UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21266

In the Matter of

MICHAEL A. GRAMINS,

Respondent.

RESPONDENT'S OPPOSITION TO THE DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

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Dated: March 29, 2023

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Pursuant to Rule 250 of the Rules of Practice of the Securities and Exchange Commission ("SEC"), Respondent Michael A. Gramins respectfully submits this Opposition to the Motion for Summary Disposition filed by the Division of Enforcement (the "Division") in this administrative proceeding. For all of the reasons discussed herein, no administrative bar of any kind should issue against Mr. Gramins.

INTRODUCTION

An administrative bar of any kind is completely inappropriate in this case. Just as the SEC has not prosecuted its case against any other trader of residential mortgage-backed securities ("RMBS") who was indicted, the SEC has not sought to impose an administrative bar against any other RMBS trader who pled guilty or was convicted. As the Division is well aware, the SEC has not pursued an administrative bar against Matthew Katke or Adam Siegel, both of whom pled guilty to similar charges on virtually identical facts more than seven years ago. Nor has the SEC pursued an administrative bar against Tyler Peters or David Demos, whose indictments resulted in full acquittals. Nor did the SEC seek to reinstate the administrative bar that was imposed against Jesse Litvak after his second conviction. The punishment of an administrative bar should not be reserved for Mr. Gramins alone, especially where, as here, the conduct was industrywide. Mr. Gramins should not be the only one.

Apart from the unfairness of proceeding against Mr. Gramins alone, the public interest factors that are relevant in this administrative proceeding weigh strongly against the imposition of any administrative bar. Those factors—articulated primarily in *Steadman v. S.E.C.*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd*, 450 U.S. 91 (1981)—include (i) the egregiousness of the respondent's actions, (ii) the degree of scienter involved, (iii) respondent's recognition of the wrongful nature of his conduct and the likelihood of future violations, (v) the age of the

violations, (vi) the degree of harm to investors, and (vii) the extent to which the sanction will have a deterrent effect. Not a single one of these factors supports the imposition of an administrative bar.

As discussed more fully below:

- Mr. Gramins' conduct was not at all egregious compared to the misconduct underlying traditional securities fraud enforcement actions. Nomura's counterparties were all "qualified institutional buyers," managing over $100 million in assets; each had abundant resources to determine for itself appropriate price ranges at which to buy and sell RMBS, including highly sophisticated proprietary models; each was well-aware that dealers were not always truthful about their acquisition costs. Nor did Mr. Gramins directly profit from his conduct, as his compensation structure did not include a direct percentage of the profits that he generated for Nomura.

- The evidence at trial revealed overwhelmingly that neither Mr. Gramins nor any of the other RMBS traders thought that using deceptive negotiating tactics violated the securities laws. Because none of the traders thought that the negotiating tactics were illegal, they made no efforts to conceal the tactics from Nomura's compliance officers, who had full access to the Bloomberg chats. Nor did anyone on the desk report the conduct to Nomura's compliance department or any government agency.

- Mr. Gramins has provided repeated and unequivocal assurances that he accepts responsibility for his actions and will not commit any future violations of the securities laws. While not required to speak at his sentencing hearing, Mr. Gramins clearly and emphatically assured Judge Chatigny that he will never violate the law again and expressed contrition for his actions. Judge Chatigny accepted those assurances without hesitation or reservation. Mr. Gramins had no legal or compliance issues before this case, and has had none since.

- The trades at issue in the SEC's case against Mr. Gramins all occurred at least 10 years ago, between 2010 and 2013. Since that time, and to this day, Mr. Gramins has endured a long and torturous legal battle. He was indicted in 2015. The government tried its case in 2017, failing to convict on eight of nine counts. A lone conviction was overturned by the district court on a post-trial motion, then reinstated by the court of appeals. Mr. Gramins was sentenced in December of 2020, and has pursued appeals in higher courts ever since. All the while, Mr. Gramins' former colleagues—who engaged in the very same negotiating tactics—suffered minor consequences, or no consequences at all. Remarkably, some continue to work at Nomura.

- This case does not involve significant (or provable) harm to Nomura's counterparties. The sophisticated investment professionals that were counterparties to Nomura only bought and sold bonds when they were confident that the price was in the best interests of their investors. Indeed, many of them realized enormous profits from bonds bought from

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Nomura. Nor was there any evidence that Mr. Gramins, who bought and sold bonds for Nomura's own account (and could hold them in inventory), would have been willing to transact at different prices.

- Any further sanction against Mr. Gramins will have absolutely no deterrent effect. The U.S. Attorney's Office for the District of Connecticut has repeatedly and unequivocally declared that deterrence has already been achieved in RMBS markets, and Judge Chatigny echoed this sentiment at Mr. Gramins' sentencing hearing. Trading practices in the RMBS market, by all accounts, have changed in significant ways. There is simply no question that further sanctions against Mr. Gramins are not needed to deter traders from providing inaccurate information concerning their acquisition costs.

Further sanctions against Mr. Gramins are not warranted under any of the relevant standards. No administrative bar should be imposed.

PROCEDURAL BACKGROUND

A. The Criminal Case

On September 2, 2015, an indictment was returned in the United States District Court for the District of Connecticut against Ross Shapiro, Michael Gramins, and Tyler Peters (the "Criminal Case"). Count One charged the defendants with conspiracy to commit wire fraud and securities fraud in violation of 18 U.S.C. § 371. Counts Two and Three charged the defendants with securities fraud in violation of 15 U.S.C. §§ 78j(b), 78ff and 17 C.F.R. § 240.10b-5. Counts Four through Nine charged the defendants with wire fraud in violation of 18 U.S.C. § 1343.

On May 8, 2017, a jury trial commenced before the Honorable Robert N. Chatigny in the United States District Court for the District of Connecticut. On June 15, 2017, the jury returned a guilty verdict as to Mr. Gramins on Count One, and acquitted him on Counts Two, Four, Five, Six, Seven, and Eight. The jury was unable to reach a verdict as to Mr. Gramins on Counts Three and Nine. The jury acquitted Mr. Peters on all nine counts, and acquitted Mr. Shapiro on all counts save for Count One, as to which the jury was unable to reach a verdict.

On August 28, 2017, Mr. Gramins filed a motion for a judgment of acquittal on Counts

One, Three, and Nine pursuant to Rule 29, and a motion for a new trial on Count One pursuant to Rule 33. On June 5, 2018—nearly a year after Mr. Gramins' post-trial motions were filed—Judge Chatigny entered an order denying Mr. Gramins' Rule 29 motion (the "Rule 29 Decision"), but granting his Rule 33 motion (the "Rule 33 Decision"). With respect to the Rule 33 Decision, Judge Chatigny held that Mr. Gramins was prejudiced by testimony from government witness Joel Wollman that "strongly implied" that he viewed Mr. Gramins as an "agent" who owed his counterparties a "duty of honesty." *See United States v. Shapiro*, No. 3:15-cr-155, 2018 WL 2694440, at *1, 5 (D. Conn. June 5, 2018).[1] On June 27, 2018—at Judge Chatigny's suggestion—Mr. Gramins filed a motion for reconsideration of the Rule 29 Decision (the "MFR").[2]

On July 5, 2018, the government filed a notice of appeal of the Rule 33 Decision. On September 20, 2019—nearly a year after oral argument was held—the Second Circuit reversed the Rule 33 Decision and reinstated Mr. Gramins' conviction. *See United States v. Gramins*, 939 F.3d 429 (2d Cir. 2019). Following the Second Circuit's decision, Mr. Gramins and the government submitted additional briefing in the district court concerning the outstanding MFR. On September 25, 2020—more than two years after the motion was filed—Judge Chatigny denied the MFR.

On December 17, 2020, Judge Chatigny sentenced Mr. Gramins on Count One to a two-year term of probation, with the first six months to be served under home confinement. In addition to the standard terms of probation, Judge Chatigny ordered Mr. Gramins to complete

[1] The Rule 33 Decision followed the Second Circuit's decision in *United States v. Litvak* ("*Litvak II*"), 889 F.3d 56 (2d Cir. 2018). In *Litvak II*, the Second Circuit vacated RMBS trader Jesse Litvak's conviction because the district court had improperly admitted irrelevant and unfairly prejudicial evidence from a counterparty witness who testified that he perceived Mr. Litvak to be acting as his agent or broker.

[2] The MFR argued that the government failed to establish at trial, as required by *Litvak II*, a "nexus" between the testimony of its counterparty witnesses and reasonable investors in the RMBS market.

300 hours of community service. Mr. Gramins has completed his sentence and community service.

On January 4, 2021, Mr. Gramins filed a notice of appeal of the judgment on Count One.[3] The Second Circuit affirmed the judgment of the district court. *United States v. Gramins*, 2022 WL 6853273 (2d Cir. Oct. 12, 2022). On February 9, 2023, Mr. Gramins filed a petition for a *writ of certiorari* with the Supreme Court of the United States, seeking a reversal of the judgment of the district court, primarily on the grounds of materiality. The response of the Solicitor General is due on April 14, 2023.

A motion for restitution remains pending in the district court. On March 15, 2021, the U.S. Attorney's Office for the District of Connecticut filed a motion, seeking more than $1 million in restitution against Mr. Gramins. Mr. Gramins opposed the motion on multiple grounds on April 5, 2021. The motion was fully submitted by April 28, 2021, and has been pending before Judge Chatigny ever since.

B. The SEC Case

On September 8, 2015 (the same day that the indictment was unsealed), the SEC filed a Complaint against Messrs. Shapiro, Gramins, and Peters in the United States District Court for the Southern District of New York, asserting securities fraud in violation of Section 17(a) of the Securities Act of 1933, as amended, and securities fraud in violation of Section 10(b) of the Securities Exchange Act of 1934, as amended, and Rule 10b-5 thereunder (the "SEC Case"). The SEC Case is predicated on those trades identified in the Complaint, as well as those

[3] Counts Three and Nine were severed from Count One prior to Mr. Gramins' sentencing hearing and remain outstanding. *See* ECF No. 573, docket order. Mr. Gramins and the government entered into an agreement whereby the government will dismiss Counts Three and Nine if Mr. Gramins' appeal on Count One is unsuccessful; however, if Count One is reversed or vacated on appeal, Counts Three and Nine will be rejoined and retried with Count One. *See* ECF No. 571 (Ex. 1).

additional trades listed in a letter that the Staff sent to the defendants on February 2, 2016 (the "SEC Trades").

Shortly after the Complaint was filed, Magistrate Judge James C. Francis in the United States District Court for the Southern District of New York entered an order staying the SEC Case, with the exception of document discovery, until the completion of the trial in the Criminal Case. *See* ECF Nos. 43 ("Ex. 2"), and 66 ("Ex. 3").

The stay in the SEC Case was lifted as to Mr. Peters after he was fully acquitted at the criminal trial. Mr. Peters filed a motion to dismiss the SEC's Complaint in October of 2017, which was denied by Judge Berman in June of 2018. *See S.E.C. v. Shapiro*, No. 15 CV. 7045, 2018 WL 2561020 (S.D.N.Y. June 4, 2018).

In October of 2018, Mr. Shapiro entered into a settlement agreement with the SEC, pursuant to which Mr. Shapiro agreed to pay a $200,000 fine and accept a bar from associating with any broker, dealer, or investment advisor, with the right to apply for re-entry after two years. ECF No. 138 ("Ex. 4"); *In the Matter of Ross B. Shapiro*, Release No. 84390, 2018 WL 4908181 (Oct. 10, 2018).

From June through September of 2019, Mr. Peters and the Division deposed four counterparty witnesses who were named as "victims" in connection with the SEC Trades executed by Mr. Peters. In September of 2019, the Staff deposed Mr. Peters.[4] On November 5, 2019—roughly seven weeks after depositions concluded—the SEC voluntarily dismissed its Complaint with prejudice against Mr. Peters. ECF No. 172 ("Ex. 5").

The SEC Case against Mr. Gramins had remained dormant for more than five years. In April of 2022, Mr. Gramins agreed to bifurcate the remedy phase of the SEC Case, which was

[4] Although the civil stay remained in place as to Mr. Gramins at this time, his counsel was permitted to participate in these depositions.

endorsed by Judge Berman. *See* Gramins Civil Judgment. ECF No. 194 ("Ex. 6"). Pursuant to that agreement, Mr. Gramins is enjoined from future violations of the federal securities laws. *Id.* The parties further stipulated there would be no disgorgement, and that the Court would determine whether a civil penalty was appropriate and, if so, in what amount. *Id*.

On December 30, 2022, the SEC commenced this action for an administrative bar by filing an Order Instituting Proceedings ("OIP"). Mr. Gramins filed his answer to the OIP on January 19, 2023. The SEC filed its motion for summary disposition on March 3, 2023. Mr. Gramins now opposes the SEC's motion for summary disposition because, for all of the reasons discussed herein, an administrative bar of any kind is completely unwarranted.

ARGUMENT

POINT I

MR. GRAMINS SHOULD NOT BE SUBJECT TO ANY FURTHER DISPARATE TREATMENT

A. The Consequences for Industry-Wide Conduct Have Been Wildly Disparate

It is indisputable that RMBS traders at virtually every major bank engaged in the same negotiating tactics as Mr. Gramins during the relevant time period. These were industry-wide tactics that were widely known and accepted among RMBS market participants. The consequences for this industry-wide conduct, however, have not been remotely consistent. RMBS traders have faced wildly disparate consequences, running the gamut from no consequences at all, to discipline by regulatory authorities, all the way to felony conviction.

Most RMBS traders were not charged by any criminal or regulatory authority and are still trading on the desks of Wall Street firms. This includes some of Mr. Gramins' former colleagues

at Nomura,[5] and some RMBS traders whose firms entered into settlement agreements with securities regulators as the result of their conduct.[6] Some RMBS traders have faced consequences from FINRA.[7] Some RMBS traders have faced consequences from the SEC.[8] Other RMBS traders—such as the Nomura traders who testified at Mr. Gramins' trial—have avoided criminal charges entirely by cooperating with criminal authorities. Only an unfortunate few, Mr. Gramins among them, were charged with felony crimes, which carry the most severe consequences available in our legal system.[9]

The criteria for determining which RMBS traders should be targeted for criminal prosecution, which should be targeted for regulatory enforcement, and which should be left alone, have never been articulated to any of the Nomura defendants and remain a mystery to this day.[10] There are no meaningful differences between the negotiating tactics used by RMBS

[5] For instance, not only did Nomura trader Caleb Chao keep his job after engaging in the same negotiating tactics as Mr. Gramins, but Nomura management tried to convince him to stay at the bank when he began seeking other employment. *See* Trial Tr. 1859:5-1860:6 ("Ex. 7"). Additionally, Nomura salesperson Conor O'Callaghan was named as an unindicted co-conspirator in the Criminal Case and remained employed by Nomura long after the criminal trial. *See* Ex. 7, 614:15-20.

[6] *See, e.g.*, *In the Matter of Merrill Lynch, Pierce, Fenner & Smith, Inc.*, Release No. 83408, 2018 WL 2932889 (June 12, 2018).

[7] *See In re Kevin J. Blaney*, FINRA Letter of Acceptance, Waiver and Consent, No. 20160499622-01, dated Sept. 1, 2016 ($30,000 fine and three-month FINRA suspension for former Jefferies RMBS supervisor) (available at http://disciplinaryactions finra.org/Search/ViewDocument/66541); *In re Simon Xi*, FINRA Letter of Acceptance, Waiver and Consent, No. 20150462885-01, dated Aug. 26, 2015 (industry bar for former RMBS trader at Bedrok Securities) (available at http://disciplinaryactions.finra.org/Search/ViewDocument/63412).

[8] *See In the Matter of Nicholas M. Bonacci*, Release No. 78932, 2016 WL 5369311 (Sept. 26, 2016) ($100,000 fine and one-year suspension for Morgan Stanley trader); *In the Matter of Edwin K. Chin*, Release No. 78585, 2016 WL 4363882 (Aug. 16, 2016) ($400,000 in penalties and two-year bar for Goldman Sachs trader); *In the Matter of Yoon Seok Lee*, Release No. 80561, 2017 WL 1548263 (May 1, 2017) ($200,000 fine and one-year suspension for Barclays trader).

[9] *See United States v. Shapiro*, 3:15-cr-00155-RNC (D. Conn.); *United States v. Litvak*, No. 3:13-cr-00019-JCH (D. Conn); *United States v. Demos*, No. 3:16-cr-00220-AWT (D. Conn.); *United States v. Katke*, No. 3:15-cr-00038-RNC (D. Conn.); *United States v. Siegel*, No. 3:15-cr-00231-SRU (D. Conn.).

[10] Mr. Gramins and his colleagues at Nomura may well have been an early (and inviting) target of federal prosecutors in Connecticut because counsel for Nomura conducted a comprehensive internal investigation just after the *Litvak* indictment and provided substantial cooperation to authorities by serving up the results of its investigation, presumably to gain an advantage in their own settlement negotiations. Counsel for Nomura shared with the government their robust analysis of the relevant chats and trading data, including by providing annotated copies of the chats that highlighted the traders' misrepresentations. In fact, every single trade introduced at the criminal trial was brought to the government's attention by Nomura's counsel.

traders throughout the relevant period. This was demonstrated time and time again at trial. When the misconduct is so uniform across the market, there is no rationale for legal consequences that are so wildly disparate. The luck of the draw should not dictate whether an RMBS trader gets off scot-free, faces regulatory consequences, or must defend against a potential loss of liberty. Even those traders who have faced regulatory consequences are free to trade today because they were sanctioned with temporary suspensions or bars that have now expired.

