 and later the City of Houston Office of
20 Inspector General, was a round trip flight
21 that you took on Southwest between Houston and
22 Birmingham, and a one way flight from Chicago
23 to Houston, also on Southwest Airlines.
24 Correct?
25 A. I missed the first part of the question.

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1 Q. You testified at your OTR that the City of
2 Houston's inquiry and later the inquiry by the
3 City of Houston Office of Inspector General
4 focused on two flights, one flight being a
5 round trip between Houston and Birmingham and
6 another flight being a one way from Chicago to
7 Houston, both flights being on Southwest
8 Airlines?
9 A. I don't remember using those words. It
10 certainly evolved to that, but it did not
11 start there.
12 Q. Okay. But you would agree that you identified
13 that -- You testified that the City of
14 Houston, whether it initially or later became
15 the focus, they were inquiring about the two
16 flights that I described. Correct?
17 A. They inquired about several flights, and those
18 were two of them, yes.
19 Q. Okay. I would like to turn to CX-112, please.
20 You were here for Mr. Hartmann's
21 testimony. Correct?
22 A. Yes.
23 Q. Okay. And he testified about how the
24 documents in CX-112 were obtained. Correct?
25 A. Yes.

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1 Q. Okay. I would like for you to turn to CX-112,
2 page 10.
3 You would agree that that's the same
4 document as CX-66 page 2. Correct?
5 A. Yes.
6 Q. Okay. And you provided the Office of
7 Inspector General the document that we see at
8 page 10 on CX-112. Correct?
9 A. Yes.
10 Q. Okay. If you turn to page 11 --
11 MR. BRODSKY:
12 Excuse me.
13 I assume counsel did not
14 intentionally mean to mislead, maybe he
15 just missed this, but it's obvious from
16 the face of CX-66 page 2 and CX-112 page
17 10 while they may be photocopies of
18 different versions of the same document,
19 they obviously aren't the identical
20 document, or whatever the word, because
21 under the customer account portion of
22 the VCR ticket information table, the
23 entirety of the customer account is
24 redacted in the CX-112 page 10 document,
25 and a portion of that number remains

<p style="text-align: right;">Page 1228</p> <p>1 Q. -- did you understand you were required to do 2 that by the contract Kipling Jones had? 3 A. No. 4 Q. Did you seek compensation from the City of 5 Jackson for the help that you gave? 6 A. No. 7 Q. Either compensation for you or for your firm? 8 A. For what we did with FINRA? 9 Q. Yes. 10 A. No. 11 Q. Okay. 12 MR. BRODSKY: 13 It's quarter of 1:00. We have been 14 going steadily since almost 9:15. I 15 apologize for the fact that it was 9:15 16 rather than 9:00. 17 Is it possible to take a break now 18 for lunch? 19 MR. WINER: 20 Sure, it is. 21 Do you have a revised guesstimate 22 of -- 23 MR. BRODSKY: 24 One of the things I intend to do at 25 lunch is look through everything and</p>	<p style="text-align: right;">Page 1230</p> <p>1 Q. Ms. Jones, the City of Houston conducted some 2 kind of investigation or inquiry about whether 3 or not you had misused their debit card -- its 4 debit card, and charged things for your 5 personal use. 6 Do you remember that? 7 A. Yes. 8 Q. Okay. First, did you ever do that? 9 A. No. 10 Q. Have you ever attempted to figure out or find 11 out from the City of Houston -- Have you ever 12 attempted to find out from the City of 13 Houston -- Let me back up and give this the 14 proper foundation. 15 Have you now seen the letter from the 16 Inspector General, a very short letter, dated 17 June 16, 2014? 18 A. I have now seen it. Yes. 19 Q. Did you see it at or about the time of -- at 20 or before your FINRA OTR? 21 A. No. 22 Q. And, of course, you can't tell from that 23 letter -- 24 MR. FERNANDEZ: 25 Objection.</p>
<p style="text-align: right;">Page 1229</p> <p>1 figure out how much more I have. 2 I don't think that I am going to 3 have -- I think I will be finished 4 before the end of the afternoon. My 5 revised estimate is that I have made 6 substantial progress, and I think maybe 7 an hour or two maybe, but in the 40 odd 8 years that I have been doing this I 9 think I have been wrong almost every 10 single time on estimates. 11 MR. WINER: 12 Okay. So let's take a break and 13 resume at 1:45. 14 MR. BRODSKY: 15 Thank you. 16 MR. WINER: 17 Okay. Off the record. 18 (Off the record.) 19 MR. WINER: 20 On the record. 21 Respondents, you may proceed with the 22 questioning of Ms. Jones. 23 MR. BRODSKY: 24 Thank you, sir. 25 EXAMINATION BY MR. BRODSKY:</p>	<p style="text-align: right;">Page 1231</p> <p>1 MR. WINER: 2 What's the objection? 3 MR. FERNANDEZ: 4 I'm sorry. 5 Leading. 6 MR. WINER: 7 What's your question? 8 EXAMINATION BY MR. BRODSKY: 9 Q. Of course, you can't tell from that letter 10 what flights, what airlines, what trips were 11 involved. 12 Did you ever ask the City of Houston to 13 tell you which ones they thought you were 14 involved in? 15 MR. FERNANDEZ: 16 Objection. Leading. 17 MR. WINER: 18 Overruled. 19 The first part, the predicate part, 20 that strikes me as improper. 21 EXAMINATION BY MR. BRODSKY: 22 Q. Let's take a look at the letter. 23 A. I don't remember the exhibit. 24 Q. I do. 25 CX-90 page 2 of 2.</p>