There is no question that Mr. Gramins found himself in the most severe category. Mr. Gramins was one of seven RMBS traders cherrypicked by federal prosecutors in the District of Connecticut to face criminal charges. While federal prosecutors brought a total of 57 felony counts in four criminal trials, they were a spectacular failure; only a single count of conviction (against Mr. Gramins) was returned that has not been overturned. Mr. Gramins remains the lone RMBS trader with an outstanding conviction, the scapegoat for conduct that was rampant in the industry. This is punishment enough. Any additional punishment from the SEC makes the unfairness exponentially worse.

A related case brought by the SEC is relevant here. On May 15, 2017, the SEC brought a civil lawsuit in the United States District Court for the Southern District of New York against James Im, a trader of commercial mortgage-backed securities ("CMBS") at Nomura. *S.E.C. v. Im,* 1:17-cv-03613-JPO (S.D.N.Y.). CMBS and RMBS markets operate in much the same way, and the SEC alleged that Mr. Im engaged in the very same conduct that is at issue in this case. There are remarkable parallels. Like Mr. Gramins, Mr. Im attended a compliance meeting at Nomura on February 5, 2013, in which compliance officials discussed the *Litvak* indictment. Like Mr. Gramins, Mr. Im was charged with a trade that occurred after the *Litvak* indictment.

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(As discussed in Point II.C. below, it is widely believed that the jury in the Criminal Case convicted on Count One against Mr. Gramins because Mr. Gramins, unlike Mr. Shapiro or Mr. Peters, had been charged with a post-*Litvak* trade.) In spite of this, the jury unanimously concluded that Mr. Im had not violated federal securities laws.

The SEC had failed to prove its case against Mr. Im, even under the lower standard of proof that applies in a civil case ("preponderance of the evidence"), and even with a post-*Litvak* trade. This was the final nail in the MBS coffin. Imposing additional punishment against Mr. Gramins after the jury's unanimous decision in the *Im* case would be grossly unfair.

B. The SEC Has Not Pressed Its Case Against Other RMBS Traders Who Were Indicted

It is bad enough that Mr. Gramins remains the only RMBS trader to be convicted for conduct that permeated the RMBS market. This should not be made worse by making Mr. Gramins the only indicted RMBS trader against whom the SEC has pressed its case (here, by seeking a bar). Seven RMBS traders have been indicted by federal prosecutors in the District of Connecticut. As to three of them—David Demos, Matthew Katke and Adam Siegel—the SEC never filed a case. In the case of Jesse Litvak, the SEC filed a case in January 2013, but voluntarily dismissed it in November 2018, three months after the government dismissed its criminal case. *See S.E.C. v. Litvak*, No. 3:13-cv-00132-JCH (D. Conn).[11]

That leaves the Nomura defendants. The SEC's case against Mr. Shapiro will not go forward because Mr. Shapiro, for his own reasons, settled with the SEC in November 2018, agreeing to accept a two-year associational bar and a $200,000 fine. Mr. Shapiro appears to have

[11] Although the SEC secured an administrative bar against Mr. Litvak after he was convicted for the first time, the bar was vacated after the Second Circuit reversed that conviction. *See* Order Vacating Bar, *In the Matter of Jesse C. Litvak*, Release No. 77993, 2016 WL 3124673 (June 3, 2016). After Mr. Litvak was convicted for the second time, the SEC did not seek to reinstate the bar.

been motivated to settle his SEC case quickly to improve his chances of a favorable resolution concerning the outstanding hung count against him in the Criminal Case. Indeed, just days after Mr. Shapiro settled with the SEC, he notified both Judge Chatigny and the Connecticut prosecutors that his SEC case had been resolved. *See* ECF No. 534 ("Ex. 8"). Mr. Shapiro was proven right. In January of 2022, Mr. Shapiro was offered, and then entered, a pretrial diversion waiver. *See* ECF Nos. 620 ("Ex. 9") and 621 ("Ex. 10"). Under the pretrial diversion waiver, which was entered in an Order from Judge Chatigny, Connecticut prosecutors agreed to drop the hung count upon successful completion of a Pretrial Diversion Program. *See* ECF No. 624 ("Ex. 11"). Mr. Shapiro completed the Pretrial Diversion Program on March 16, 2023, and Connecticut prosecutors moved to dismiss the remaining case against Mr. Shapiro on March 22, 2023. *See* ECF No. 627 ("Ex. 12"). Judge Chatigny granted the motion to dismiss on March 23, 2023. *See* ECF No. 628, docket order.

Likewise, the SEC's case against Mr. Peters will not go forward. As discussed above, the SEC voluntarily dismissed its case (with prejudice) against Mr. Peters shortly after depositions in his SEC case concluded. The SEC dropped the case against Mr. Peters outright, and no administrative bar was ever sought.

The SEC has not pressed its case against any of the other indicted RMBS traders. Only Mr. Shapiro has suffered SEC consequences, but Mr. Shapiro proactively sought an SEC resolution for reasons of his own, presumably to obtain a favorable resolution of a hung criminal count. Mr. Gramins should not be both the only RMBS trader to suffer criminal consequences, and the only indicted RMBS trader against whom the SEC has advanced its case. This kind of piling on by the SEC is unfairly selective and grossly disproportionate. Consistent with its treatment of other indicted RMBS traders, no administrative bar of any kind should be imposed

by the SEC against Mr. Gramins.

POINT II

THE PUBLIC INTEREST FACTORS WEIGH STRONGLY AGAINST THE IMPOSITION OF AN ADMINISTRATIVE BAR

A. The Public Interest Factors

Apart from the unfairness of proceeding against Mr. Gramins alone, the public interest factors that are relevant in this administrative proceeding weigh strongly against the imposition of any administrative bar. Those factors, articulated primarily in *Steadman v. S.E.C.*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd* 450 U.S. 91 (1981), include:

> "the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations."

Beyond the *Steadman* factors, the SEC considers "the age of the violation[,]... the degree of harm to investors and the marketplace resulting from the violation… [and] the extent to which the sanction will have a deterrent effect." *In the Matter of Joseph S. Amundsen, Cpa, Michael T. Remus, Cpa, & Michael Remus Cpa*, Release No. 1391, 2019 WL 6683122, at *9 (Dec. 5, 2019) (citations omitted). Courts have made clear that the analysis "is flexible and no one factor is controlling." *In the Matter of Lawrence Maxwell Mccoy*, Release No. 569, 2014 WL 720787, at *5 (Feb. 26, 2014).

As discussed more fully below, not a single one of these public interest factors supports the imposition of an administrative bar.

B. Mr. Gramins' Conduct Was Commonplace—Not Egregious

The negotiating tactics at issue in this case were commonplace in RMBS markets. If

anything became clear at trial, it was that RMBS traders at virtually every major bank used the very same negotiating tactics used by Mr. Gramins. These negotiating tactics were industrywide. They were widely known and accepted among RMBS dealers and counterparties. Mr. Gramins was among an unfortunate few who faced severe consequences for negotiating tactics that were an everyday reality in the rough-and-tumble world of RMBS trading.

Judge Chatigny confirmed this everyday reality repeatedly during the Criminal Case, expressing serious due process concerns about a criminal case that was premised upon negotiating tactics that so permeated the RMBS market. Set forth below are a few examples from Judge Chatigny:

- "No one had ever been charged with doing this, even though everybody did it, and certainly nobody had ever been convicted of doing it. They thought that it was okay, and the government has decided to use the criminal law as a means of educating the people in this industry about where the line is. Do we have a precedent for that? Is there any other area of securities regulation where the government proceeded by way of indictment rather than some lesser means?" Apr. 24, 2017 Hearing Tr. at 62:6-15 (ECF No. 372) ("Ex. 13").

- "If the regulators believe that an area needs to be better regulated, the way to do that is to publish regulations for comment and get feedback and give people notice. The way not to do that is to say, 'Well, let's pick a couple of people and prosecute them, and then everybody will know where the line is if we win…' That's something that's very much in my mind as I think about this case." Ex. 7, 276:10-18.

- "I agree… that the 'everybody does it' offense is not very appealing… but when you're talking about due process and fair warning, what everybody does is certainly relevant… Where does the fair warning come from?" Apr. 29, 2020 Hearing Tr. at 54:9-55:2 (ECF No. 560) ("Ex. 14").

Judge Chatigny's observations were spot on. The negotiating tactics used by Mr. Gramins were commonplace in the RMBS marketplace. As Judge Chatigny recognized (over and over again), RMBS traders at virtually every major bank used these same negotiating tactics throughout the relevant period.

C. Mr. Gramins Did Not Believe That Deceptive Negotiating Tactics Violated the Securities Laws

The evidence at trial revealed overwhelmingly that neither Mr. Gramins nor any other RMBS trader thought that using deceptive negotiating tactics violated the securities laws. All of the government's Nomura witnesses testified that they did not believe, prior to the first *Litvak* indictment, that it was illegal to provide inaccurate information concerning Nomura's acquisition costs, and Caleb Chao and Frank Dinucci testified that they did not even believe it was "wrong" to do so. Ex. 7 at 293:22-294:1; 343:4-8; 1777:25-1778:2. Mr. Peters testified similarly during his deposition in this case. *See* Peters Depo Tr. ("Ex. 15") at 270:2-12.

Because none of the traders thought that the negotiating tactics were illegal, they made no efforts to conceal the tactics from Nomura's compliance officers, who had full access to the relevant Bloomberg chats. Nor did anyone on the RMBS desk report the conduct to Nomura's compliance department or any government or regulatory agency. Ex. 7 at 287:19-23; 333:2-6, 1778:9-1780:15. In fact, Nomura continued to employ certain traders and salespeople even after learning that they used the same negotiating tactics at issue in this case. *See* Ex. 7 at 1859:5-1860:6; 614:15-20.[12]

The Division may argue that Mr. Gramins is different from the other defendants, and had *scienter*, because Mr. Gramins was the only defendant for whom the government introduced at trial a trade that was executed after Jesse Litvak was indicted in January 2013 (the JPMAC 2006-WMC1 A4 "JPMAC" trade). Indeed, Judge Chatigny, the government, and the Second Circuit all agree that Mr. Gramins was almost certainly convicted on Count One as a result of his

[12] Additionally, it is clear from the volume of criminal and regulatory actions brought against banks and individual traders that the conduct at issue in this case was occurring at virtually every major broker-dealer in the RMBS market. It would be illogical (to say the least) to suggest that this conduct was so widespread because dozens of RMBS traders across these banks all knowingly decided to commit felonies and risk imprisonment.

involvement in the JPMAC trade. *See, e.g.*, Transcript from September 22, 2020 Hearing on Motion for Reconsideration (ECF No. 576) ("Ex. 16") at 9:4-5 (Judge Chatigny stating that it "seems obvious" that Mr. Gramins was convicted due to this trade); *Gramins*, 939 F.3d at 455 (stating that the JPMAC trade provides an "obvious inference" that "explain[s] the different results" between Mr. Gramins' guilty verdict and his co-defendants' acquittals).[13]

The JPMAC trade, however, provides no basis whatsoever for the SEC to treat Mr. Gramins differently than Mr. Peters in this matter, as Mr. Peters was also alleged to have executed an allegedly fraudulent "post-*Litvak*" trade—the BCAP 2012-RR12 4A2 trade (the "BCAP trade")—which was included among the SEC Trades. Luckily for Mr. Peters, although the BCAP trade was included in the indictment as part of the conspiracy charge, Judge Chatigny ultimately precluded the government from introducing evidence concerning the trade at trial in the absence of testimony from Conor O'Callaghan, the Nomura salesperson who worked in tandem with Mr. Peters to execute the trade.[14] As a result, the overt acts associated with the BCAP trade were stricken from the version of the indictment that the jury reviewed during deliberations.

In other words, the difference between Mr. Gramins' and Mr. Peters' verdicts was almost certainly the result of the government's unwillingness to call Conor O'Callaghan as a trial witness—*not* because Mr. Gramins is in fact more culpable than Mr. Peters.[15] It had nothing to do with intent. This evidentiary technicality has already branded Mr. Gramins a felon for the rest of his life. It should not subject him to further disparate treatment from Mr. Peters in this case.

[13] As Mr. Gramins argued to the jury, Judge Chatigny, and the Second Circuit, the JPMAC trade demonstrated a shift in his negotiating tactics that, at the time, he believed adhered to instructions from Nomura's compliance department and addressed the legal concerns presented by the *Litvak* indictment. Indeed, Mr. Gramins made no express representations about the specific size of Nomura's spread to either counterparty involved in the trade.
[14] The government informed Judge Chatigny that "for reasons unrelated to [the BCAP trade], the government doesn't want to sponsor Mr. O'Callaghan." Ex. 7 at 2515:19-21.
[15] Mr. Peters made explicit misstatements to the seller in the BCAP trade. For example, after Mr. O'Callaghan received a 64-16 bid from the buyer of the bonds, Mr. Peters told the seller a lower bid (63-08).

D. Mr. Gramins Has Accepted Responsibility for His Conduct

Mr. Gramins has provided repeated and unequivocal assurances that he accepts responsibility for his actions and will not commit any future violations of the securities laws. Indeed, although "the existence of a violation raises an inference that it will be repeated," defendants are entitled to rebut that inference. *In the Matter of Paul D. Crawford*, Release No. 1001, 2016 WL 1554845, at *6 (Apr. 18, 2016); *see also id.* ("the existence of a past violation, without more, is not a sufficient basis for imposing a bar"); *Steadman*, 603 F.2d at 1140 ("To say that past misconduct gives rise to an inference of future misconduct is not enough. What is required is a specific enumeration of the [*Steadman* factors] that merit permanent exclusion."). Mr. Gramins—who was not required to speak at his sentencing hearing—clearly and emphatically rebutted this inference when he assured Judge Chatigny that he will never violate the law again and expressed contrition for his actions:

> "I can assure Your Honor that I am a much different person today than I was six years ago when I lost my job and I began this painful ordeal. I cannot begin to express how humbling and eye-opening this experience has been, and I can accept responsibility for why I'm here today. I fully intend to live every day the rest of my life as a law-abiding citizen and as a positive role model for my two children who mean the absolute world to me... I promise that Your Honor will never see me in this courtroom or any other courtroom ever again."

Dec. 17, 2017 Sentencing Tr. at 60:5-22 ("Ex. 17"); *see also id.* at 76:21-77:1 (Judge Chatigny: "I understand Gramins' statement just now to be an expression of his remorse and contrition, and I have read in the letters that were submitted on his behalf numerous statements by various writers that he is ashamed and he is remorseful and he understands that this conduct was wrongful"); *compare In the Matter of Jesse C. Litvak*, Release No. 739, 2015 WL 271259 at *7-8 (Jan. 22, 2015) (finding that Litvak did not "offer[] a straightforward assurance against future violations" and that "[t]he record is devoid of any sign of contrition on Litvak's part"); *In the*

Matter of Lawrence Foster, Release No. 867, 2015 WL 4939695, at *6 (Aug. 19, 2015) ("Foster has offered no evidence to rebut the inference that he might repeat his illegal behavior if given the opportunity.").

Judge Chatigny did not doubt the sincerity of the remorse and contrition that was expressed by Mr. Gramins during the sentencing process, and there is no cause for any such doubt. Mr. Gramins has accepted full responsibility for his conduct.

Nor is there any basis for the Division to fantasize about "future violations" because Mr. Gramins now works as a consultant to Vista Index Services ("Vista"). A firm is either required to be registered with the SEC, or it is not. Vista is not required to be registered with the SEC. Vista does not engage in "broker" or "dealer" activities, or investment advisory activities, of any kind. Vista is an index provider that analyzes mortgage loan data. Vista has never had a regulatory or disciplinary issue of any kind. Mr. Gramins is a consultant to Vista. Mr. Gramins is an unregistered consultant at an unregistered firm. Respectfully, Mr. Gramins is leveraging his significant experience in mortgage credit markets, and helping to support his family, in an entirely appropriate way. There is no requirement that Mr. Gramins divorce himself from anything remotely related to finance.

E. The Trades at Issue in the SEC Case Occurred At Least 10 Years Ago

Courts consider the "age of the violation[s]" because, when the violations occurred long ago, and the risk of recurrence has become less and less likely, the need for an administrative bar is reduced. *In the Matter of Joseph S. Amundsen, Cpa, Michael T. Remus, Cpa, & Michael Remus Cpa*, Release No. 1391, 2019 WL 6683122, at *9 (Dec. 5, 2019); *In the Matter of the Application of Alan E. Rosenthal*, Release No. 40387, 1998 WL 549558 (Sept. 1, 1998). That is precisely the case here.

The trades in the SEC Case are ancient. The SEC Trades began in 2010, *approximately 13 years ago*. None of the SEC Trades occurred after 2013. Much has changed since 2010—including (most importantly) negotiating tactics in RMBS markets—and any cause for an administrative bar has long since dissipated. Mr. Gramins was a 27-year-old RMBS trader at Nomura in 2010. Today, Mr. Gramins is a 40-year-old married father of two, residing in North Carolina. Since Nomura's internal investigation began in 2014 (nine years ago), and to this day, Mr. Gramins has endured a long and torturous legal battle. He was indicted in 2015 (eight years ago). The government tried its case in 2017 (six years ago), failing to convict on eight of nine counts. A lone conviction was overturned by the district court on a post-trial motion, then reinstated by the court of appeals. Mr. Gramins was sentenced in December of 2020 (more than two years ago), and has pursued appeals in higher courts ever since.

The advanced age of the trades in the SEC Case weighs decisively against the imposition of an administrative bar. The SEC Trades are all at least 10 years old, the risk of recurrence is obviously remote, and the need for any administrative bar (if it ever existed) has long since dissipated.

Apart from the sheer age of the violations, Mr. Gramins has been unable to work in the securities industry since his suspension from Nomura in 2014. In effect, Mr. Gramins has already been barred from the securities industry for almost 10 years, an amount of time that well exceeds the amount of time he worked as an RMBS trader. This, too, weighs decisively against the imposition of an administrative bar. *See S.E.C. v. Miller*, 744 F. Supp. 2d 1325, 1348 (N.D. Ga. 2010) (limiting bar for defendant who had "already effectively served over 10 years of any bar period that would have been imposed had this case been resolved closer to the time of the offense conduct"); *S.E.C. v. Jasper*, 883 F. Supp. 2d 915, 931 (N.D. Cal. 2010), *aff'd*, 678 F.3d

1116 (9th Cir. 2012).