<p style="text-align: right;">Page 1232</p> <p>1 A. You said CX-92? 2 Q. CX-90, 2 of 2. 3 A. Okay. 4 Q. Can you tell from the letter whether or not it 5 refers to any particular trips, any particular 6 airlines, any particular dates? 7 A. I cannot tell that from this letter. 8 Q. In fact, it doesn't. Correct? 9 A. Correct. 10 Q. Given that it doesn't, did you ever ask the 11 City of Houston to tell you what they were 12 complaining about after the June 16, 2014, 13 letter? 14 A. With respect to this letter or in general? 15 Q. Well, when did you first see the letter? 16 A. I saw this letter in January in your office. 17 Q. Have you since asked the City of Houston to 18 tell you what flights were involved? 19 A. I have not. 20 Q. So you still don't know? 21 A. No. 22 Q. And have you deciphered yourself -- Have you 23 attempted to figure out what they accuse you 24 of -- what specifically they were accusing you 25 of doing in terms of flights, et cetera?</p>	<p style="text-align: right;">Page 1234</p> <p>1 Q. Is the answer to my question that you haven't 2 really attempted to induce -- to deductively 3 determine by deductive reasoning what the City 4 of Houston Inspector General was referring to? 5 A. In general or with respect to this letter? 6 Q. Well, let's talk about since January when you 7 were -- when you saw this letter in my office? 8 A. No. 9 Q. Okay. Now, did you -- I want you to turn to 10 Exhibit 95 for identification. 11 Take a look at page 8 of 9. 12 A. You said CX-95? 13 Q. Exhibit CX-95, which is the last exhibit in 14 their first book. 15 The 9th page of 16 or 18, purports to be a 16 letter dated February 19, 2014, from Percy 17 Jenkins. 18 Do you see that? 19 A. I do. 20 Q. You have seen that letter before? 21 A. This week. Yes. 22 Q. Well, you saw it in my office, didn't you? 23 A. I think so. 24 Q. Had you seen it before? 25 A. No.</p>
<p style="text-align: right;">Page 1233</p> <p>1 A. Absolutely. 2 Q. Have you been successful at that? 3 A. Yes and no. 4 Q. Tell me the yes and tell me the no. 5 A. The yes is I was being accused of having 6 somehow gotten access to the City's charge 7 card, debit card, P card, and using it to book 8 two flights and using those flights for my 9 personal use. 10 That is my interpretation of what I was 11 being accused of. 12 Q. Now, have you attempted to decipher for 13 yourself, figure out for yourself what flights 14 you allegedly used it for? 15 A. I focused on primarily, almost exclusively, on 16 one thing, and that was finding out the full 17 16 digits of either my mother's -- her card 18 was an AT&T Universal Citi, C-I-T-I, card -- 19 either that card or the C-I-T-Y's card. 20 Q. The City of Houston's card? 21 A. Correct. 22 Q. Okay. 23 A. Which flights it was was less important to me 24 than I just wanted to show this is my mother's 25 card, this is your card.</p>	<p style="text-align: right;">Page 1235</p> <p>1 Q. Did you receive this letter? 2 A. No. 3 Q. Were you housed at on -- Was your office on 4 Smith Street in downtown Houston at that time? 5 A. Not on February 19th. 6 Q. Did anybody try to call you and tell you -- 7 Strike that. 8 Did anybody call you to tell you that they 9 were about to take the CD and apply it to the 10 loan? 11 A. No. 12 Q. Did you have the ability to renew that 13 underlying loan at that time? 14 A. What do you mean by ability? 15 Q. Did anything deter you from the bank's point 16 of view from renewing that loan, the 17 underlying loan? 18 A. Oh. 19 No. 20 Q. You had to get them some more information. 21 Correct? 22 A. I did. 23 Q. You didn't though? 24 A. I did not. 25 Q. How come?</p>