F. There is No Provable Harm in this Case and Mr. Gramins Did Not Profit Directly

It is not at all clear that the counterparty "victims" in this case—sophisticated hedge funds and asset managers—suffered any harm at all. Indeed, Nomura's counterparties were all "qualified institutional buyers" that managed over $100 million in assets and possessed abundant resources to determine for themselves appropriate price ranges at which to buy and sell RMBS, including highly complex models designed to forecast a bond's yield and the range of prices at which the bond could be profitably purchased or sold. *See, e.g.*, Ex. 7 at 1549:5-20; 2358:8-24; Graham Depo Tr. ("Ex. 18") at 26:18-27:6; 33:21-34:21; Litt Depo Tr. ("Ex. 19") at 39:18-40:4; Austin Depo Tr. ("Ex. 20") at 82:16-84:7. These sophisticated counterparties—who were themselves fiduciaries—were well-aware that broker-dealers were not always truthful about their acquisition costs, and they made investment decisions based on whether they were satisfied, based on their independent analysis, with the all-in prices offered by dealers. *See, e.g.*, Ex. 7 at 1600:24-1601:10; 2225:3-6; Ex. 19 at 94:7-96:3; 227:3-228:1; Ex. 18 at 35:18-22; 42:19-44:10.[16] There was no proof at trial that Mr. Gramins, who bought and sold bonds for Nomura's own account (and could hold them in inventory), would have been willing to transact at different prices. Indeed, no counterparty ever brought a claim against Nomura for any alleged loss.

Nor did Mr. Gramins profit directly from his conduct. Mr. Gramins did not receive a direct percentage of the profits that he generated for Nomura. Instead, Nomura management

[16] Nomura's counterparties were not just aware that broker-dealers were not always truthful about their acquisition costs, they engaged in a host of deceptive negotiating tactics of their own. Zachary Harrison, a government witness, admitted in the Criminal Case to spreading "BS color" about the price at which a bond had traded (Ex. 7 at 1289:22-1290:10, 1291:15-20); "shading" color in order to obtain favorable prices on future transactions (*Id.* at 1295:8-20); "shopping" bids for certain dealers (*Id.* at 1275:1-4, 1276:6-7); asking dealers not to outbid him in auctions (*Id.* at 1238:1-7, 1251:3-8); lying "point-blank" to dealers (*Id.* at 1204:24-25); lying during negotiations when he thought it was in the best interest of his clients (*Id.* at 1219:5-13); offering to fabricate "color" (*Id.* at 1091:11-15); and lying to dealers about whether he owned certain bonds (*Id.* at 1094:16-18).

determined Mr. Gramins' annual bonus on the basis of a holistic review of a variety of factors, including the overall performance of the RMBS desk and the fixed income department, whether Mr. Gramins had acted "as a good corporate citizen" that year, and the amounts at which competitor firms were compensating their traders. *See* Ex. 7 at 539:6-542:13; *compare In the Matter of Jesse C. Litvak*, Release No. 739, 2015 WL 271259, at *7-8 (Jan. 22, 2015), *vacated by In the Matter of Jesse C. Litvak*, Release No. 77993, 2016 WL 3124673 (June 3, 2016) (finding that the fact that "Litvak personally received $700,000 to $1 million" in illicit profits weighed in favor of a bar).

G. The Imposition of an Administrative Bar Will Have Absolutely No Deterrent Effect

The imposition of an administrative bar against Mr. Gramins will not serve any deterrent purpose, or have any deterrent effect. By the government's own reckoning, deterrence in the RMBS market was achieved long ago.

The U.S. Attorney's Office for the District of Connecticut has made it abundantly clear that RMBS traders have already been sufficiently deterred from using the negotiating tactics that are at issue in this case. Indeed, the United States Attorney who made the decision to devote prosecutorial resources to the pursuit of the RMBS market has declared "mission accomplished," pointing to the "reforms at banks and brokerages to cut down on deception" that were the result of her Office's efforts. *See* Jack Newsham, *Former Conn. US Atty Deirdre Daly Joins Finn Dixon*, LAW360 (June 27, 2018), https://www.law360.com/articles/1058033/former-conn-us-atty-deirdre-daly-joins-finn-dixon; *see also* Jan. 27, 2017 DOJ Press Release, https://www.justice.gov/usao-ct/pr/former-rmbs-trader-convicted-securities-fraud-after-retrial ("We are confident that [the *Litvak*] prosecutions have acted as a forceful disincentive to market participants tempted to commit securities fraud."); Apr. 26, 2017 DOJ Press Release,

https://www.justice.gov/usao-ct/pr/former-rmbs-trader-sentenced-2-years-prison-fined-2-million-securities-fraud ("Since [Mr. Litvak's] arrest... broker dealers have changed their sale practices to prevent this type of fraud."); June 15, 2017 DOJ Press Release, https://www.justice.gov/usao-ct/pr/former-nomura-rmbs-trader-convicted-fraud-conspiracy ("Our investigation into fraudulent trading practices in the RMBS and other financial markets has had a marked impact on the industry...").

Judge Chatigny echoed these very same sentiments at Mr. Gramins' sentencing hearing when he determined that a term of incarceration was unnecessary to achieve the goal of general deterrence. *See* Ex. 17 at 86:5-13 ("[T]he government's investigation and prosecution of these cases has had a needed effect in that people understand that this conduct is unlawful, and anybody who would engage in this conduct, in my opinion, in the wake of the investigation and the prosecutions… is not likely to be influenced by [Mr. Gramins' sentence].").

As a result of these reforms, criminal and regulatory authorities (including the SEC) stopped bringing new actions against RMBS traders years ago. In fact, according to the former Chief of the SEC's Complex Financial Instruments Unit:

> "Prompted by the cases filed by the government, sell-side institutions have generally enhanced their surveillance of trading of RMBS and other complex products. For those traders and firms that remain active in the RMBS secondary market, the prospect of criminal and regulatory prosecution has exercised a strong deterrent effect, depriving the government of what had once been a target-rich investigative environment. In light of the changed behavior, the SEC... has reportedly begun to focus its deep product and analytical expertise on the prospect of misconduct by buy-side asset managers and hedge funds."

Michael Osnato, *SEC's Emerging Enforcement Priorities In The Bond Markets*, LAW360 (July 18, 2017), https://www.law360.com/articles/944550.

The sentiments expressed above strongly counsel against a bar. Trading practices in RMBS markets have evolved to the point where further sanctions serve no deterrent purpose.

RMBS traders no longer discuss their potential acquisition cost with a buyer counterparty on the other side. RMBS traders no longer discuss their potential sales price with a seller counterparty on the other side. This remains true whether the SEC imposes an administrative bar against Mr. Gramins or not. As Judge Chatigny aptly found, anyone brazen enough to engage in the negotiating tactics underlying this case despite the felony charges brought against numerous RMBS traders is unlikely to be deterred by any further sanctions secured against Mr. Gramins. Indeed, if Jesse Litvak's prison sentence does not sufficiently deter a trader from misrepresenting his or her acquisition costs, surely any administrative bar imposed on Mr. Gramins would be equally futile. Further sanctions against Mr. Gramins will have no deterrent impact whatsoever.

* * *

It is abundantly clear that the *Steadman* factors do not warrant any further sanctions against Mr. Gramins. As the Commission has made clear, "[i]t is well-settled that such administrative proceedings are not punitive but remedial. When we suspend or bar a person, it is to protect the public from future harm at his or her hands." *In the Matter of Howard F. Rubin*, Release No. 35179, 1994 WL 730446, at *1 (Dec. 30, 1994); *see also McCarthy v. S.E.C.*, 406 F.3d 179, 188 (2d Cir. 2005) ("It is familiar law that the purpose of expulsion or suspension from trading is to protect investors, not to penalize brokers."). No such purpose is served here.

POINT III

NO ADMINISTRATIVE BAR IS WARRANTED, BUT IF AN ADMINISTRATIVE BAR IS ISSUED, IT SHOULD NOT BE PERMANENT

Any administrative bar in this matter (of any length) is completely inappropriate because it would be inconsistent with the SEC's treatment of every other RMBS trader in the industry. Likewise, for all of the reasons discussed above, we think that the public interest factors relevant

in this administrative proceeding weigh strongly against the imposition of any administrative bar (of any length) against Mr. Gramins.

Nevertheless, if an administrative bar were to issue, a permanent bar would be excessively punitive, grossly unfair, and completely inappropriate. Nor does the case law require a permanent bar. Courts instead consider whether a conditional or temporary bar "might be sufficient, especially where there is no prior history of unfitness," and have imposed temporary bars under similar circumstances. *S.E.C. v. Patel*, 61 F.3d 137, 142 (2d Cir. 1995). A recent example is *In the Matter of Mark Megalli*, Release No. 1253, 2018 WL 3199049 (May 31, 2018). In *Megalli*, the ALJ applied the *Steadman* factors and imposed a 12-month suspension on a defendant who pled guilty to conspiracy to commit securities fraud and was sentenced to a year and a day in prison. Mr. Gramins was convicted of a very similar violation. Although Mr. Megalli pled guilty, Mr. Megalli received a more severe sentence than Mr. Gramins. No administrative bar should issue, but in the event that an administrative bar is imposed, *Megalli* is the most analogous precedent.

The jurisprudence is replete with similar examples of temporary bars. This includes:

- *In the Matter of Maher F. Kara*, Release No. 979, 2016 WL 1019197 (Mar. 15, 2016), *vacated in part on other grounds by In the Matter of Maher F. Kara*, Release No. 82966 (Mar. 29, 2018) (three-year bar for defendant who pled guilty to securities fraud and conspiracy and was sentenced to three years of probation, with the first three months to be served under home confinement).[17]

- *In the Matter of Sandip Shah*, Release No. 1054, 2015 WL 12513537 (Sept. 8, 2015) (five-year bar for defendant convicted of wire fraud and sentenced to 27 months in prison and two years of supervised release).

- *In the Matter of the Application of Alan E. Rosenthal*, Release No. 40387, 1998 WL 549558 (Sept. 1, 1998) (three-year bar for defendant convicted of offering a gratuity

[17] *See also Kara*, 2016 WL 1019197, at *7 ("In the judgment of the court in *United States v. Kara*, [respondent] is unlikely to reoffend. Thus a permanent bar is unnecessary.").

in connection with a pension plan investment and sentenced to a one-year suspended prison sentence and three years of probation).

- *In the Matter of Ted Harold Westerfield*, Release No. 120, 1998 WL 49459 (Feb. 9, 1998) (five-year bar for defendant convicted of conspiracy and mail fraud).

- *In the Matter of Bruce Paul*, Release No. 21789, 1985 WL 548579 (Feb. 26, 1985) (two-year bar for defendant who pled guilty to filing false tax returns and was sentenced to 15 months in prison).

Although temporary bars have followed guilty pleas and criminal convictions, no administrative bar of any kind should issue in this case. This case is *sui generis*. As discussed more fully above, the SEC has not sought administrative bars against other indicted RMBS traders; Mr. Gramins has already been selectively and severely punished for conduct that was commonplace in RMBS markets (far more severely than any other RMBS trader); and the *Steadman* factors weigh decisively against the imposition of an administrative bar.

CONCLUSION

For all of the foregoing reasons, Mr. Gramins respectfully submits that the Division of Enforcement's claims for administrative relief on summary disposition should be denied, and no administrative bar of any kind should be issued.

Dated: New York, New York
March 29, 2023

MUKASEY FRENCHMAN LLP

By: /s/ Robert S. Frenchman

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CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2023, the foregoing opposition to the Division of Enforcement's Motion for Summary Disposition was filed electronically through the S.E.C's eFAP site. The foregoing will be sent electronically to all participants registered to receive electronic notice in this case.

/s/ Robert S. Frenchman
Robert S. Frenchman

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21266

In the Matter of

MICHAEL A. GRAMINS,

Respondent.

RESPONDENT MICHAEL GRAMINS' INDEX OF ATTACHMENTS

Attachment	Description
1	*United States v. Shapiro, et al.*, No. 15-cr-155 (D. Conn.), October 7, 2020 Joint Motion to Set Sentencing Date, Sever
2	*S.E.C. v. Shapiro, et al.,* 15-cv-07045 (S.D.N.Y.), November 4, 2015 Case Management Plan
3	*S.E.C. v. Shapiro, et al.*, 15-cv-07045 (S.D.N.Y.), February 19, 2016 Order
4	*S.E.C. v. Shapiro, et al.*, 15-cv-07045 (S.D.N.Y.), Final Judgment as to Ross Shapiro
5	*S.E.C. v. Shapiro, et al.*, 15-cv-07045 (S.D.N.Y.), Motion to Dismiss Against Tyler Peters
6	*S.E.C. v. Shapiro, et al.*, 15-cv-07045 (S.D.N.Y.), Final Judgment as to Michael Gramins
7	*United States v. Shapiro, et al.*, No. 15-cr-155 (D. Conn.), Trial transcript excerpts
8	*United States v. Shapiro, et al.*, No. 15-cr-155 (D. Conn.), Supplemental Memo in Support of Ross Shapiro's Motion for Reconsideration and Motion for Severance

OS Received 03/29/2023

Attachment	Description
9	*United States v. Shapiro*, *et al.*, No. 15-cr-155 (D. Conn.), Pretrial Diversion Waiver
10	*United States v. Shapiro, et al.*, No. 15-cr-155 (D. Conn.), Joint Motion to Continue in Connection with a Pretrial Diversion Program
11	*United States v. Shapiro*, *et al.*, No. 15-cr-155 (D. Conn.), Pretrial Diversion Order
12	*United States v. Shapiro, et al.*, No. 15-cr-155 (D. Conn.), Motion to Dismiss Following Completion of Pretrial Diversion
13	*United States v. Shapiro, et al.*, No. 15-cr-155 (D. Conn.), April 24, 2017 hearing transcript excerpts
14	*United States v. Shapiro, et al.*, No. 15-cr-155 (D. Conn.), April 29, 2020 hearing transcript excerpts
15	Tyler Peters deposition transcript excerpts (Sep. 16, 2019)
16	*United States v. Shapiro, et al.*, No. 15-cr-155 (D. Conn.), September 22, 2020 hearing transcript excerpts
17	*United States v. Shapiro, et al.*, No. 15-cr-155 (D. Conn.), December 17, 2020 sentencing hearing transcript excerpts
18	Robert Graham deposition transcript excerpts (Sep. 11, 2019)
19	Gary Litt deposition transcript excerpts (June 11, 2019)
20	Scott Austin deposition transcript excerpts (Aug. 13, 2019)

Gramins Attachment 1

OS Received 03/29/2023

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA No. 3:15CR155 (RNC)

v.

MICHAEL GRAMINS October 7, 2020

JOINT MOTION TO SET SENTENCING DATE, SEVER UNRESOLVED COUNTS, AND TOLL SPEEDY TRIAL CLOCK

The Government and defendant Michael Gramins ("Gramins") jointly move the Court (1) to set a sentencing date for Gramins's conviction of one count of conspiracy to commit wire fraud and securities fraud; (2) to sever Gramins's case from his co-defendant Ross Shapiro; (3) to sever the unresolved counts of wire fraud and securities fraud against Gramins from the count of conviction; (4) to schedule a trial date on those unresolved counts to a mutually acceptable date in 2022 or 2023, reasonably expected to be after the resolution of any appeal or collateral attack on the count of conviction; and (5) to toll the speedy trial clock on those unresolved counts until the new trial date. The Government represents that, if this motion is granted, it will move to dismiss with prejudice those unresolved counts against Gramins once any appeal or post-judgement litigation has been decided (including petition under 28 U.S.C. § 2255), unless that appeal or post-judgment litigation reverses or vacates Gramins's conspiracy conviction, in which case, Gramins and the Government agree that those unresolved counts would be re-joined with the count of conviction and the entire case would then be retried. In support of this motion, the parties state:

1. On September 3, 2015, a grand jury sitting in the District of Connecticut returned an indictment charging Gramins, together with Ross Shapiro and Tyler Peters, with one count of Conspiracy to Commit Securities Fraud, Wire Fraud and False Statements, in violation of 18

U.S.C. § 371; two counts of Securities Fraud, in violation of 15 U.S.C. §§ 78j(b) and 78ff and 17 C.F.R. § 240.10b-5; and seven counts of Wire Fraud, in violation of 18 U.S.C.§ 1343.

2. On June 15, 2017, the jury convicted Gramins of conspiracy (Count One), failed to reach a verdict on one count each of securities and wire fraud (Counts 3 and 9, hereinafter the "unresolved counts"), and acquitted Gramins on Counts 2 and 4 through 8. The Court ordered a mistrial as to the unresolved counts.

3. Extensive post-trial litigation ensued, both over the unresolved counts and the count of conviction. That post-trial litigation concluded on September 22, 2020, when the Court denied Gramins's and Shapiro's motions to reconsider its denial of dismissal and acquittal.

4. This Court has the authority to sever the unresolved counts, and proceed to sentencing on the count of conviction. *See United States v. Abrams*, 137 F.3d 704, 707 (2d Cir. 1998) ("Although the litigation as framed in the indictment may not yet have run its course, the counts of conviction have been resolved and the sentence is ready for execution. The unresolved counts have in effect been severed, and will be resolved another time in a separate judgment."). The Second Circuit would then have jurisdiction over any appeal, even if the Court holds the remaining counts in abeyance. *See id.*

5. The Government and Gramins agree that the Court should exercise its discretion to sever the unresolved counts and proceed to sentencing on the count of conviction. The Government and Gramins further agree that the Court should continue the trial on the unresolved counts to a date in 2022 or 2023, when the Court and parties reasonably believe that any appeal of or collateral attack on the count of conviction will be resolved. The parties agree to move for a further continuance, and to toll the speedy trial clock, if such appeal or collateral attacks are not resolved at least two months before the new trial date.

6. Should Gramins's appeal and any other attacks (including petition under 28 U.S.C. § 2255) on the judgment in this case be unsuccessful, and the conviction and judgment stand, the Government will move to dismiss with prejudice the unresolved counts. Likewise, if any appeal or attack, whether by Gramins or the Government, results only in the vacatur of the sentence, and not the conviction, the Government will move to dismiss with prejudice the unresolved counts. Conversely, Gramins agrees that if the conviction is vacated or reversed for any reason, the unresolved counts should be re-joined with the conspiracy count, and all three counts retried.

7. The parties agree that, pursuant to 18 U.S.C. § 3161(h)(7), the ends of justice served by continuing the trial on the unresolved counts outweigh the best interests of the public and the defendant in a speedy trial. *See United States v. Eldridge*, No. 09-CR-329-RJA, 2016 WL 5745161, at *4 (W.D.N.Y Oct. 4, 2016). If the conviction is affirmed on appeal and collateral attack, the continuance will the save the public the time and expense of another trial entirely. If the conviction is reversed or vacated, this continuance will ensure the need for only one retrial, again saving valuable time and resources for the defendant, the Government, and the Court.

Wherefore, the Government and Michael Gramins agree that the Court should (1) set a sentencing date for Gramins's conviction of one count of conspiracy to commit wire fraud and securities fraud; (2) sever Gramins's case from his co-defendant Ross Shapiro; (3) sever the unresolved counts of wire fraud and securities fraud against Gramins from the count of conviction; (4) schedule a trial date to a mutually acceptable date in 2022 or 2023, at a time when the parties anticipate any appeals or other attacks are likely to be resolved; and (5) toll the speedy trial clock on the unresolved counts until the new trial date, finding that the ends of justice served by continuing the trial on the unresolved counts, either by avoiding the time and expense of a retrial or by limiting that burden to only one trial, outweigh the public's interest in a speedy trial.

Respectfully submitted,

JOHN H.DURHAM
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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2020, a copy of the foregoing was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ *David E. Novick*

DAVID E. NOVICK
ASSISTANT UNITED STATES ATTORNEY

Gramins Attachment 2

OS Received 03/29/2023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

ROSS B. SHAPIRO, MICHAEL A. GRAMINS, and TYLER G. PETERS,

Defendants.

15 Civ. 7045 (RMB) (JCF)

CASE MANAGEMENT PLAN

JAMES C. FRANCIS IV
UNITED STATES MAGISTRATE JUDGE

The following case management plan is entered after consultation with the parties at a pretrial conference on November 3, 2015. This plan is also a Rule 16 and Rule 26(f) scheduling order as required by Rule 16 and Rule 26(f) of the Federal Rules of Civil Procedure.

1. Depositions are presumptively stayed pending completion of the parallel criminal case, United States v. Shapiro, 3:15cr155 (RNC) (D. Conn.), subject to particularized requests for an exception.

2. Document discovery, including service of document subpoenas on non-parties, may proceed, subject to particularized requests for an exception.

3. Defendants shall answer or move with respect to the complaint by January 29, 2016.

4. Plaintiff shall respond to any motion to dismiss by February 26, 2016.

5. Defendants shall reply by March 18, 2016.

6. Initial disclosures shall be exchanged by January 29, 2016.

7. The parties may propound document subpoenas and requests for production of documents immediately.

8. All document discovery shall be completed by May 20, 2016.

9. Additional deadlines shall be established as and when appropriate.

SO ORDERED.

[redacted]

JAMES C. FRANCIS IV
UNITED STATES MAGISTRATE JUDGE

Dated: New York, New York
November 4, 2015

Copies transmitted this date:

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Gramins Attachment 3

OS Received 03/29/2023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

ROSS B. SHAPIRO, MICHAEL A. GRAMINS, and TYLER G. PETERS,

Defendants.

15 Civ. 7045 (RMB) (JCF)

ORDER

JAMES C. FRANCIS IV
UNITED STATES MAGISTRATE JUDGE

Counsel having submitted letters concerning defendants' time to answer and the scope of the stay of discovery in this action, it is hereby ORDERED as follows:

1. Defendants' time to answer or move with respect to the complaint is extended until thirty days following completion of the parallel criminal trial.

2. Discovery other than that allowed by the November 4, 2015 order shall be stayed pending completion of the criminal case.

3. The pretrial conference scheduled for February 23, 2016, is cancelled.

SO ORDERED.

[redacted]

JAMES C. FRANCIS IV
UNITED STATES MAGISTRATE JUDGE

Dated: New York, New York
February 19, 2016

Copies transmitted this date:

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Gramins Attachment 4

OS Received 03/29/2023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ROSS B. SHAPIRO, MICHAEL A. GRAMINS, and TYLER G. PETERS,

Defendants.

15 Civ. 7045 (RMB)

~~[PROPOSED]~~ FINAL JUDGMENT AS TO DEFENDANT ROSS B. SHAPIRO

The Securities and Exchange Commission having filed a Complaint and Defendant Ross B. Shapiro having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein in paragraph VI); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

(a) to employ any device, scheme, or artifice to defraud;

(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(a) to employ any device, scheme, or artifice to defraud;

(b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or

would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a civil penalty in the amount of $200,000.00 to the Securities and Exchange Commission pursuant to Section 20(d) of the Securities Act, 15 U.S.C. §77t(d) and Section 21(d)(3) of the Exchange Act, 15 U.S.C.§78u(d)(3). Defendant shall make this payment within 14 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; identifying Ross B. Shapiro as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the allegations in the complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VIII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: October 3, 2018

[redacted]

HON. RICHARD M. BERMAN
UNITED STATES DISTRICT JUDGE
UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

Gramins Attachment 5

OS Received 03/29/2023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	:	**C. A. No. 1:15-cv-7045 (RMB)**
Plaintiff,	:	
v.	:	
MICHAEL GRAMINS and TYLER PETERS,	:	
Defendants.	:	

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MOTION TO DISMISS ALL CLAIMS AGAINST TYLER PETERS

Plaintiff Securities and Exchange Commission (the "Commission") hereby moves to dismiss all claims against defendant Tyler Peters ("Peters") pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure. In support if its motion, the Commission states that the parties are in agreement that dismissal with prejudice as to all claims against defendant Peters is appropriate.

Dated: November 5, 2019

Respectfully submitted,

SECURITIES AND EXCHANGE COMMISSION,
By its counsel,

/s/ Rua M. Kelly
Rua M. Kelly
Alfred A. Day
Boston Regional Office
33 Arch Street, 24th Floor
Boston, MA 02110
(617) 573-8941
(617) 573-4590 (Facsimile)
KellyRu@sec.gov

CERTIFICATE OF SERVICE

I hereby certify that, on November 5, 2019, a true and correct copy of the foregoing document was filed through the Court's CM/ECF system, and accordingly, the document will be sent electronically to all participants registered to receive electronic notices in this case.

/s/ Rua M. Kelly
Rua M. Kelly

Gramins Attachment 6

OS Received 03/29/2023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	**C. A. No. 1:15-cv-7045 (RMB)**
Plaintiff,	
v.	
MICHAEL A. GRAMINS,	
Defendant.	

~~[PROPOSED]~~ JUDGMENT AS TO DEFENDANT MICHAEL A. GRAMINS

The Securities and Exchange Commission having filed a Complaint and Defendant Michael A. Gramins having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Judgment; waived findings of fact and conclusions of law; and waived any right to appeal from this Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

(a) to employ any device, scheme, or artifice to defraud;

(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(a) to employ any device, scheme, or artifice to defraud;

(b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the amount of the civil penalty, if any, shall be determined by the Court. Upon motion of the Commission, the Court shall determine whether a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] is appropriate and, if so, the amount of the penalty. In connection with the Commission's motion for civil penalties, and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of the Consent or this Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the allegations in the complaint are true and admitted by Defendant, and further, any debt for civil penalty or other amounts due by Defendant under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Judgment.

Dated: April 26, 2022

[redacted]

UNITED STATES DISTRICT JUDGE

On Consent

Gramins Attachment 7

OS Received 03/29/2023

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	No. 3:15CR155(RNC)
vs.	:	
ROSS SHAPIRO, ET AL,	:	
Defendants.	:	HARTFORD, CONNECTICUT May 9, 2017

JURY TRIAL - VOLUME II

BEFORE:

HON. ROBERT N. CHATIGNY, U.S.D.J.

Darlene A. Warner, RDR-CRR
Official Court Reporter

I think that the defendants are overstating what the government's burden here is.

I don't disagree that we need to prove they made material misrepresentations and then they knew making material misrepresentations was a wrong thing to do.

THE COURT: Do you hear and understand what I'm saying?

MR. NOVICK: I do, Your Honor.

THE COURT: Because to me that's fundamental.

If the regulators believe that an area needs to be better regulated, the way to do that is to publish regulations for comment and get feedback and give people notice. The way not to do that is to say, "Well, let's pick a couple of people and prosecute them, and then everybody will know where the line is if we win, if we win."

That's something that's very much in my mind as I think about this case.

MR. NOVICK: And, Your Honor, look, in every white-collar case of this kind of nature, there's often a question -- it's often not a question of who did it. It's a question of somebody did something, and is that a violation of the law, is it a knowing violation of the law. And we intend to prove that it was.

I am merely saying that these passages in the

whether what you're communicating about in your chats had to do with a private business venture, is that correct?
A. That's correct.
Q. And they often -- and you received communications from compliance asking you from time to time to explain communications concerning expenses, is that right; do you remember that?
A. I don't recall that.
Q. Do you remember Mr. Kramer sending you an email asking you about an upcoming dinner and your comment in a chat asking whether you can authorize it; does that refresh your recollection?
A. Yes, that refreshes my recollection.
Q. The tactics that you've described to the jury on direct examination, did you make any efforts to conceal those tactics from compliance?
A. There were no overt tactics to conceal them from compliance.
Q. Did anybody tell you to do anything to conceal it from compliance, conceal the use of those tactics from compliance?
A. No one told me to conceal the tactics from compliance.
Q. On a different compliance question, is it the case that if a trade occurred that resulted in a markup of

A. That's correct.
Q. Blame was shifted from Nomura onto the client, the phantom client?
A. Yes, that's correct.
Q. But you didn't think that tactic was wrong at the time because you weren't misrepresenting cash flows of the bond, correct?
A. No, that's not correct.
Q. Didn't you tell the federal government, in December of 2014, that at the time you did not think that tactic was wrong, with that tactic there was not a misrepresentation as to the cash flows of the bond?
A. Again, I don't recall exactly what I said in this meeting in 2014.
MR. PETRILLO: Mr. McCleod, would you show the witness only DX3510B at page 6.
BY MR. PETRILLO:
Q. Does that now refresh your recollection?
A. Yes, it does.
Q. And what do you now recall?
A. That this is what I told the government in 2014.
Q. So in 2014, you're acknowledging today that you told the government that the tactic did not involve a misrepresentation as to the cash flows of the bond; as a result, you didn't think the tactic was wrong, correct?

A. That's what I said.
Q. And at the time you didn't think it was illegal, correct?
A. That's correct.
Q. Now, I want to focus you on the trading negotiations on the desk and ask you: Did you ever tell a counterparty that you were selling them a particular bond and then deliver a different bond?
A. No.
Q. Did anyone ever ask you to do that?
A. No.
Q. And you never observed anyone on the desk doing that, correct?
A. That's correct.
Q. And you understood that that would not be permissible, correct?
A. That's correct.
Q. When you purchased the bond on the desk from a counterparty, did you ever shortchange the counterparty by sending less money than agreed upon?
A. No.
Q. No one ever asked you to do that, right?
A. No, they didn't.
Q. That would be impermissible, correct?
A. That's correct.

A. That's correct.
Q. And you never called the anonymous Nomura compliance hotline to report any unethical activity or suspect illegal activity or violations of policies while you were at Nomura, right?
A. I did not.
Q. Can we talk for a second about the AAA trade that we discussed this morning, or that you discussed this morning?
A. Yes.
Q. If you want, I can give you copies of the checks, but I think you'll be able to answer my questions without them.
A. Okay.
Q. You were not involved in that trade, right?
A. I was not communicating with the clients, no.
Q. I'm not sure I understand the difference.
Were you involved in that trade, yes or no?
A. I was in one of the chat rooms.
Q. That's not my question.
Were you involved in the trade, yes or no?
A. No, I was not involved in the trade.
Q. So this morning when Mr. Brennan was doing that thing with the chart, you were just reading words that were on a page, correct?

witness.

THE COURT: Overruled.

BY MR. MUKASEY:

Q. You didn't think they were illegal, right?

A. That's correct.

Q. You've testified repeatedly here and in the grand jury that you didn't think it was illegal, right?

A. That's correct.

Q. Ms. Cherry asked you in the grand jury, you didn't think they were illegal, and you said, "Correct," right?

A. Correct.

Q. Couple times during the summer of 2015, you were asked whether you used these sales tactics at Auriga by the prosecutors, and you denied it, right?

A. Correct.

Q. And I think I asked you this, this morning, I apologize, but you said you used it at Nomura, but you stopped at Auriga, right?

A. That's correct.

Q. And is the reason that you stopped -- the reason you told them you didn't do it at Auriga is because they were investigating you, right?

A. I don't recall the reason I didn't tell them I did it at Auriga.

Q. Well, if you told them you did it at Auriga, it would

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	No. 3:15CR155(RNC)
vs.	:	
ROSS SHAPIRO, ET AL,	:	
Defendants.	:	HARTFORD, CONNECTICUT May 10, 2017

JURY TRIAL - VOLUME III

BEFORE:

HON. ROBERT N. CHATIGNY, U.S.D.J.

Darlene A. Warner, RDR-CRR
Official Court Reporter

way."
A. That's correct.
Q. Did you have the same ability to overrule Ross if you disagreed with him?
A. I did.
Q. Let's talk for a moment about the factors that went into compensation at least during the period that you were involved.
One factor that was looked at was revenue for the securitized products business, correct?
A. Correct.
Q. The RMBS desk was just one desk within securitized products, correct?
A. Correct.
Q. How many desks are there in securitized products?
A. The risk report you had listed just about all of them. So there was ABS, CMBS, RMBS, pass-throughs, CMOs, let's say five large ones, and then there's syndicate desks or financing desks as well.
Q. Do all of those desks hold positions in inventory as we talked about the RMBS desk doing?
A. Yes.
Q. So if the market for fixed income broadly does very well, and the fixed-income desks are taking a lot of market risk and own a lot of bonds, how the securitized

products business does could affect revenue business substantially, right?

A. Correct.

Q. And that could result largely from just how the market does.

A. Correct.

Q. Revenue for the fixed-income department was also taken into account, right?

A. Correct.

Q. That's a subset of securitized products?

A. Fixed income is a superset --

Q. Superset.

A. -- of securitized products. It would include interest rates, credit, foreign exchange.

Q. Understood.

And going to another superset, Nomura's overall revenue is considered, is that fair?

A. At both the wholesale level as well as at the group level, correct.

Q. And I believe, as you testified, revenue for the RMBS desk was also considered, right?

A. Correct.

Q. Fair to say that -- withdrawn.

We've talked about the fact that the RMBS desk was long. It owned nearly a billion dollars' worth of bonds

at various times.

The other desks in fixed income also traded and often held large dollar amounts, correct?

A. Correct.

Q. Fair to say that if the RMBS desk, let's say, had a profit or a loss of one, two, three, even five million or six million dollars, as a practical matter, that type of number doesn't really affect compensation?

A. That's correct.

Q. And revenues and profits, those weren't the only factors that related to compensation, correct?

A. No.

Q. In fact, assessments would be made of whether a trader got along with others at Nomura?

A. How one acted as a culture carrier, as a good corporate citizen, was a factor.

Q. What are some of the other factors taken into account, just generally?

A. Being very practical about it, you'd consider things such as what the market levels were. If you pay too far below market and your traders all leave, you then don't have a business, so you care about market levels.

Compensation is both retrospective as well as prospective. Yes, we want to recognize performance for the past year; but if you think, on a forward-going basis,

you think they're never going to make any money again, you're probably not inclined to pay them as well as if you think they're going to make a lot of money in the future.

So there's a lot of factors that go into it.

Q. One of the factors you mentioned is what other people were paying, is that correct?

A. Correct.

Q. There were, in fact, circumstances where traders had offers, or at least there was concern at Nomura that traders may have offers or may be looking to leave, and Nomura might make compensation decisions in an effort to keep a trader from leaving?

A. Correct.

Q. That actually did happen, right?

A. There were -- while I was supervising, we definitely lost some traders to competitors, and we were not able to retain them.

Q. But you tried?

A. But we tried.

Q. And you tried by offering them larger compensation packages?

A. Correct.

Q. They just weren't as large as what the competitors were paying?

A. Usually people don't tell you exactly that, but

A. They both still work at Nomura, correct.
Q. And they work under you?
A. So Michael Jones reports to me directly. Conor O'Callahan reports to Michael Jones.
Q. You're his boss' boss?
A. Correct.
Q. And Conor, by way of background, is a lawyer, right?
A. I don't know if he ever practiced law, but I believe he has a J.D.
Q. A law degree?
A. A law degree.
Q. And he has a Series 24?
A. I don't know if Conor has a Series 24 or not offhand. He's not acting as a supervisor.
Q. Are you aware, in your capacity as a superior at Nomura, that Mr. O'Callahan was named as an unindicted co-conspirator in this case?
A. I am aware of that fact.
Q. And he's still working at Nomura?
A. He is still working at Nomura.
Q. Have you discussed the fact that he's been named an unindicted co-conspirator with him?
A. I have not.
MR. SPIRO: I don't have any further questions, Your Honor.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	No. 3:15CR155(RNC)
vs.	:	
ROSS SHAPIRO, ET AL,	:	
Defendants.	:	HARTFORD, CONNECTICUT May 16, 2017

JURY TRIAL - VOLUME V

BEFORE:

HON. ROBERT N. CHATIGNY, U.S.D.J.