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1 Q. Do you remember -- Just a second.
 2 Best as you recall was your state of mind
 3 such that you would have had any issues or
 4 concerns about accepting the deal the way he
 5 says he proposed it to you, or would that deal
 6 have been acceptable?
 7 A. The way he says?
 8 Q. Yes.
 9 A. That would not have been acceptable.
 10 Q. And do you have any reasons why it wouldn't be
 11 acceptable?
 12 A. An encumbered asset is an encumbered asset.
 13 Q. And therefore would that have any implications
 14 as to whether you would -- as you understood
 15 it as to whether it would qualify for net
 16 capital?
 17 A. Well, just like I described with the corporate
 18 entity it would -- it would not qualify.
 19 Q. Okay. Now, given that testimony -- Now I am
 20 going to ask you a very serious question. Not
 21 that any of them haven't been serious.
 22 Are you telling the truth about this
 23 point?
 24 A. Yes.
 25 Q. Are you telling the truth in front of your

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1 mother?
 2 A. I am telling the truth period.
 3 Q. Okay. Given that, how do you explain the fact
 4 that two loan documents -- at least that you
 5 signed, that you testified that you signed,
 6 said that the CD secured the loan?
 7 A. The shortest answer I can give --
 8 Q. You don't have to give a short answer
 9 necessarily. Just give an answer that is
 10 responsive.
 11 Did you fuck up?
 12 A. Yeah. I was not in a good state for a whole
 13 lot of reasons.
 14 Q. And you've stated those reasons today?
 15 A. Yeah.
 16 Q. Are there any others?
 17 A. My brother got sick in 2014.
 18 Q. How serious was his illness?
 19 A. Very.
 20 Q. Are you close to your brother?
 21 A. Yes.
 22 Q. How often a week -- How many times a week do
 23 you talk to him?
 24 A. I talk to him two or three times a day.
 25 Q. Explain to this panel how somebody with an MBA

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1 from Booth, with your background and your
 2 education and your character set, whatever it
 3 is, explain how you can sign those documents
 4 that you testified you did, and still believe
 5 that you had not pledged the bank -- the
 6 company had not pledged that CD?
 7 A. Along with every other aspect of my life, I
 8 messed it up. I was -- I mean we have heard
 9 ad nauseam how I have messed things up. I was
 10 late on things. I was late on so much. I
 11 wasn't reading things carefully. I relied on
 12 what people told me verbally more than I
 13 should have.
 14 Q. And on that point whom do you include on that?
 15 A. I include Tyrone Fenderson first and foremost.
 16 We had -- Every year, every single year,
 17 like every other broker dealer, we had to
 18 submit an audit.
 19 Q. Meaning Kipling Jones had to submit audited
 20 financial statements?
 21 A. Correct.
 22 We get the -- From the audit firms, we get
 23 paperwork, send this to this bank, send this
 24 to that bank, send this to a clearing firm.
 25 Q. Confirmations?