Darlene A. Warner, RDR-CRR
Official Court Reporter

jury, Your Honor?

THE COURT: Yes.

BY MR. PETRILLO:

Q. All right. Would you look at 13:50:32 where you make a comment as follows to Ross, Hey, just to throw this out there, dot, dot, obv -- is that obviously?

A. Yes.

Q. Not mentioning this anywhere else. Anything you buy or TRD -- is that trade?

A. Yes.

Q. -- on the MH list, I will fabricate color of your choosing and I will be amenable to blatant shop job, et cetera.

Do you see that?

A. Yes.

Q. Ross says, Cool. Good to know. You see that?

A. Yes.

Q. What do you mean by fabricating color of Ross's choosing?

A. My practice when I conducted auctions was to distribute color that buyers requested if I thought it was reasonable.

Q. And what do you mean color in that context?

A. After conducting a public auction I would send out information on each security on whether or not it traded

A. I see that.
Q. And then at 14:45:46 you say, If anyone asks. Next line, 14:45:47, I will deny, deny, deny?
A. I see that.
Q. At 15:59:09, you write, I was asked if those GTs are mine. Do you see that?
A. I see that, yes.
Q. Ross says, Of course at 16:00, right?
A. Yes.
Q. 16:00:03 he says, That didn't take too long?
A. I see that.
Q. And right after that you're saying, at 16:00:19, I don't like lying but me thinks these guys have lied to me once or twice, correct?
A. Yes.
Q. So are you telling Ross I'm going to go ahead and lie as to whether I'm the owner of the bond?
A. I believe so, yes.
Q. Okay. We can take this down.
Mr. Harrison, when you perceived that dealers were lying or misrepresenting, you had the possibility of putting them in the penalty box, is that right? Do you understand that expression?
A. It's an expression I've used.
Q. Did you put dealers in the penalty box from time to

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	No. 3:15CR155(RNC)
vs.	:	
ROSS SHAPIRO, ET AL,	:	
Defendants.	:	HARTFORD, CONNECTICUT May 17, 2017

JURY TRIAL - VOLUME VI

BEFORE:

HON. ROBERT N. CHATIGNY, U.S.D.J.

Darlene A. Warner, RDR-CRR
Official Court Reporter

identification. It's also a chat with Mike Gramins.

Take a look at 21:18:33 -- I'm sorry -- 22:18:33.

A. Okay.

Q. Gramins says, Can we do 47-12, you can call it a victory for getting me to counter twice."

What do you say?

A. I measure victories in getting my level not how many counters I get.

Q. Meaning, it's a good buy if you get it at the price you want it, right?

A. I think I was valuing the price over the amount of the back-and-forth.

Q. Mr. Harrison, I'd like you to take a look at DX1033. And go to 12:39:19, and see where -- I'm sorry, 12:38:19.

See where Ross Shapiro says: "Cool if I send out the blast message from last week just one more time?"

A. Yes.

Q. What do you say after that?

A. Sure. I already lied to the guy.

Q. And then Shapiro: Chuckles.

And you say, at 12:38:42 --

A. He asked me point blank.

Q. And you point-blank lied to that guy, right?

A. That's what it looks like, yes.

Q. But otherwise, you say that you don't tolerate lying?
A. There could be other situations where it would be acceptable.
Q. Can you explain to me another situation where it would be acceptable?
A. There could be a situation which I was employing a trading strategy, or considering a trading strategy and if someone in the marketplace asked me if I was conducting certain sales or attempting certain sales or purchases, I may be left with a choice of lying to that person if I thought it was in the best interest of protecting my client's interests.
Q. So you might do that if it's protecting your client's interest, you might say something that's not true, correct?
A. Yes.
Q. Or if because of another relationship you have with somebody in the marketplace, that might also -- and there's a trust relationship there -- that might be somewhere where you would do the same thing, you would say something that wasn't true?
A. Potentially, yes.
Q. So let's go back to this instance. But what you're telling him here is you don't play, you are up front,

Q. Okay. So you're trying to either get him to not bid against you or to not submit a bid that is lower than the context you've described?
A. Not submit a bid higher than that.
Q. Okay. Either not bid against you or don't bid higher than you. That's what you're suggesting here?
A. Yes.
Q. And that's why you're telling him what your bid is, 68, right?
A. Well, I see that I'm sharing that information. I don't remember my thought process.
Q. You say, I'm showing in 68. That means you are going to bid 68, right?
A. That was my plan at the time.
Q. He showed you 70 area, and you said, FCK me. Really?

Then you say, Will you be receptive to stay out of my way request?

If I understand what you're saying now, what you wanted either was number one, either him not submitting a bid competing with you, or number two, not to submit a bid above your bid, right?
A. Yes.
Q. In either context, do you agree with me that what you are doing is interfering with the seller's ability

against you on a BWIC, correct?
A. It appears that way.
Q. You have to admit that that is something that frustrates the person who's trying to sell the bond's strategy, doesn't it?
A. I think "frustrates" is a word that has kind of different meanings. I think the seller would prefer that other market participants not do that.
Q. Right. Because now they're not getting the 70 bid. They're getting the 68 bid you're putting in, right?
A. I think that if Nomura was going to be a 70 bid, they would have submitted a 70 bid. My reading of that chat is that two points I self-described seemed like too much to ask someone to step back.
Q. You do recall the part of the chat where Mr. Feely said he was talking down Ross, right?
A. Yes.
Q. You do also remember the part of the chat where Mr. Feely said he would not step in front of you, right?
A. Yes.
Q. Okay. So would you agree with me that this chat would indicate that they did exactly what you wanted, right?
A. It appears that way, yes.
Q. And you would agree with me -- can you put

Q. You're saying that while you have a rule that you don't shop the bid, in this instance, you will shop the bid for Arvind, right?
A. Yes.
Q. And then you say he is 66 and 17. I want 67. Two others are 66 handle, right?
A. Yes.
Q. So what you're doing is you are taking the highest bidder, who's at 66-17, and telling Arvind what that person's bid is, right?
A. That's what it appears, yes.
Q. And the reason you're doing that is to give him an advantage, right?
A. Over the 66-17 bidder, yes.
Q. To give him advantage over the person who, when everything was equal, gave you the best bid, right?
A. Yes.
Q. Then you say, Seriously, dude. You cannot let a custy know I did this, right?
A. I am doing this, yes.
Q. I am doing this.

You don't want any of the other folks in the market to know you've done this, right?
A. Right.
Q. Because you go out on the market and you say I

don't shop bids, right?
A. Right.
Q. And you tell people shopping bids is a dirty game, right?
A. I don't think that's how I described shopping bids.
Q. How would you have described shopping bids?
A. Obnoxious protocol.
Q. Okay. Let's go down to 20:09:57.
You say, I'll say it again. I'm trusting you big time here with my rep. Yeah, my less than 65 told we were missing.
You really don't want him telling anybody you shopped this bid, right?
And he says at the end, Don't worry about it, right?
A. Yes. I'm sorry, can we stop here for a moment please? There's something else here that suggests that there's somebody else buying and I really don't understand because when I say, Yeah, my less than 65 is missing it implies I was bidding something and got feedback from someone else's BWIC.
So it seems like there may be more than one thing happening here.
Q. Okay. Let's go to the next line. Just the top part is fine.

with 58 and a half, right?
A. Yes.
Q. Let's move on to Defense 1448, which is Tab 14?
MR. BROWN: And I would move this into evidence.
MR. BRENNAN: No objection, Your Honor.
THE COURT: Thank you.
BY MR. BROWN:
Q. Do you see this is August 22, 2011. This is three days later, correct?
A. Yes.
Q. Another chat between you and Mr. Mohan?
A. Yes.
Q. Ray, if you could please go to 16:08:28.
He says, I can buy more of that SARM below 60. Yikes. Best bid I have seen on the SARM for your color is 58 and a quarter.
Do you see that?
A. 57 and a quarter.
Q. Sorry. Do you see that?
A. Yes.
Q. Then you say to him, You bought my SARM at less than 60, too, chief. Don't get confused with the BS color you asked me to spread.
Do you see that?

A. Yes.
Q. He says, Yeah, ha, ha. Yeah, I know. That color obviously didn't do anything for anyone, which I appreciate, by the way.
And you say, Ha, ha. I tried.
Do you see that?
A. Yes.
Q. You here have characterized your own color as BS, isn't that right?
A. I used that expression to tease him, yes.
Q. To tease him you say?
A. Yes.
Q. Okay. Let's go to Tab 14A which is 1779.
MR. BROWN: I would admit this into evidence, Judge, 1779.
MR. BRENNAN: No objection, Your Honor.
THE COURT: Thank you.
BY MR. BROWN:
Q. Ray, if you could please publish the beginning of this, the header.
This is a chat between you and Mr. Peters on October 20, 2011.
Do you see that?
A. Yes.
Q. If you could please go, Ray, to 18:07:20.

Mr. Peters asks you if you own any of this same bond. Do you see that?

A. Yes.

Q. You say you do not. You ask him why. He says he's seeing an obscene offer.

Do you see that?

A. Yes.

Q. If we keep going down to 18:17:40, you say, I had him on BWIC and traded the next day.

Mr. Peters says, Ahh, right. I remember that.

You say, Mine were 60 area I believe is official color I can share.

Do you see that?

A. Yes.

Q. Do you agree with me that you were giving Mr. Peters the color that Mr. Mohan asked you to spread?

A. Yes.

Q. The color that you in the last chat described as BS?

A. Yes.

Q. Thank you.

Already in evidence is Defendant's Exhibit 915. You have seen this before and I'm going to be very brief, but if you could show the portion, Ray, at 13:50:32.

Keep going down, Ray, if you could.

You then say, Little annoyed at the salesman. I had that color blasted specifically to help me buy the piece OTF. Otherwise would have shaded that S word up more.

Do you see that?

A. Yes.

Q. What you mean here is that you specifically had color shaded low so that you could buy more bonds on the follow, right?

A. Attempt to buy more bonds, yes.

Q. Attempt to buy more bonds, right?

A. Yes.

Q. Because you had it shaded down because you hoped that that would give you an advantage when you went to go buy more bonds, right?

A. Yes.

Q. And otherwise you would have shaded that stuff up more, right?

A. Yes.

Q. Okay. Now I'd like to ask you to look at two chats. There's two rather long and somewhat tedious chats that I would like you to look at together. One is 540 and one is 563.

Can you look at both of those. It's Tab 17 and 18

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	No. 3:15CR155(RNC)
vs.	:	
ROSS SHAPIRO, ET AL,	:	
Defendants.	:	HARTFORD, CONNECTICUT May 18, 2017

JURY TRIAL - VOLUME VII

BEFORE:

HON. ROBERT N. CHATIGNY, U.S.D.J.

Darlene A. Warner, RDR-CRR
Official Court Reporter

one of the different bonds that are available to buy.
Q. But certainly you would model a bond before you start negotiations to buy it, correct?
A. That is correct.
Q. And am I correct in understanding that once you've done your modeling analysis and you go into the market and you start negotiating and bids and offers are moving back and forth, am I correct in understanding that you continue to be guided, very much so, by your model in terms of how much you're willing to pay or not willing to pay for a bond?
A. Yes. As we talked before, models defines the perimeters or the ceiling or the maximum amount of price I would pay in order to get certain yield.
Q. The model is what tells you whether -- when the counterparty is pushing to move the price up to 79, the model is what tells you whether that price works for HIMCO, correct?
A. It tells us what point the price does not make sense, yeah.
Q. And based on the yield that you're looking to get from a particular bond, the modeling work that you do also tells you where it does make sense, doesn't it?
A. Yes. So for example, the easiest way to look at it, if at 80 percent -- so let's say my target is to generate

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	No. 3:15CR155(RNC)
vs.	:	
ROSS SHAPIRO, ET AL,	:	
Defendants.	:	HARTFORD, CONNECTICUT May 22, 2017

JURY TRIAL - VOLUME VIII

BEFORE:

HON. ROBERT N. CHATIGNY, U.S.D.J.

Darlene A. Warner, RDR-CRR
Official Court Reporter

A. There may be. There may be certain investors who think like that.

Q. And I think you testified that in a market, in the non-agency RMBS market, which is not fully transparent, that sometimes you might get bad color, is that fair?

A. Yes.

Q. Can you explain what you mean by that?

A. So what I mean by that is the fact there's no special place where transactions happen, and the price at which the transaction happened is posted, so there's no central place for that. Especially back in 2012, there was no special place for it.

So now you're relying on the brokers and dealers most of the time, so you're relying on them, and if you get wrong information from them, that may paint the picture that you may be getting wrong color, or two different sources may be telling you, this one traded in high 80s, versus another person saying it traded in high 70s. So you could get conflicting information at times.

Q. So bad color is basically inaccurate information about the general levels at which bonds are trading, correct?

A. Correct.

Q. And you understood that in a market like this in which trading prices are not published to market

participants, that it's a possibility that you could receive inaccurate information when you're talking to market participants about trading prices, correct?

A. That is correct.

Q. And because of that, is it fair to say that in a market like this that isn't transparent, all you can really know for sure is the price that you are willing to pay for a bond based on your analytics and the price at which a bond is offered to you; is that fair?

A. Yes.

Q. Now, you bought this PPSI bond at 79.02; do you recall that from last week?

A. Yes.

Q. And fair to say, that's a more than 20 percent discount to par?

A. Yes.

Q. And you understand from your meetings with the government that, and the chats you were shown, that Nomura had paid 78 and a half for the bond, right?

A. Yes.

Q. So the markup to Nomura from this PPSI transaction was something under 1 percent, is that fair?

A. Yes.

Q. And I'm just about done, I just have a few more questions, Mr. Abbas.

Q. Now, Mr. Novick asked you some questions about a meeting that you had with Mr. Gramins after the Litvak indictment back at Nomura in January 2013; do you recall that?
A. I do.
Q. You were in an industry conference when you first learned about that Litvak indictment, correct?
A. Correct.
Q. When that news broke, it was considered a major development, true?
A. Yes.
Q. Fair to say that it was a topic that everyone at the conference was talking about?
A. It was brought up in multiple conversations.
Q. I'm sorry, could you repeat that?
A. It was brought up in multiple conversations.
Q. Fair to say, it received a significant amount of attention?
A. Yes.
Q. And is it fair to say that it was the first time you ever heard that you could get into trouble for using the kinds of negotiating tactics that you've testified about here today?
A. Yes.
Q. And, in fact, until then, you didn't think that using

those kinds of negotiating tactics was wrong, true?
A. That's true.
Q. And you certainly didn't think that using those kinds of negotiating tactics could be a violation of the law, right?
A. I wasn't thinking about that in legal terms.
Q. But you didn't think it was wrong, correct?
A. I didn't think it was wrong.
Q. And if you did think it was wrong, you knew that you had the, actually the requirement, to report any kind of unethical or improper conduct up the chain at Nomura, isn't that right?
A. It didn't cross my mind to do that.
Q. It didn't cross your mind to do that because you didn't think it was wrong, correct?
A. Correct.
Q. And so you didn't call anybody at compliance to tell them you had some concerns about this conduct, correct?
A. I did not.
Q. And you didn't report any concerns to anybody in the legal department, true?
A. True.
Q. And you didn't sit down with anybody in senior management and say, "You know what, I've got some questions about some of this trading activity that I see

going on"; you didn't do that, did you?
A. I considered my senior management to be Mr. Gramins.
Q. Could you answer my question?
Did you sit down with anybody above Mr. Gramins?
Did you sit down with Mr. Raiff and tell him what you were thinking about?
A. I've never spoken a word to him.
Q. What about Gordon Sweely, any conversations with him about concerns you had with this kind of conduct?
A. I did not.
Q. What about Michael Jones, a senior salesperson, did you have any conversations with him?
A. No.
Q. Did you ever make a call anonymously to the Nomura hotline where you could just follow up with a concern without even leaving your name?
A. I didn't know that existed.
Q. Do you recall signing each year an attestation that you read the compliance manual?
A. I think I got an email, and I think we had to click to attest it.
Q. So you attested without reading?
A. I would review it.
Q. But you don't recall reviewing it in sufficient detail to know that there was an anonymous hotline set up

at Nomura if anybody had any concerns about any conduct they saw taking place?

A. I don't recall that.

Q. What about FINRA, do you recall whether FINRA had a hotline people could call up anonymously and report any concerns about any conduct they saw going on at a broker-dealer?

A. I don't remember those details.

Q. So when you took your Series 7 and your Series 63 licenses, you don't recall studying and finding out about abilities to report conduct, or what you thought might be misconduct, anonymously?

A. I do vaguely remember reading some of that reporting.

Q. But you didn't do it, right?

A. I did not.

Q. Now, back at Nomura, you testified there was a high level meeting with compliance.

I think, was it in February 2013?

A. That sounds about right, right around then.

Q. That was a meeting you weren't invited to, correct?

A. That's correct.

Q. And those were with senior people, senior traders, and Nadine Cancell, who was the head of compliance, right?

A. Yes.

Q. And after that meeting, Mike Gramins came over to

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	No. 3:15CR155(RNC)
vs.	:	
ROSS SHAPIRO, ET AL,	:	
	:	HARTFORD, CONNECTICUT
Defendants.	:	May 23, 2017

JURY TRIAL - VOLUME IX

BEFORE:

HON. ROBERT N. CHATIGNY, U.S.D.J.

Darlene A. Warner, RDR-CRR
Official Court Reporter

MR. NOVICK: Your Honor, objection. How does he know what Nomura knew. Can we lay a foundation?

THE COURT: All right.

BY MR. SKLAROFF:

Q. You had a meeting in December '13, with some outside lawyers from Nomura, correct?

A. Yes.

Q. And they showed you a chat in which you actually made such misrepresentation, right?

A. Yes, they did.

Q. And in addition to the outside lawyers, they were -- Ms. Cancell was at that meeting?

A. Yes, she was.

Q. And also somebody named Nancy Prahofer was there too, correct?

A. I don't remember who she was, but she may have been there.

Q. Do you remember somebody from Nomura being the head of litigation?

A. I remember Nadine, and I think outside counsel, but I don't remember who the third person was.

Q. And it's on that basis the fact that, during that meeting, Nomura's lawyers showed you a chat in which you actually made a misrepresentation that you knew that Nomura knew that you had engaged in this kind of conduct,

right?
A. Yes.
Q. And even though Nomura knew that, isn't it also true that Nomura asked you to stay when you told them you were leaving?
A. Yes, they did.
MR. SKLAROFF: One moment, Your Honor?
THE COURT: All right.
(Pause)
MR. SKLAROFF: I have nothing further.
Thank you, Mr. Chao.

CROSS-EXAMINATION

BY MR. PETRILLO:
Q. Good morning, Mr. Chao.
A. Good morning.
Q. My name is Guy Petrillo and I represent Ross Shapiro, okay?
A. Okay.
Q. Other than bumping into each other downstairs yesterday, we have not met each other, right?
A. We have not.
Q. I want to ask you some questions about your activity on the desk, different from what you've been asked before.
A. Okay.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	No. 3:15CR155(RNC)
vs.	:	
ROSS SHAPIRO, ET AL,	:	
Defendants.	:	HARTFORD, CONNECTICUT May 24, 2017

JURY TRIAL - VOLUME X

BEFORE:

HON. ROBERT N. CHATIGNY, U.S.D.J.

Darlene A. Warner, RDR-CRR
Official Court Reporter

Q. He does not own them. He says "in touch with"?
A. That's what it says.
Q. Right. It's fair to say that in the RMBS market you have to be sort of on your guard with information that's volunteered to you, correct?
A. I would argue that's the case in any market, but yes.
Q. But in the RMBS market, you do have to be on your guard for volunteered information, right?
A. I have to be -- I think you have to be on guard for all information.
Q. And that includes in the RMBS market, right?
A. Yes.
Q. And it's fair to say that as a sophisticated investor in the RMBS market when you were at QVT, you wouldn't rely on information that you had some suspicions about, correct?
A. Would I rely on something that I was suspicious about?
Q. On information you had gotten in the market that you had some suspicions about.
A. I certainly wouldn't fully rely on it if I was suspicious about it.
Q. In terms of something else that you tell your investors, is it fair to say that from time to time you would issue prospectuses or confidential memorandum to

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	No. 3:15CR155(RNC)
vs.	:	
ROSS SHAPIRO, ET AL,	:	
Defendants.	:	HARTFORD, CONNECTICUT May 25, 2017

JURY TRIAL - VOLUME XI

BEFORE:

HON. ROBERT N. CHATIGNY, U.S.D.J.

Darlene A. Warner, RDR-CRR
Official Court Reporter

Q. Computer science?
A. Yes.
Q. A lot of smart people?
A. There are a lot of smart people, yes.
Q. Ellington focuses in particular on mortgage-backed securities, correct?
A. Yes.
Q. Fair to say it holds itself out to investors as having trading experience and analytical skills that are on the cutting edge?
A. Yes.
Q. Fair to say it holds itself out as having state of the art analytics?
A. Yes.
Q. And that means a state of the art ability to analyze non-agency RMBS bonds, correct?
A. Yes.
Q. Fair to say it holds itself out as having best in class infrastructure?
A. Yes.
Q. What does that mean, by the way?
A. To me it means our systems are the best, and our models are fast, efficient, reliable, and we believe in the output and the productions.
Q. Is it true that you guys maintain information on

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	No. 3:15CR155(RNC)
vs.	:	
ROSS SHAPIRO, ET AL,	:	
Defendants.	:	HARTFORD, CONNECTICUT May 30, 2017

JURY TRIAL - VOLUME XII

BEFORE:

HON. ROBERT N. CHATIGNY, U.S.D.J.

Darlene A. Warner, RDR-CRR
Official Court Reporter

be drawn based on the state of the evidence, and so we object to that for the same reasons that we disagree with the Court on that understanding, that the striking of T would flow as a natural consequence from the Court's earlier ruling.

I would just add, Your Honor, I realize the Court has ruled, we did have -- just one moment, please, Your Honor?

(Pause)

MR. NOVICK: So I do think, Your Honor, since the time that the Court heard argument on this, we've heard additional information from other witnesses about the practice about who controlled what in terms of a trader being a source of information on trades. I think Mr. Wollman talked at length about that.

We didn't call Mr. O'Callaghan. Honestly, Your Honor, I don't think the government has an obligation to put on a witness -- let's put it this way -- to sponsor a witness that we don't want to; in other words, for reasons unrelated to this particular trade, the government doesn't want to sponsor Mr. O'Callaghan up there, so we didn't. We believed it was consistent with our obligations.

And again, I would renew our application with regard to those exhibits putting in the other side of the chat. But if the Court is still inclined to preclude

Gramins Attachment 8

OS Received 03/29/2023

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
v.	:	S3 No. 15-cr-00155 (RNC)
ROSS SHAPIRO and MICHAEL GRAMINS	:	October 5, 2018

SUPPLEMENTAL MEMORANDUM IN FURTHER SUPPORT OF ROSS SHAPIRO'S MOTION FOR RECONSIDERATION AND MOTION FOR SEVERANCE

Defendant Ross Shapiro respectfully submits this supplemental Memorandum in further support of his (1) Motion for Reconsideration of the Court's Order dated June 5, 2018 (Dkt. 522), and (2) Motion for Severance dated June 6, 2018 (Dkt. 505), which remain *sub judice.*

With but one count of the nine-count Superseding Indictment remaining, the Court, at a conference on June 7, 2018, encouraged the parties to meet and confer "with an eye toward a resolution of the case." 6/7/18 Hr'g Tr. at 32:19-23. Earlier, and in the June 5 Order itself, the Court also raised the possibility of a civil resolution to the case. 8/2/16 Hr'g Tr. at 10:23-24; 11:25-12:1 ("What makes this a criminal case as opposed to a civil case? . . . Why not leave it to [the alleged victims] to bring a civil action . . . ?"); *see also* Order dated June 5, 2018 (Dkt. 504) at 9-10 (noting that "the defendants' conduct might be better addressed through civil or administrative proceedings" where "[o]thers who engaged in this conduct have been the subject of civil enforcement proceedings or no enforcement proceedings at all").

In this vein, we respectfully supplement the factual record of the pending motions. Specifically, with respect to the parallel civil action filed against Mr. Shapiro and his two codefendants by the Securities and Exchange Commission ("SEC") in the Southern District of

New York in 2015, Mr. Shapiro and the SEC have now settled that action. Accordingly, on October 3, 2018, the Honorable Richard Berman endorsed a final order resolving the action as to Mr. Shapiro. *See* Final Judgment, *SEC v. Shapiro*, Case No. 15-cv-7045 (S.D.N.Y. Oct. 3, 2018), ECF. No. 138.

Under the settlement, Mr. Shapiro will pay a $200,000 fine and is permanently enjoined from violations of the securities laws. Also as part of the resolution, the SEC will issue a censure and bar Mr. Shapiro from the securities industry for two years, with a right to re-apply.

Although it is unconventional to negotiate with the SEC while a related criminal matter is pending, Mr. Shapiro's interest in resolving his case as soon as possible overrode conventional strategy. For its part, the SEC, recognizing where this matter falls within the spectrum of enforcement actions it has pursued in the nonagency RMBS secondary trading arena, agreed to a resolution that is fully in line with the resolutions the SEC has reached with others similarly situated in the SEC's RMBS investigations.

Mr. Shapiro continues to seek to resolve the single remaining open count in this case. Thus, pursuant to the Court's suggestion, counsel for Mr. Shapiro recently met with the senior leadership of the U.S. Attorney's Office regarding a potential resolution. With respect to possible terms of such a resolution, the parties appear to be no closer to agreement than previously.

* * *

Accordingly, for the reasons previously stated both in Mr. Shapiro's Motion for Reconsideration and Motion for Severance, Mr. Shapiro respectfully seeks an Order (a) granting the Rule 29 Motion, or, alternatively, dismissing the remaining count of the Indictment as a violation of Due Process; or, in the further alternative, (b) granting severance.

Respectfully submitted,

PETRILLO KLEIN & BOXER LLP

By: /s/ Guy Petrillo

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Attorneys for Ross Shapiro

CERTIFICATION OF SERVICE

I hereby certify that on October 5, 2018, a copy of foregoing Supplemental Memorandum in Further Support of Ross Shapiro's Motion for Reconsideration and Motion for Severance was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

Dated: New York, New York
October 5, 2018

/s/ Leonid Sandlar
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Gramins Attachment 9

OS Received 03/29/2023

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA Case No. 3:15-cr-155 (RNC)

v.

ROSS SHAPIRO

PRETRIAL DIVERSION WAIVER

The Pretrial Diversion Program for the District of Connecticut (also referred to as "the Program") has been explained to me by my attorney, who has also signed this waiver. I fully understand the requirements of the Program as well as the advantages resulting to me from my successful completion of the Program.

A. Defendant Subject to Criminal Prosecution

I understand that I am charged in Count One of a third superseding indictment (Doc. 307) (the "Indictment") with a violation of 18 U.S.C. § 371, conspiracy to commit securities fraud and wire fraud. No other counts remain against me following a 2017 trial in this matter.

Were Count One of the Indictment to proceed to trial, I acknowledge that the Government would present sufficient evidence to prove beyond a reasonable doubt that I violated 18 U.S.C § 371. I admit that while working as a trader on and supervisor of the non-agency Residential Mortgage Backed Securities ("RMBS") desk ("Desk") of Nomura Securities International ("Nomura"), I agreed with others on the Desk from time to time to misrepresent to trade counterparties (a) the prices at which the Desk had obtained or would obtain, or had sold or would sell, certain RMBS we were negotiating to trade with those counterparties, and (b) that certain of the RMBS that the Desk was negotiating to sell were owned at the time by counterparties in the market when in fact they were held in Nomura's inventory. I knew these statements were false

when I or my colleagues on the Desk made them. Were Count One of the Indictment to proceed to trial, I acknowledge that the Government would present sufficient evidence to prove beyond a reasonable doubt that (a) by making these false statements, I intended to deceive customers to increase Nomura's profit at the expense of its counterparties; (b) there was a substantial likelihood a reasonable investor in the non-agency RMBS market would view the misstated fact as one that significantly altered the total mix of information available to the investor; and (c) I knew that my conduct was wrongful and involved a significant risk of violating the law.

I consent to the filing of a motion on my behalf requesting a continuance of judicial proceedings based on the Indictment and understand that further judicial proceedings in this prosecution will be delayed until whichever of the following events occurs first: (1) a United States Probation Officer and the United States Attorney (through an Assistant United States Attorney) determine that they are unable to devise a satisfactory Program for me; (2) I reject the Program proposed to me; (3) I fail to abide by the conditions of the Program; or (4) I successfully complete the Program.

B. Waiver of Rights

1. Waiver of Statute of Limitations

I agree to a tolling of the statute of limitations period from the date the Indictment was returned in this matter until the period of pretrial diversion in this case has expired, and I have successfully completed the Program. I agree that should I fail to successfully complete the Program, then the charges in this case may be commenced or reinstated against me, regardless of whether the statute of limitations period expired after the date the Indictment was returned in this matter. I further agree to waive any defenses based on the statute of limitations expiring after the date of the Indictment with respect to the charge contained in Count One of the Indictment, namely,

conspiracy to commit securities fraud and wire fraud in violation of 18 U.S.C. § 371. Nothing in this waiver precludes me from raising a defense based on the claim that the statute of limitations expired prior to the date the Indictment was returned in this matter.

2. Waiver of Speedy Trial Rights

I fully understand my rights with respect to a speedy trial in this case, according to the Sixth Amendment of the United States Constitution, the Speedy Trial Act, 18 U.S.C. §§ 3161-3174, and the Due Process Clause of the Fifth Amendment to the United States Constitution. I agree to waive all such rights, including the right to claim that my prosecution has been improperly delayed under the provisions of the Constitution and laws of the United States during the period of my participation in the Program and during the period between the filing of this Waiver and my acceptance in the Program or a formal determination (for the reasons set forth below) that I will not participate in a Program.

C. The Determination of a Satisfactory Program

I understand that the next stage of the pretrial diversion process will be an interview with a United States Probation Officer of the United States District Court, and an investigation and evaluation by that officer. I also understand that, after the United States Probation Officer's evaluation is complete, he or she will confer with an Assistant United States Attorney in order to devise a Program satisfactory to the United States Probation Officer and the United States Attorney for the District of Connecticut. I understand that if the United States Attorney and the United States Probation Officer are able to agree upon a Program for me, that Program will be presented to me and my attorney for approval. I further understand that after reviewing the Program proposed, I may either accept the proposal and enter into the Pretrial Diversion Program or reject the Program. I understand that if I reject the Program proposed, the prosecution against me may

begin at the point at which it was suspended.

D. Completion or Failure to Complete the Program

I understand that during the period of the Program established for me, I shall be obliged to conform in all respects to the conditions of the Program and the requirements of the United States Probation Officer who supervises my Program. I also understand that upon my completion of the Program, as certified by the United States Probation Officer, the United States Attorney will move to dismiss the Indictment filed in this case in so far as it pertains to me. I further understand that if I fail to abide by the terms and conditions of the Program established for me, or if I fail to complete the Program, the prosecution based on the Indictment may be recommenced, and in such instance I shall receive no credit for any participation in the Pretrial Diversion Program. I understand that the determination of whether I have or have not abided by the terms and conditions of the Program and of whether or not I failed to complete the Program shall be made solely by the United States Attorney for the District of Connecticut.

E. Limitation of Deferral of Prosecution

I understand that the deferral of prosecution in this case pertains only to the violation of law set forth in the accompanying Indictment and the conduct underlying the criminal investigation which gave rise to the charges in the Indictment.

Dated this 11TH day of JANUARY, 2022, at NEW YORK, NEW YORK (location).

[redacted]
ROSS SHAPIRO
Defendant

[redacted]
GUY PETRILLO
JOSHUA KLEIN
Attorney for Defendant

Gramins Attachment 10

OS Received 03/29/2023

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA Case No. 3:15-cr-155 (RNC)

v.

ROSS SHAPIRO January 11, 2022

JOINT MOTION TO CONTINUE AND FOR AUTHORIZATION OF ASSISTANCE BY THE UNITED STATES PROBATION OFFICE IN CONNECTION WITH A PRETRIAL DIVERSION PROGRAM

Pursuant to 18 U.S.C. § 3161(h)(2), the United States, by and through the United States Attorney for the District of Connecticut, and the defendant jointly move that the trial against this defendant be deferred until whichever of the following events occurs first:

1. A United States Probation Officer and the United States Attorney (through an Assistant United States Attorney) determine that they are unable to devise a satisfactory pretrial Diversion Program (hereafter referred to as "the Program") for the defendant, in which event the United States will request that this case be returned to the Court's calendar;

2. The defendant rejects the Program devised, in which event the United States will request that this case be returned to the Court's calendar;

3. The defendant fails to abide by the conditions of the Program devised, in which event the United States will request that this case be returned to the Court's calendar; or

4. The defendant successfully completes the Program devised, in which event the United States will move to dismiss the pending charges in this case.

The defendant has consented in writing to this deferral of prosecution. A copy of the defendant's written Pretrial Diversion Waiver is attached and made a part of this motion.

The United States and the defendant also request that the Court authorize personnel of the

United States Probation Office to assist in preparing a Pretrial Diversion Report, in devising a Pretrial Diversion Program, and in supervising the defendant during the defendant's participation in the Program.

Finally, the United States and the defendant request that, if the Court grants this motion, a copy of the Court's order be transmitted to the United States Probation Office for further action consistent with the Order and the Pretrial Diversion Program. A proposed Order is attached for the Court's consideration.

Respectfully submitted,

LEONARD C BOYLE
UNITED STATES ATTORNEY

[redacted]

DAVID E. NOVICK
Assistant United States Attorney
Federal Bar No. phv02874

HEATHER L. CHERRY
Assistant United States Attorney
Federal Bar No. ct4351

157 Church Street, 25th Floor
New Haven, CT 06510
Phone: 203-821-3700

ROSS SHAPIRO
Defendant

By: [redacted]
GUY PETRILLO (CT19924)
JOSHUA KLEIN (PHV07748)
Petrillo Klein & Boxer LLP
655 Third Ave.
22nd Floor
New York, NY 10017
Phone: 212-370-0330

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA Case No. 3:15-cr-155 (RNC)

v.

ROSS SHAPIRO

PRETRIAL DIVERSION ORDER

The joint motion of the United States and the defendant for a continuance pursuant to 18 U.S.C. § 3161(h), and for authorization of assistance by the United States Probation Office in connection with a Pretrial Diversion Program in the captioned criminal case is granted for the reasons set forth therein.

The Clerk of the Court is ordered to transmit a copy of this Order to the United States Probation Office.

It is so ordered, this _____ day of _____, 2022 at Hartford, Connecticut.

_____
HON. ROBERT N. CHATIGNY
UNITED STATES DISTRICT JUDGE

Gramins Attachment 11

OS Received 03/29/2023

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA Case No. 3:15-cr-155 (RNC)

v.