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1 A. Confirmations.
 2 We send them out. Different audit firms
 3 have different things, different forms, and
 4 the audit comes back, they complete it, and
 5 we, you know, go from there.
 6 In 2012 unlike has been portrayed
 7 here -- it was either 2011 or 2012, I went to
 8 the Bank of Texas, and we had some CD's there,
 9 and I borrowed in Kipling Jones against the
 10 CD's for cash.
 11 At the end of the year we are in the
 12 process of the audit, I got a -- they give you
 13 a draft, and I looked at.
 14 Q. Who gives you a draft?
 15 A. The audit firm gives us a draft.
 16 Q. Of?
 17 A. Of the audit.
 18 Q. Of the audit report?
 19 A. Yes.
 20 Q. Okay.
 21 A. And I looked at it, and I said, this is not
 22 right, we did have debt, and I went back to
 23 the audit firm and I said, there's debt here,
 24 there's Bank of Texas debt.
 25 So they -- So in working with whoever was

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1 Q. You said Cornel Williams mentioned this
2 letter?
3 A. Yes.
4 Q. What did he say?
5 A. He said he received a letter from the City,
6 the City was not filing any criminal charges,
7 and he asked me had I been told that I could
8 not do any more business with the City.
9 I told him no, that we had offered to
10 resign just because I was kind of tired of
11 them, and they told us no, continue, finish
12 the transactions that you are working on.
13 Cornel is a criminal attorney, and in his
14 mind when there are no criminal charges filed,
15 it's a good day.
16 EXAMINATION BY MS. HUPPERT:
17 Q. Okay. Getting back to that City of Houston
18 matter.
19 You also indicated today that in a
20 conversation with an employee of the City of
21 Houston, that you were advised that they were
22 already looking into one of their own
23 employees who was alleging that you had
24 misappropriated one of the corporate cards.
25 Is that correct?

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1 A. Sort of.
2 Q. Chavez, that Stephanie Chavez?
3 A. Well, the Controller told me -- I wouldn't use
4 the word advised -- told me that they were
5 looking at her for some other things.
6 When I went to the Office of the Inspector
7 General, they asked me if I knew her. They
8 asked me a lot of questions, do you know her,
9 when you meet with the City where do you meet,
10 had I ever been to the Controller's office,
11 would the -- I think they asked me would Ms.
12 Chavez -- or Gomez or Chavez, would she know
13 my name, my full name, et cetera.
14 Q. But you never asked for anything in writing
15 from the City of Houston?
16 I guess --
17 A. No. We asked for something in writing
18 nonstop.
19 Q. Okay.
20 A. Yeah.
21 Q. Did you explain this conversation to your
22 attorney, Mr. Cornel Williams?
23 A. Yes.
24 Q. So he was aware of that as well?
25 A. Yes.

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1 Q. That there was something going on between the
2 City's books and records themselves?
3 A. Correct.
4 Q. Okay. And it seems like you did a lot of
5 record production for them in regard to
6 something that might have been an internal
7 matter. That's why I'm asking you.
8 A. We absolutely did. We were -- Well, two
9 things. One, from a professional standpoint
10 they were our client. We were working on at
11 that time two transactions. I think we
12 wrapped up one during that time, and we wanted
13 to be responsive to our client.
14 Then once I realized that this was a very,
15 very, very serious matter, it became not just
16 taking care of the client, but demonstrating
17 that I had not done this thing.
18 So at every step as they asked for
19 successive records, we produced them, and then
20 we started on our own making phone calls, you
21 know.
22 I learned things like how odd is it that
23 two credit card numbers can have the same last
24 four digits. Would Southwest approve a
25 transaction if the name and ZIP code did not

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1 match what was on their records as far as the
2 name and ZIP code tied to the account.
3 Q. You also indicated in response to counsel's
4 questions on looking forward to improve your
5 controls and back office procedures, you
6 indicated that you have mechanisms that you've
7 put in place at Kipling Jones to guard against
8 future behavioral lapses, if I can use that
9 term.
10 Can you describe for us what you have done
11 at your firm?
12 A. Sure. We have -- In terms of operational type
13 mechanisms?
14 Q. Yeah.
15 A. Is that your question?
16 Q. Yeah.
17 A. We have -- We've used a compliance consultant,
18 and we have increased greatly the scope of
19 services that we now require from them.
20 We also have engaged a CPA firm to -- And
21 this was at the suggestion of someone at
22 SIFMA. We've engaged a CPA firm to do a
23 compilation of our financial records at the
24 end of every month.
25 Our regular bookkeeper will continue to