ROSS SHAPIRO

PRETRIAL DIVERSION ORDER

The joint motion of the United States and the defendant for a continuance pursuant to 18 U.S.C. § 3161(h), and for authorization of assistance by the United States Probation Office in connection with a Pretrial Diversion Program in the captioned criminal case is granted for the reasons set forth therein.

The Clerk of the Court is ordered to transmit a copy of this Order to the United States Probation Office.

It is so ordered, this 12th day of January, 2022 at Hartford, Connecticut.

[redacted]
HON. ROBERT N. CHATIGNY
UNITED STATES DISTRICT JUDGE

Gramins Attachment 12

OS Received 03/29/2023

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA Case No. 3:15-cr-155 (RNC)

v.

ROSS SHAPIRO March 22, 2023

MOTION TO DISMISS FOLLOWING COMPLETION OF PRETRIAL DIVERISON

The United States Probation Office has informed the Government that defendant Ross Shapiro has successfully completed his one-year term of pretrial diversion, which expired on March 16, 2023. As a result, according to the terms of the pretrial diversion program in this matter, the Government moves to dismiss this case, including all charging documents, as to defendant Ross Shapiro only.

Respectfully submitted,

VANESSA ROBERTS AVERY
UNITED STATES ATTORNEY

/s/ *David E. Novick*

DAVID E. NOVICK
Assistant United States Attorney
Federal Bar No. phv02874

HEATHER L. CHERRY
Assistant United States Attorney
Federal Bar No. ct4351

157 Church Street, 25th Floor
New Haven, CT 06510
Phone: 203-821-3700

CERTIFICATION OF SERVICE

This is to certify that on March 22, 2023 a copy of the foregoing Motion was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail on anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ David E. Novick
DAVID E. NOVICK
ASSISTANT UNITED STATES ATTORNEY

Gramins Attachment 13

OS Received 03/29/2023

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	No. 3:15CR155(RNC)
vs.	:	
ROSS SHAPIRO, ET AL,	:	
Defendants.	:	HARTFORD, CONNECTICUT April 24, 2017

TELEPHONE CONFERENCE

BEFORE:

HON. ROBERT N. CHATIGNY, U.S.D.J.

Darlene A. Warner, RDR-CRR
Official Court Reporter

rather than agency regulation or some other means? I'm thinking about this in the broadest terms.

I have a case in which people apparently can say that at the time they engaged in most of these trades, they believed in good faith that what they were doing was not illegal. No one had ever been charged with doing this, even though everybody did it, and certainly nobody had ever been convicted of doing it. They thought that it was okay, and the government has decided to use the criminal law as a means of educating the people in this industry about where the line is.

Do we have a precedent for that? Is there any other area of securities regulation where the government proceeded by way of indictment rather than some lesser means?

MR. NOVICK: I guess I'm not completely following. Are you saying, Your Honor, precedent to show that -- I mean, there are many white collar cases where the -- I have white collar cases where the defense is "here's what I did, I didn't think it was wrong," and the government has to prove that it was wrong, that it was illegal.

You know, I think that's pretty common, and certainly, you know --

THE COURT: Do you have any case where the

C E R T I F I C A T E

In Re: U.S. vs. SHAPIRO

I, Darlene A. Warner, RDR-CRR, Official Court Reporter for the United States District Court for the District of Connecticut, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

/s/_____

DARLENE A. WARNER, RDR-CRR
Official Court Reporter
450 Main Street, Room #223
Hartford, Connecticut 06103
(860) 547-0580

Gramins Attachment 14

OS Received 03/29/2023

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	No. 3:15CR155(RNC)
vs.	:	
ROSS SHAPIRO, ET AL,	:	
Defendants.	:	HARTFORD, CONNECTICUT April 29, 2020

ORAL ARGUMENT VIA TELEPHONE CONFERENCE

BEFORE:

HON. ROBERT N. CHATIGNY, U.S.D.J.

Darlene A. Warner, RDR-CRR
Official Court Reporter

conversation before. That is Rule 10(b)(5). You cannot lie --

THE COURT: There's no case that says that.

MR. NOVICK: There is no case directly on point pre-Litvak in this market.

I mean, I think that is well accepted. Yes, I would agree with that.

THE COURT: Okay, very good.

Well, I agree with you that the "everybody does it" offense is not very appealing, certainly not as an ethical matter, and I would be the last one, I think, to vote in favor of that approach; but when you're talking about due process and fair warning, what everybody does is certainly relevant.

If -- and again, I'm not asking you to accept the factual premise in the context of this case but just for the sake of the discussion -- if not everybody is doing it, but a lot of people are doing it, a lot of successful people who seem to be well-regarded in the industry, and there's no regulation, there's no case that says you can't do it, where does the fair warning come from for somebody like me?

And, yes, you can point to a company policy that says "don't lie." Maybe that was meant to be taken literally, maybe not. But, in any case, that's not

dispositive for sure.

Where does the fair warning come from?

Or are you simply in jeopardy if you make misrepresentations that are going to affect the decision-making on the other side?

You know that's wrong, because the case law says not all lies provide the basis for a prosecution.

MR. NOVICK: I think if you make lies that are obviously immaterial, I suppose that's right, Your Honor, and I know we've had this conversation.

Making lies about important things in the context of an RMBS negotiation, assuming that your intent is to deceive the party out of money -- and again I think that the presence of the scienter of acquiring its share is critical here.

I think it's particularly interesting here where essentially the Court, in part, instructed the jury on due process. I think that where we have a situation in which we have to -- again, accepting the premise of what the government has proven, and that is that the defendants intended to deceive, intended to defraud, and the lies were material, I think that's enough, Judge.

And defendants, individuals, traders are on notice, all people are on notice that that runs afoul of the law.

C E R T I F I C A T E

In Re: U.S. vs. SHAPIRO, ET AL

I, Darlene A. Warner, RDR-CRR, Official Court Reporter for the United States District Court for the District of Connecticut, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

/s/_____

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Gramins Attachment 15

OS Received 03/29/2023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. MICHAEL GRAMINS and TYLER PETERS, Defendants.	Civil Action 15-CV-07045 (RMB)

September 16, 2019
9:32 a.m.

Deposition of TYLER PETERS, taken by Plaintiff, at the offices of the Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, New York, before Brandon Rainoff, a Federal Certified Realtime Reporter and Notary Public of the State of New York.

JOB No. 190916BRA

other law, would you have done it?

A. No, I would not have.

Q. Why not?

A. I -- there is many reasons, but one is that's not the type of person I am. I am not the type of person that knowingly would violate any rules of my employer, certainly not any laws or regulations. I was very young at the beginning of my career and I would have never jeopardized that by doing something that I would have thought was violating policies and no less violating the laws.

MR. JAFFE: That's all we have.

MS. KELLY: Okay. We don't have anything. Thank you very much, Mr. Peters.

THE VIDEOGRAPHER: The time now is 5:17 p.m. and we are off the record.

* * *

E N D O F P R O C E E D I N G

Time noted 5:17 p.m.

* * *

REPORTER'S CERTIFICATE

STATE OF NEW YORK
COUNTY OF NEW YORK

I, BRANDON RAINOFF, a Federal Certified Realtime Reporter and Notary Public within and for the State of New York, do hereby certify:

That TYLER PETERS , the witness whose deposition is hereinbefore set forth at the time and place aforesaid, was duly sworn or affirmed by me, and that such deposition is a true record of the testimony given by the witness to the best of my ability.

I further certify that (1) I am not a relative, employee, or independent contractor of the parties or counsel of any of the parties; nor a person financially interested in the action; nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned; and (2) that transcript review was requested.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of September, 2019.

[redacted]

BRANDON RAINOFF, RPR, FCRR, RMR, CRR

Gramins Attachment 16

OS Received 03/29/2023

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	No. 3:15CR155(RNC)
vs.	:	
ROSS SHAPIRO, ET AL,	:	
Defendants.	:	HARTFORD, CONNECTICUT September 22,2020

TELEPHONE CONFERENCE

BEFORE:

HON. ROBERT N. CHATIGNY, U.S.D.J.

Darlene A. Warner, RDR-CRR
Official Court Reporter

defendant was conscious of the wrongful nature of his conduct and the risk that it might violate the securities laws. The jury was unanimous in finding Mr. Gramins guilty on Count One. It seems obvious that they focused on the post-Litvak trade.

I agree with Mr. Novick's observations in one of our conferences that the jury seems to have concluded that Mr. Gramins and Mr. Romanelli conspired to deceive the counterparty by engaging in the conduct that gave rise to the Litvak indictment.

On reconsideration, I continue to believe that the evidence viewed most favorably to the government is sufficient to support the verdict as to Mr. Gramins on Count One. The Second Circuit's opinion in Gramins calls on me to sentence Mr. Gramins, and I think it would be an abuse of my discretion if I were to fail to do so.

The defendants' reliance on Weimert is unavailing essentially for the reasons stated by counsel for the government in their oral and written submissions, which I will not repeat, but I do want to say a word about Weimert.

Weimert illustrates that reasonable minds can differ about materiality in some cases, and from a fair notice standpoint, that can be problematic.

But Weimert is far from our case. In our case,

C E R T I F I C A T E

In Re: U.S. vs. SHAPIRO, ET AL

I, Darlene A. Warner, RDR-CRR, Official Court Reporter for the United States District Court for the District of Connecticut, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

/s/_____

DARLENE A. WARNER, RDR-CRR
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Gramins Attachment 17

OS Received 03/29/2023

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	No. 3:15CR155(RNC)
vs.	:	
MICHAEL GRAMINS,	:	
Defendant	:	HARTFORD, CONNECTICUT December 17, 2020

SENTENCING HEARING (VIA ZOOM)

BEFORE:

HON. ROBERT N. CHATIGNY, U.S.D.J.

Darlene A. Warner, RDR-CRR
Official Court Reporter

will forever be grateful for the amazing support that I received from my wife, from my parents, from my siblings, from my friends, from many others who have given me support throughout the duration of this case.

I can assure Your Honor that I am a much different person today than I was six years ago when I lost my job and I began this painful ordeal. I cannot begin to express how humbling and eye-opening this experience has been, and I can accept responsibility for why I'm here today. I fully intend to live every day the rest of my life as a law-abiding citizen and as a positive role model for my two children who mean the absolute world to me.

I accept that I'll never be a bond trader again, but I am confident that I will find a new way to support my family.

I respectfully ask Your Honor for leniency so that I can begin this new journey and so that my family, who are all innocent bystanders in this case, can begin to heal.

I promise that Your Honor will never see me in this courtroom or any other courtroom ever again.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Gramins.

Mr. Mukasey, the subject of deferred

sentence for Mr. Gramins in circumstances where they otherwise might not be. That theoretical possibility does not warrant a sentence of incarceration in order for the interest in general deterrence to be adequately served.

The record shows that the government's investigation and prosecution of these cases has had a needed effect in that people understand that this conduct is unlawful, and anybody who would engage in this conduct, in my opinion, in the wake of the investigation and the prosecutions, which included incarceration for Mr. Litvak for a period of approximately nine or ten months, I think that somebody who's going to go ahead and do it anyway is not likely to be influenced by whether Mr. Gramins gets to spend a similar period of time in the custody of the Bureau of Prisons.

Just so you know, I have focused specifically on the question of whether I should give Mr. Gramins a year and a day, which would have the effect of requiring him to spend the same amount of time in custody as Mr. Litvak did. I've asked myself whether that's necessary and I have concluded that it is not necessary to adequately serve the interest in general deterrence. I think that interest can be served in other ways.

Ultimately, I conclude that a sentence of probation is sufficient, subject to the conditions that I

C E R T I F I C A T E

In Re: U.S. vs. GRAMINS

I, Darlene A. Warner, RDR-CRR, Official Court Reporter for the United States District Court for the District of Connecticut, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

/s/_____

DARLENE A. WARNER, RDR-CRR
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darlene_warner@ctd.uscourts.gov

Gramins Attachment 18

OS Received 03/29/2023

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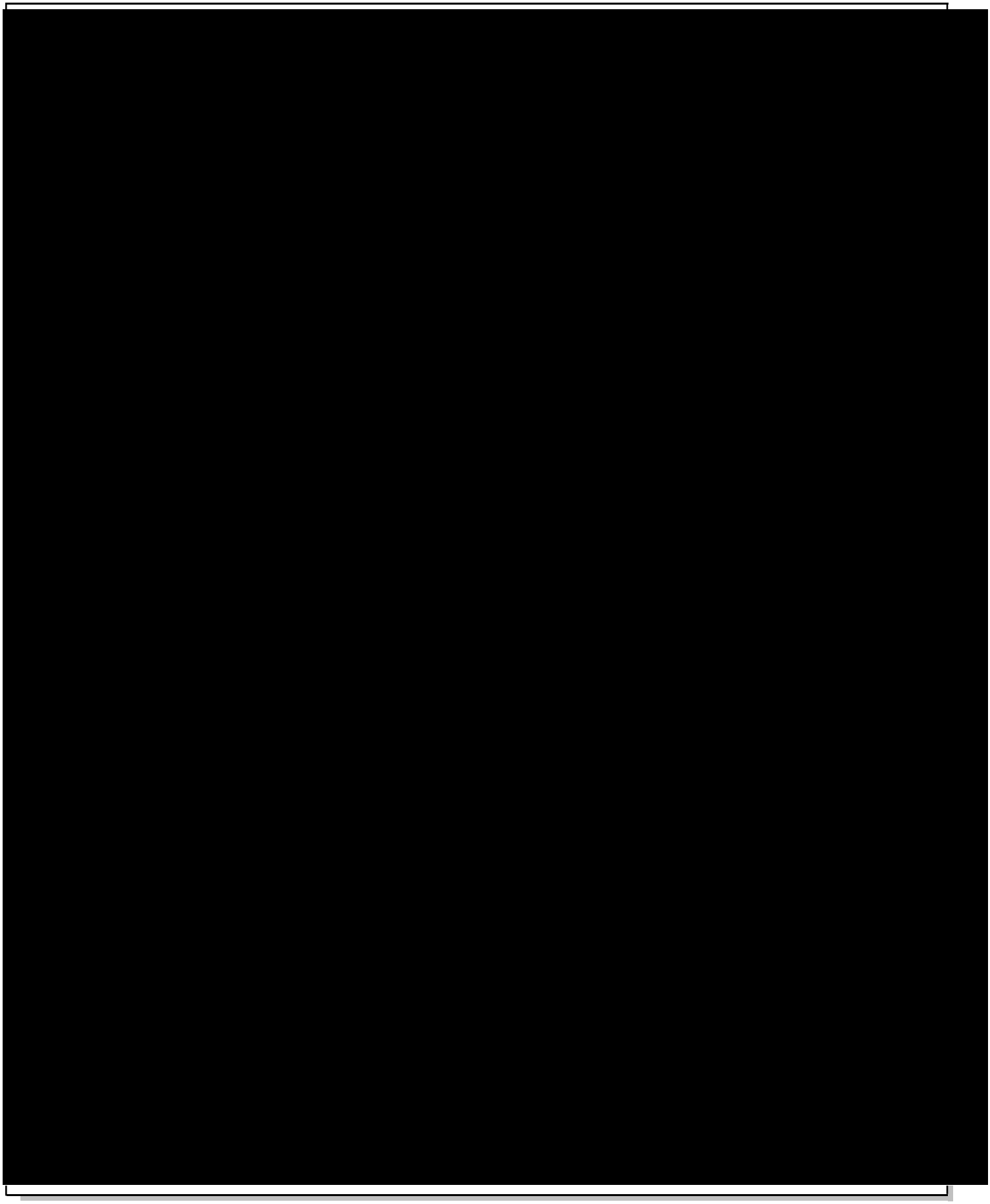
OS Received 03/29/2023



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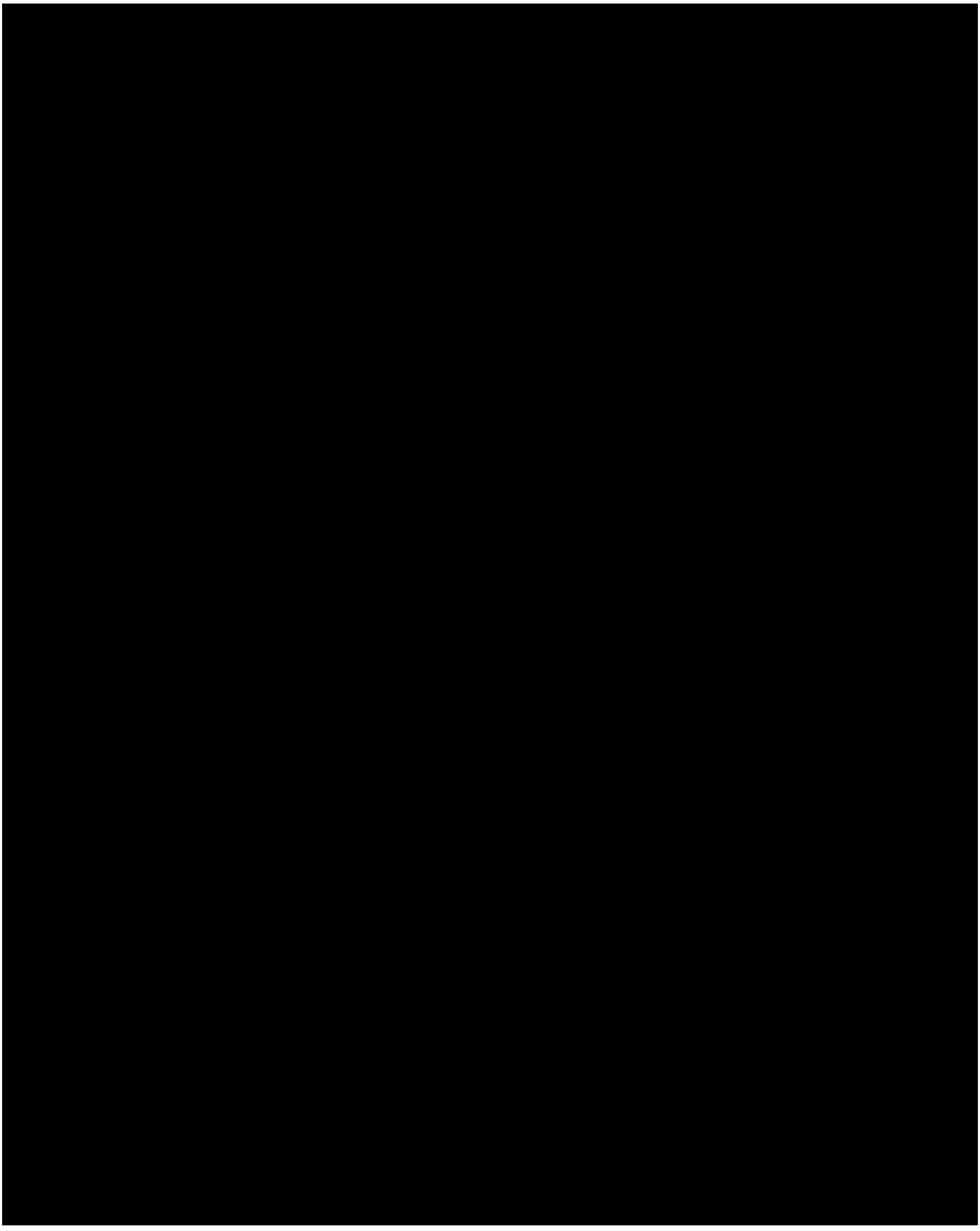

OS Received 03/29/2023

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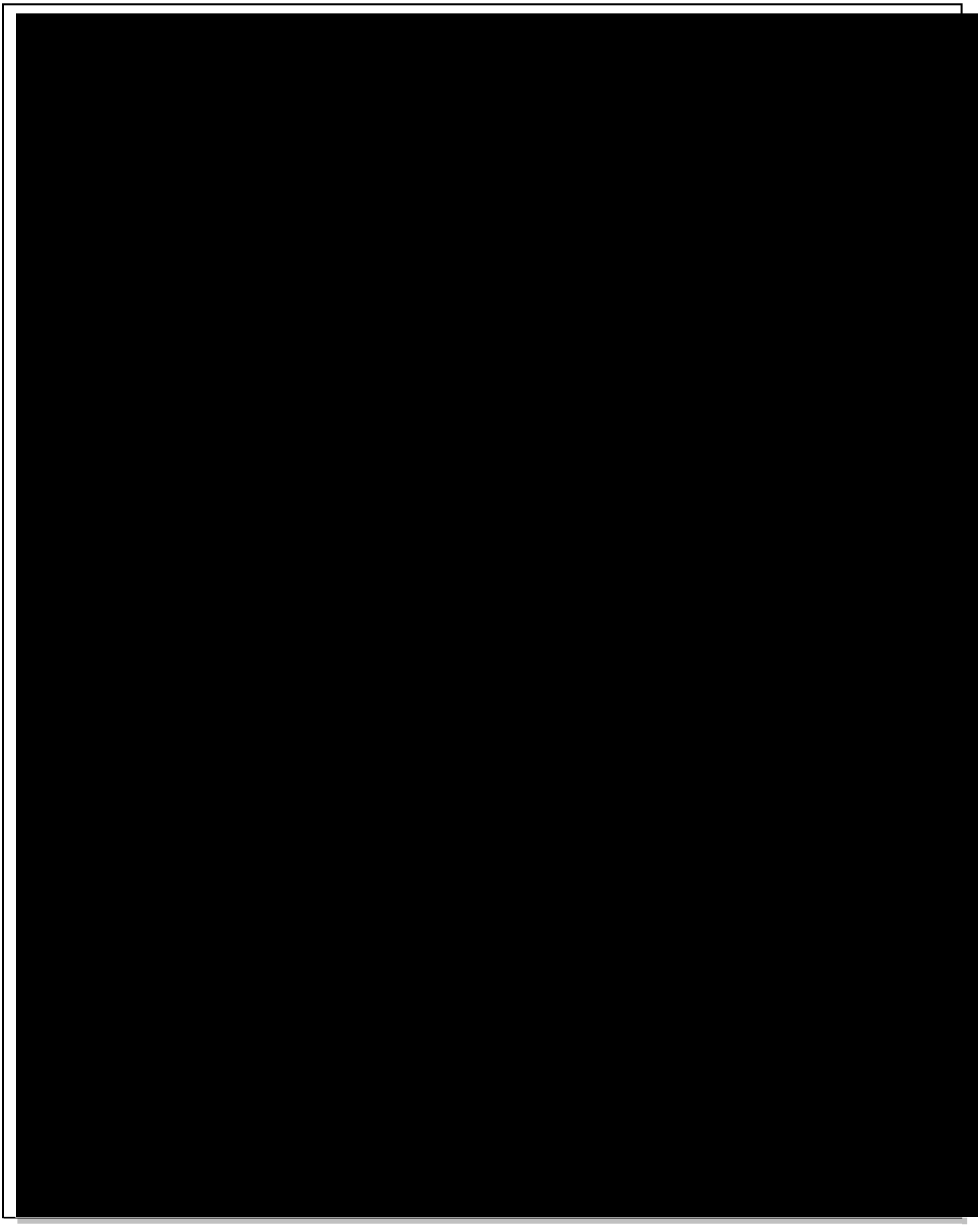

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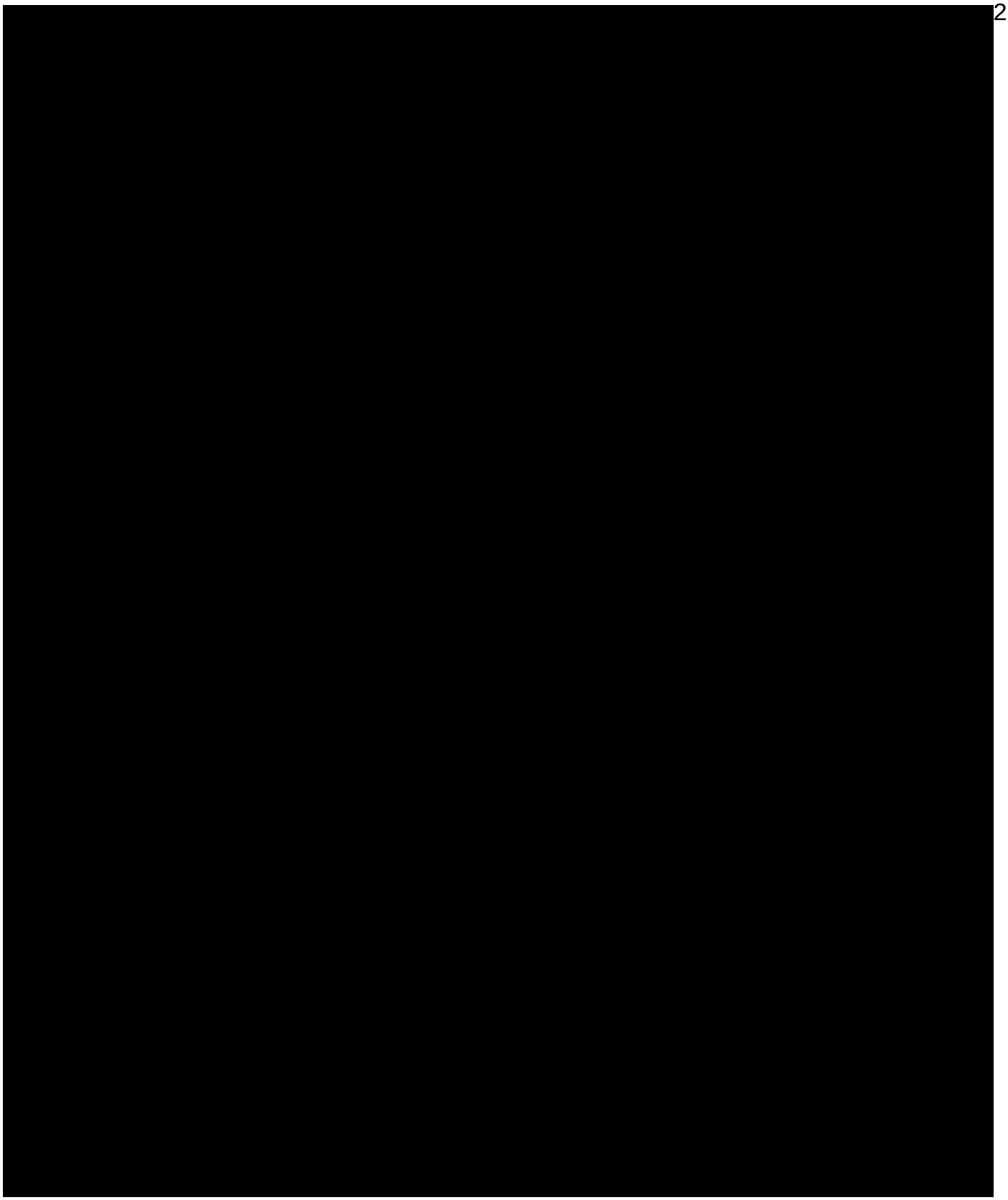

Gramins Attachment 19

OS Received 03/29/2023

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v. 1:15 Cv 07045 RMB-RWL

ROSS B. SHAPIRO, MICHAEL A. GRAMINS and TYLER G. PETERS,

Defendants.

----------x

DEPOSITION OF GARY LITT

New York, New York

June 11, 2019

Reported by:

MARY F. BOWMAN, RPR, CRR

JOB NO. 159539

Q. What happened when that transition happened? What was the effect of that?

MR. SAHNI: Objection.

Q. You can answer.

A. For me personally?

Q. No, for the firm.

A. I'm not -- I'm not really sure.

Q. Is it fair to say that when Soros became a family office and stopped being a hedge fund, it returned the money of the outside investors that it was previously managing?

A. I don't know exactly, I wasn't privy to that, but that would, that would be my understanding.

Q. Now, when you started at Soros in 2009, do you know what Soros' assets under management were?

A. I don't know exactly.

Q. Do you have a general idea?

A. Generally, I was not privy to that information. So the only thing that I -- the only thing that I can recall is

generally something north of 20 billion, but I don't -- but I don't -- I don't ever specifically remember seeing any numbers.

Q. And whether it was -- whether 20 billion is accurate or not, is it fair to say at the time when you went to work for Soros, it was considered a large hedge fund?

A. Yes.

Q. And by large, I mean relative to the size of other hedge funds and the assets that they manage, Soros was in sort of a larger part of that range, is that correct?

A. That's right.

Q. And that continued to be the case up until early 2012 when Soros ceased to be a hedge fund became a family office, is that correct?

A. That's right.

Q. Did Soros' assets continue to grow between 2009 and 2012 to the best of your knowledge?

A. I don't -- I don't know

Q. And those communications would either happen over during the relevant time over Bloomberg messenger or on the phone, right?

A. Yes.

Q. You understood though from your training that you should take what the dealer had to say about the bond or about the market with a grain of salt, right?

MS. KELLY: Objection.

Q. You can answer.

A. So when I came to Soros in my early days, there was a general recollection that I have around that time of when I was first starting to learn how the trade -- trading operates in the market, that I should operate with some degree of skepticism around what was being said to me.

Q. And that's something that was taught to you when you started interacting with dealers, right?

A. That was something that I was advised.

Q. Advised by people senior to you at Soros, right?

A. Correct.

Q. And you followed that instruction, right?

A. Yes.

Q. And in fact, when you -- you were interacting with dealers, you maintained a degree of skepticism about what dealers were saying to you?

A. Yes, to the best of my recollection.

Q. And that was true in 2012, right?

A. That's right.

Q. That was true in your dealings with Nomura, correct?

A. Correct.

Q. You didn't treat Nomura differently than any other dealer that you would interact with?

A. That's right.

Q. And to the best of your recollection, that was true with regard to your interactions with Mr. Peters as well,

right?

A. Yes.

Q. Are you aware, as you sit here today, that there is a trade that you did with Mr. Soros that is at issue in the litigation between Mr. Peters and the SEC?

MR. SAHNI: I think -- you said trade with Mr. Soros. You mean trade with Mr. Peters?

MR. JAFFE: Yeah, that would be weird. Trade with Mr. Peters.

A. I'm sorry, could you just repeat it.

Q. Why don't I just fixed that whole terrible question.

Are you aware, as you sit here today, that there is a trade that you did with Mr. Peters that is at issue in the litigation that the SEC has brought against Mr. Peters?

A. Yes.

Q. How did you become aware of the fact that a trade you did with Mr. Peters was -- let me rephrase that.

A. That's correct.

Q. And you agreed to pay 101 and a half on the bond because you considered that to be a good price, right?

MS. KELLY: Objection.

A. Yeah, ultimately, you know, our team transacted when we felt as though we were acquiring a price that was in the range of what we felt was fair value.

Q. In paying that price, that was -- that decision was made in consultation with your portfolio managers?

A. Correct.

Q. And it was the product of all of the work that you and the rest of the Soros mortgage team did to determine what would be a good price for your investors, right?

MS. KELLY: Objection.

A. So that's right, that was ultimately the price that we felt was fair value and the best level at which we could buy it.

Q. And that's the reason why you transacted, correct?

A. That's correct.

MR. JAFFE: No further questions.

MS. KELLY: I just have like three questions following that.

EXAMINATION BY

MS. KELLY:

Q. So just to clarify, on June 6, Soros bid 100. Does that comport with your recollection?

A. It does, yes.

Q. And then on Tuesday, June 12, it appears that Nomura actually bought the bond before they came back to you and they bought it for 99.75, right?

A. That's right.

Q. So shouldn't Soros have won that bid at 100 if the seller was willing to sell at 99.75?

MR. JAFFE: Object to form.

A. So our bid was par and typically our bid would be good for, you know, the remainder of the day, potentially as much as 24 hours, and anything longer than that would typically require us to specify such.

G. Litt

CERTIFICATE

STATE OF NEW JERSEY)
)ss:
COUNTY OF UNION)

I, MARY F. BOWMAN, a Registered Professional Reporter, Certified Realtime Reporter, and Notary Public within and for the State of New Jersey, do hereby certify:

That GARY LITT, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

In witness whereof, I have hereunto set my hand this 21st day of June, 2019.

MARY F. BOWMAN, RPR, CRR

Gramins Attachment 20

OS Received 03/29/2023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION	)	
Plaintiffs,	)	
vs.	)	No. 1:15-CV-07045-RMB-RWL
ROSS B. SHAPIRO, MICHAEL A. GRAMINS and TYLER G. PETERS,	)	
Defendants.	)	

VIDEOTAPED DEPOSITION OF SCOTT AUSTIN
Los Angeles, California
Tuesday, August 13, 2019

Reported By:
SUSAN A. SULLIVAN, CSR #3522, RPR, CRR
Job No. 163165

Nomura bought from FTN at the price of 71.25, right?

A That's what the ticket appears to show.

Q Okay. You can put that aside.

And I would like to have you look at Austin 9.

MR. FRENCHMAN: What was the Bates number on that?

MS. KELLY: Sure. No problem.

Austin 9 is TCW00002409.

Q So when you were -- you looked at this before and noted that you had initially, that you had offered a bid of 74-24 that was marked as FOK meaning fill or kill, correct?

A (No audible response.)

Q I understand that you don't necessarily recall how you came up with that number back in 2011. Did you have a particular practice as to how you came up with a bid when were you making a -- when you were making a bid in this context?

A Using the analytics and proprietary tools at TCW.

Q Right.

And I think you testified earlier that the number, the price that was given to you by the

broker-dealer would also impact the amount of your bid, correct?

MR. JAFFE: Objection to form.

MS. FEINSTEIN: I think that misstates prior testimony.

Do you mind asking him that again?

MS. KELLY: Sure.

Q Would the -- here you've learned from Mr. Peters that 75-24 is the existing offer from Nomura; is that right?

A Correct.

Q And did learning that number inform your bid on behalf of TCW?

A No.

Q It didn't.

A No.

Q Did -- is it fair to say that you testified that the question that you asked Mr. Peters was an effort to determine whether there was any room there for you to get the bond for less than 75-24?

A To -- asking the question what do you think is to glean Nomura's willingness to sell the bond below 75 and 24.

Q Right, right.

And so are you saying that knowing that number, 75-24, does not impact your offer to Nomura?

A The analysis that TCW does is independent of any offer --

Q Sure.

A -- to determine the ultimate bid.

Q But it provides context for your negotiation, does it not?

A But provides context? What's your question?

Q The 75-24 provides context for your negotiation?

MR. JAFFE: Objection.

THE WITNESS: What we would know is that they would be willing to sell at 75 and 24.

Q BY MS. KELLY: Which is information that informs your further negotiation with Nomura, correct?

MR. JAFFE: Objection.

Q BY MS. KELLY: I mean, it is a ceiling, isn't it, for the negotiation? That's the maximum amount that TCW would pay for the bond, right?

MS. FEINSTEIN: Objection.

MR. JAFFE: Objection.

REPORTER'S CERTIFICATE

I, SUSAN A. SULLIVAN, CALIFORNIA CSR No. 3522, RPR, CRR, do hereby certify:

That prior to being examined SCOTT AUSTIN, the witness named in the foregoing deposition, was, before the commencement of the deposition, duly administered an oath in accordance with C.C.P. Section 2094;

That the said deposition was taken before me at the time and place therein set forth, and was taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision; that the said deposition is a true and correct record of the testimony given by the witness;

I further certify that I am neither counsel for, nor in any way related to any party to said action, nor in any way interested in the outcome thereof.

IN WITNESS WHEREOF, I have subscribed my name on this 23rd day of August, 2019.

[redacted]

SUSAN A. SULLIVAN, CSR