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1 create them, and then he will send them to the
 2 CPA firm. They will do a compilation before
 3 they are actually submitted to -- well, put
 4 into the focus report and the focus report
 5 submitted to FINRA.
 6 The other thing that the CPA firm will
 7 do -- back to your comment about net capital
 8 requirements, you know, to the point about net
 9 capital being a minute by minute requirement
 10 of FINRA -- once a day they are in the process
 11 of creating a spreadsheet.
 12 We are giving them access to our operating
 13 accounts, and once a day they will
 14 do whatever. I'm not a spreadsheet whiz.
 15 They will do a net capital calculation at
 16 4:00 p.m., and make a phone call to either me,
 17 or hopefully the next FINOP, and say, okay,
 18 what is coming due, do you have any
 19 outstanding checks, for example, has a plane
 20 ticket been paid for that would affect that,
 21 and factor that in, and if they see a problem
 22 they will send an e-mail to the bookkeeper, to
 23 whoever is the FINOP, and to myself, and say
 24 we see a problem today or we see a problem by
 25 the end of the week, or, you know, whatever.

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1 We will know -- Someone other than me will
 2 know in real time what the financial situation
 3 is.
 4 The other thing that we will do is we have
 5 gone to -- and I have not completed this,
 6 because I have been here -- our banking
 7 relationships, and especially with Morgan
 8 Stanley and our primary operating bank now,
 9 Unity National, and changed the -- I don't
 10 know what it's called, but I won't be the only
 11 person that can make decisions, financial
 12 decisions on behalf of Kipling Jones.
 13 Q. Piggybacking on that, you're currently the
 14 FINOP. Is that correct?
 15 A. Yes.
 16 Q. Who is the chief financial officer?
 17 A. Same.
 18 Q. So you're both the FINOP and the CFO?
 19 A. Yes.
 20 Q. Okay. And did you say you are still the CCO,
 21 even though you are using a compliance
 22 consultant?
 23 A. Yes.
 24 Q. How many employees are in your firm besides
 25 yourself?

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1 A. We have two part-time people.
 2 Q. What do they do for you?
 3 A. One only does filing. She comes in sometimes
 4 twice a week and files.
 5 The other person does -- I would call it
 6 more general support services. So if we are
 7 responding to an RFP, she frames it out before
 8 I finish it, or if we are in the middle of a
 9 municipal advisory contract and I need, you
 10 know, a list of who the ten largest taxpayers
 11 in Jefferson Parish, Louisiana are, she goes
 12 and does that.
 13 Then we also have a few people who are
 14 tasked with -- their sole function for being
 15 there is to bring in business. Most of them
 16 are part-time. They have other things.
 17 The person that I mentioned earlier that
 18 we hired at the end of '15 or early '16 to fix
 19 things, his role was to do several things.
 20 One, be the point of contact with FINRA,
 21 take care of all FINRA related matters, and
 22 provide analytical support. He's a whiz at
 23 quantitative analysis, and he's anal in a good
 24 way, and likes to take care of the process
 25 type things.

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1 So our goal as I continue to yet again get
 2 back on my feet is to have that once again be
 3 a full-time position, and I now know that his
 4 title was operations officer, although he did
 5 a lot from a compliance standpoint.
 6 I now -- Back to several of the things
 7 that I've learned. I think that the
 8 operations and compliance should be two
 9 separate things. If I can only afford one on
 10 a full-time basis, I would have that be a
 11 compliance person, and maybe use a consultant
 12 or a less than full-time person for
 13 operations, assuming I have limited resources.
 14 When resources permit, I would like to
 15 have a full-time compliance person and a
 16 full-time operations person.
 17 Q. Before you became certified as a FINOP, you
 18 used another FINOP, and I assume this person
 19 was not an employee. Is that correct?
 20 A. That is correct.
 21 Q. He was one of the FINOP for hire types.
 22 Correct?
 23 A. We started out with a firm, a consulting firm,
 24 and I would absolutely refer to them as FINOP
 25 for hire.